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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**

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

COMES NOW, Defendants, NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only (hereinafter collectively "Department"), by and through its attorneys, Catherine Cortez Masto, Attorney General, and Vivienne Rakowsky, Deputy Attorney General, and hereby moves this Court for an Order to Compel Plaintiffs' pursuant to NRCP 34 and 37 to produce documents pursuant to the Request for Production served on May 25, 2011. This Motion is based on all pleadings and papers on file, the attached Memorandum of Points and Authorities and any oral arguments the Court may allow at the time of the hearing on this matter.

DATED this 15th day of August, 2011.

Respectfully submitted:

CATHERINE CORTEZ MASTO
Attorney General

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

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AFFIDAVIT OF VIVIENNE RAKOWSKY IN SUPPORT OF ORDER SHORTENING TIME

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

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.

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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

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
TRACI PLOTNICK
Appt. No. 96-3633-1
My Appt. Expires June 10, 2012

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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

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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.

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8. On or about July 15, 2011, Mr. Roos responded that they would not provide any documentation in response to the Defendants' Requests for Production. *See* e-mail dated July 15, 2011, attached hereto as **Ex. "E".**

9. Having not heard from Mr. Shafer's office, on or about July 13, 2004, the Defendants' sent an e-mail requesting a response. To date, neither Mr. Brown, Mr. Shafer nor Ms Pritzlaff have contacted counsel for the Defendants, nor have they produced a single document. *See* e-mail dated July 13, 2011, attached hereto as **Ex. "F"**.

II. FACTS AND PROCEDURAL HISTORY

Plaintiffs are the above-captioned exotic dancing establishments. Defendants are the various agencies of the State of Nevada which administer and collect the Live Entertainment Tax (hereinafter "LET") and Michelle Jacobs in her official capacity only. As background, there have been two Complaints (A533273 and A554970) filed in this matter. The two cases were coordinated for discovery and scheduling purposes, but have not been consolidated.[1]

On December 19, 2006, the eight Plaintiffs in Case A533273[2] (hereinafter "Case 1 Plaintiffs") filed a Complaint seeking as their remedies: (1) an injunction enjoining the Defendants from enforcing the provisions of the LET; (2) a refund of all LET payments that have been "involuntarily" made; (3) a declaration that the LET is unconstitutional; and, (4) an award for damages, costs and fees pursuant to 42 U.S.C. §1983. Before filing the Complaint in District Court, none of the Case 1 Plaintiffs had ever been audited with regards to LET nor had they requested a refund from the Department pursuant to NRS 368A.260 and therefore had not exhausted their administrative remedies as required by NRS 368A.260, NRS 368A.290, Chapter 233B of the NRS and Nevada case law.

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[1] This court has ordered the consolidation of the claims for declaratory relief but to date the order has not yet been filed.

[2] 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

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After filing the complaint in Case 1, six of the Plaintiffs requested refunds from the Department (hereinafter "Case 2 Plaintiffs") and pursued their administrative remedies. In January 2007, the six Case 2 Plaintiffs[3] requested a refund of the LET they remitted for January, February, March and April 2004. The Department denied the refund requests. The six Case 2 Plaintiffs appealed the Department's denial of the refunds to the NTC. Following a hearing over which it presided, the NTC upheld the Department's denials of the refunds and issued its final written decision dated October 12, 2007. *See* NTC Decision attached hereto as **Ex. "G"**. However, because the Plaintiffs' refund claims were not related to an audit, to date the amount of the refunds that Plaintiffs have requested has never been verified by the Department pursuant to the requirements of NRS 360.236.

On January 9, 2008, the six Case 2 Plaintiffs filed a Complaint initiating Case A554970. The Case 2 Plaintiffs allege in their Complaint that the LET, established by Chapter 368A of the Nevada Revised Statutes (hereinafter "NRS"), is an impermissible state tax and they request the refund of LET remitted for the tax periods at issue. The Case 2 Plaintiffs allege that the LET is an unconstitutional infringement by the State of Nevada on constitutionally protected expression. The Case 2 Plaintiffs seek as their remedy: (1) an injunction enjoining the Defendants from enforcing the provisions of the LET; (2) a refund of all LET payments which they remitted for January, February, March and April 2004; and (3) a declaration that the LET is unconstitutional.

On or about January 28, 2009, the eight Class 1 Plaintiffs filed an Amended Complaint in order to add an "as applied" cause of action to the "facial" challenge to the LET contained in the initial Complaint.

On or about December 19, 2010, the Case 2 Plaintiffs filed an Amended Complaint enlarging the caption to include all eight Case 1 Plaintiffs without leave of the Court[4] and

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[3] The six Case 2 Plaintiffs include: K-KEL, INC.; OLYMPUS GARDEN, INC.; SHAC, LLC; THE POWER COMPANY, INC.; D. WESTWOOD, INC.; and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC. The other two 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.

[4] 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.

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added an "as applied" cause of action in addition to the requested declaratory relief regarding the facial challenge and claim for refund in the initial Complaint.

It is the Defendants' position that the refund issues raised by the six Case 2 Plaintiffs in their Complaint were adjudicated through administrative proceedings and are the subject of a final decision issued by the NTC following a hearing over which it presided. *See* NTC Decision attached hereto as **Ex. "G".**

Based on rulings of this Court, and prior to the Supreme Court decision in Southern Cal. Edison v. First Judicial Dist. Court, 127 Nev.Adv.Op 22 (May 26, 2011), the Defendants served Requests for Production on the Plaintiffs in order to seek discovery with reference to the LET paid by each Plaintiff. *See* **Ex. "A".**

Plaintiffs waited maximum time before responding to the Requests for Production, and in fact Mr. Shafer's office requested additional time to respond, which was granted. Finally, Plaintiffs responded with boilerplate refusals to provide any documents. *See* **Ex. "C".**

In addition, counsel for Shac, LLC associated into the litigation a day or so before the responses were due. The Defendants offered to provide information in order to bring them up to speed and offered to extend the time to respond if they put the request into an e-mail. *See* e-mail dated June 29, 2011, attached hereto as **Ex. "H".** Instead, counsel for Shac, LLC responded with boilerplate responses (Ex. "B"), and in a telephone conversation with counsel for the Defendants stated that he responded to the requests *before* even speaking with his client. *See* follow up e-mail dated July 1, 2011, attached hereto as **Ex. "I".**

Pursuant to the local rules, in good faith, the Defendants requested an EDCR 2.34 meeting. A telephonic meeting took place with counsel for Shac, LLC and another telephonic meeting with counsel for the Plaintiffs.[5] During both discussions, the Defendants set forth the statutory basis for the requests for production, and both counsel similarly stated that they would think about it and let the Defendants know if they were going to produce the requested documents. Although all the documents requested in the Defendants' Request for Production were well within Nevada's broad standard for requests for discovery -- not

[5] 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.

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privileged, relevant to the subject matter involved in the pending action, and appear reasonably calculated to lead to the discovery of admissible evidence – during the 2.34 conference the Defendants provided the Plaintiffs with additional statutory basis stating: 1) no audit had been performed and the numbers had to be verified pursuant to NRS 360.236; 2) pursuant to NAC 368A.170 it is necessary to determine whether the club owner or the patron paid the tax; and 3) because the Plaintiffs have claimed in the Complaint that the statute has chilled their speech and had an impact on their business, it is necessary to compare the amount of business prior to and since the adoption of LET.

Regardless of the discussions, Plaintiffs have still refused to provide a single document in response to any of the 24 Requests for Production. Mr. Brown, Mr. Shafer and Ms. Pritzlaff did not respond after the 2.34 conference and counsel for Shac, LLC, Mr. Roos, responded by e-mail and refused to provide any documentations stating that it "would be best to address these issues with Judge Gonzalez through motion practice." *See* e-mail from Brandon Roos dated July 15, 2011, which addresses NAC 368A.170 but not the other basis for the requests, attached hereto as Ex. "E".

The Defense respectfully requests that pursuant to NRCP 37, this Court compel the Plaintiffs to provide the documents requested in the Defendants' Request for Production, and pursuant to NRCP 37(4)(A), grant the Defendants reasonable expenses including attorney's fees in having to prepare this Motion to Compel.

III. ARGUMENT

The State of Nevada embraces a broad and liberal standard for discovery. *See e.g.* Maheu v. Eighth Judicial Dist. Court, 88 Nev. 26, 37, 483 P.2d 709 (1972). ("Statutes relating to discovery procedures should be liberally construed in favor of disclosure.") The policy behind this practice is for both sides to have access to facts or information as to the existence or whereabouts of facts relative to the claims. Hickman v. Taylor, 329 U.S. 495, 500 (1947). "Parties are entitled to obtain the fullest possible knowledge of the issues and facts before trial." Hickman v. Taylor, 329 U.S. 495, 501 (1947). Liberal discovery aids in

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ascertaining facts in dispute, clarifying the issues and avoiding surprise at the time of trial. Medford v. Metro. Life Ins. Co., et al, 244 F.Supp.2d 1120, 1123 (D. Nev. 2004).

"The basic philosophy underlying discovery is that prior to trial every party to a civil action is entitled to the disclosure of all relevant information in the possession of any person, unless that information is privileged." Dart Indus. Co., Inc. v. Westwood Chemical Co., Inc. 649 F.2d 646, 652 (9th Cir. 1980) (quoting Wright, Law of Federal Courts 354 (2d ed. 1970) (internal quotations omitted)). Accordingly, the Nevada Rules of Civil Procedure allow a party to obtain discovery "regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party..." NRCP 26(b)(1). There is no pre-requisite that the information be admissible evidence. NRCP 26(b)(1); *see also* Dart Indus. Co., Inc. v. Westwood Chemical Co., Inc. 649 F.2d 646, 649 (9th Cir. 1980) ("A central justification for our exceedingly liberal discovery practice has been that the right to discover facts and information is kept entirely distinct from the right to use that information at trial.") Thus, it is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

All discovery is subject to the limitations imposed by Rule 26 of the Nevada Rules of Civil Procedure. The portions of Rule 26 relevant to this Motion state:

> **(1) In General.** Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(i), (ii), and (iii).
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> **(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

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> make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of 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.

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> The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The response shall first set forth each request for production made, followed by the answer or objections thereto. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.
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> A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

NRCP 34.

Therefore, according to the Nevada Rules of Civil Procedure, the Parties are entitled to broad and liberal discovery of things which are not privileged and are relevant to the subject matter involved in the pending action. The discovery need not be admissible to be relevant and discoverable. In this case, despite twenty-four requests for production, all eight Plaintiffs have refused to provide one single piece of paper in response to the requests by the Defendants, and instead provided a bunch of boilerplate unsubstantiated objections. In fact, with regards to Shac, LLC, the boilerplate objections to production were provided and signed by counsel for Shac, LLC before counsel had even spoken with his client. *See* Ex. "I".

When a party refuses to provide discovery, prior to filing a motion in Court, the Local Rules require the parties to engage in good faith discussions pursuant to EDCR 2.34(d) 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.

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In this case, as soon as the Defendants received the responses, Defendants immediately contacted counsel for Shac, LLC and counsel for the Plaintiffs and requested EDCR 2.34 conferences. Separate conferences were held with counsel for Shac, LLC and counsel for the Plaintiffs. During the course of both telephonic conferences, counsel for the Defendants discussed the scope of discovery allowed under the Rules of Civil Procedure and further explained the Defendants' reasoning and statutory basis for the requests, stating: 1) no audit had been performed and the numbers had to be verified pursuant to NRS 360.236 and NRS 368A.250; 2) pursuant to NAC 368A.170 it is necessary to determine whether the club owner or the patron paid the tax; 3) because the Plaintiffs have claimed in the Complaint that the statute has chilled their speech and had an impact on their business, it is necessary to compare the amount of business prior to and since the adoption of LET; and 4) before processing any refunds, it is necessary to determine if the taxpayer owes any other tax. NRS 360.236. (Any 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).

In addition, the Plaintiffs have made a number of claims in both of the Amended Complaints which necessitate the discovery requested in Ex. "A". As an example, the Plaintiffs' claim the LET is "an impermissible tax on constitutionally protected expression" (First Amended Compl., p. 2, ll. 19-2) which contains "numerous and various provisions affecting the constitutionally protected conduct of the Plaintiffs, their agents, representatives, entertainers and employees, as well as those individuals from the consenting adult audience who would seek to view the entertainment provided by the Plaintiffs". (First Amended Compl. ¶ 31). The Plaintiffs' claim that the Plaintiffs are "assert[ing] the constitutional rights of their patrons as well in this action." (First Amended Compl. ¶ 31). The Plaintiffs' further claim that pursuant to NRS 368A.260 they "filed timely requests for refunds of the Live Entertainment Tax they had paid, together with claims for the statutory interest provided for

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by NRS 368A.270 and 368A.310" (First Amended Compl. ¶ 34) and that both the "Defendant Nevada Department of Taxation and the Defendant Nevada Tax Commission erred by not granting Plaintiffs' requests for refunds." (First Amended Compl. ¶ 60).

The Plaintiffs seek to "have this Court declare as unconstitutional on its face and *as applied to Plaintiffs*... all aspects of the Nevada Tax on Live Entertainment..." (Verified Amended Compl. ¶1, 56 (emphasis added)), and have also requested that this Court declare "that the Defendants have violated the constitutional rights of the Plaintiffs by requiring them to have pay the Live Entertainment Tax in the past." (Verified Amended Compl. ¶ 56).

The Plaintiffs claim that as a "direct and proximate cause of the application and/or enforcement of Chapter 368A by Defendants against the Plaintiffs, the Plaintiffs have incurred and suffered significant an substantial damages, and will in the future suffer significant and substantial damages, including but not limited to having to pay an illegal and/or unconstitutional tax; loss of constitutional rights; lost business profits; and as a result incur costs and attorney fees in seeking protection of their constitutional rights. (Verified Amended Compl. ¶ 64).

As a result the Plaintiffs have requested that this Court require "Defendant Nevada Tax Commission to record the payments of the Live Entertainment Tax made by the Plaintiffs during those tax periods and to certify those amounts to the Defendant State Board of Examiners, and further ordering the Defendant State Board of Examiners to Approve and authorize the refund from the State Treasury of all such Live Entertainment Tax payments that have been involuntarily made by the plaintiffs under Chapter 368A during those tax periods, together with interest as required by NRS 368A.270 and 368A.310." (First Amended Compl., p. 17, ll. 5–13; Verified Amended Compl., p. 13, ll. 19–24). The Plaintiffs' additionally claim they have been damaged in an amount in excess of $10,000.00. (First Amended Compl. ¶ 62).

The documentation requested by the Defendants in Ex. "A" is relevant to the Plaintiffs' claims and the Defendants defenses of the matters at issue here. It is important to note that none of the Plaintiffs have undergone an audit. Traditionally, a taxpayer will go through the

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audit process prior to taking their claims to the Tax Commission and to District Court. That did not happen in this instance. The Plaintiffs filed the case in District Court, and then six of the Plaintiffs went through the administrative process requesting refunds from the Nevada Tax Commission. Because the Plaintiffs have not gone through an audit, the Department of Taxation does not have the records it would normally have regarding the Plaintiffs' businesses.

Moreover, when the Department performs an audit, it does not only audit one type of tax applicable to the Taxpayer, it will audit all of the taxes that apply such as sales tax, use tax, modified business tax, as well as any other tax that it administers that apply to the entity including Live Entertainment Tax. Pursuant to statute, any refund must first be credited to other taxes that may be due.

> **NRS 360.236 Overpayments: Credit against other amounts due required before any refund.** Notwithstanding any specific statute to the contrary, if the Department determines that any taxpayer or other person has overpaid any tax or fee 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.

In the normal course of events, a refund issue arises after an audit. In order to perform the audit, the auditor first contacts the taxpayer with a list of the documents that are necessary for the audit. NAC 360.700. The documents requested are similar to those in the Defendants Request for Production such as, but not limited to: general ledgers, banking information, financial statements, tax returns, sales journals, budgets, projections, and profit and loss statements. If after an audit there is an overpayment pursuant to NRS 360.236 or NRS 368A.250, the numbers must first be certified and then the Department must first apply the credit to any tax that has not been paid before processing a refund. As a result without enough information to perform an audit, the Department is not in a position to look at a potential refund.

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> **NRS 368A.250 Certification of excess amount collected; credit and refund.** If the Department determines that any tax, penalty or interest it is required to collect has been paid more than once or has been erroneously or illegally collected or computed, the Department shall set forth that fact in its records and shall certify to the State Board of Examiners the amount collected in excess of the amount legally due and the person from whom it was collected or by whom it was paid. If approved by the State Board of Examiners, the excess amount collected or paid must, after being credited against any amount then due from the person in accordance with NRS 360.236, be refunded to the person or his or her successors in interest.

The Department must also determine whether the club collected the LET tax from its customers or whether the club paid the LET tax without collecting from its customers. Nevada Administrative Code 368A.170 specifically applies to the LET and provides:

> **NAC 368A.170 Over-collection of tax: Duties of taxpayer and Department.** (NRS 360.090, 368A.140)
>
> 1. As used in this section, "over-collection" means any amount collected as a tax on live entertainment that is exempt from taxation pursuant to subsection 5 of NRS 368A.200, or any amount in excess of the amount of the applicable tax as computed in accordance with subsections 1 to 4, inclusive, of NRS 368A.200.
>
> 2. Any over-collection must, if possible, be refunded by the taxpayer to the patron from whom it was collected.
>
> 3. A taxpayer shall:
>
> (a) Use all practical methods to determine any amount to be refunded pursuant to subsection 2 and the name and address of the person to whom the refund is to be made.
>
> (b) Within 60 days after reporting to the Department that a refund must be made, make an accounting to the Department of all refunds paid. The accounting must be accompanied by any supporting documents required by the Department.
>
> 4. If a taxpayer is unable for any reason to refund an over-collection, the taxpayer shall pay the over-collection to the Department.
>
> 5. If an audit of a taxpayer reveals the existence of an over-collection, the Department shall:
>
> (a) Credit the over-collection toward any deficiency that results from the audit, if the taxpayer furnishes the Department with satisfactory evidence that the taxpayer has refunded the over-collection as required by subsection 2.
>
> (b) Within 60 days after receiving notice from the Department that a refund must be made, seek an accounting of all refunds paid. The accounting must be accompanied by any supporting documents required by the Department.
>
> (Added to NAC by Tax Comm'n by R212-03, eff. 12-4-2003)

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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
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.	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

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		LET was instituted. Accordingly, the information requested is not only relevant to the claims made by the Plaintiffs, but it is necessary.
REQUEST NO 2: 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.
REQUESTS NO. 3 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.
REQUEST NO. 4: 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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REQUEST NO. 5: Cash receipts journal(s), bank statements and cancelled checks 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. In addition, this information is necessary during an audit in order to determine if the bank information correlates to the return information.
REQUEST NO. 6: 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.	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, 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.
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.	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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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.	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.
REQUEST NO. 9: 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.	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.
REQUEST NO. 10: 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.	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 generally Defendants' explanation in Request 1. Specifically, this information is relevant to the Plaintiffs claims regarding the affect of LET on business.

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REQUEST NO. 11: Any and all documents constituting all customer data from any loyalty club or similar databases 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 generally Defendants' explanation in Request 1. Specifically, this information is relevant to the Plaintiffs claims regarding the affect of LET on business.
REQUEST NO. 12: Any and all documents constituting all information and data gathered related to customer satisfaction, suggestions and/or complaints from January 2003 to 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 generally Defendants' explanation in Request 1. Specifically, this information is relevant to the Plaintiffs claims regarding the affect of LET on business.
REQUEST NO. 13: 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.	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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REQUEST NO. 14: 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.	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 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.
REQUEST NO 15: 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.	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 generally Defendants' explanation in Request 1. In addition, this information is necessary with regards to determining the gross receipts and admission payments.
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, business plans, valuations or other information forming the basis for the loss from January 2001 to 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. Specifically, this information is relevant to the Plaintiffs claims regarding the affect of LET on business.

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REQUEST NO. 17: 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.	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.
REQUEST NO. 18: 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.	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.
REQUEST NO 19: 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.	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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REQUEST NO. 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.	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.
REQUEST NO 21: All Federal Tax returns and schedules filed by the Plaintiffs from January 2001 to 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. This information is necessary in order to correlate the financial information provided with the information provided to other taxing authorities.
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.	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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REQUEST NO. 23: All correspondence to and from the Department of Taxation regarding Live Entertainment Tax from January 2003 to 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.	Any correspondence between the Plaintiffs and the Department would be relevant to both the claims and defenses in this matter.
REQUEST NO. 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.	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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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
REQUEST NO. 1: 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

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		requested is not only relevant to the claims made by the Plaintiffs, but it is necessary.
REQUEST NO 2: Any and all audited financial statements for all periods prepared 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 tax is already within Defendants' custody and control. Plaintiff's financial information, including audited financial statements, 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.	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.
REQUESTS NO. 3: All Sales and Use Tax Returns for the period starting January 2002 through the present, along with all back –up work papers.	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.	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.

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REQUEST NO. 4: Any and all documents constituting periodic profit and loss statements 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, including periodic profit and loss statements, 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.	See Defendants' explanation in Request 1.
REQUEST NO. 5: Cash receipts journal(s), bank statements and cancelled checks 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, including cash receipt journal(s), bank statements and cancelled checks 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 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).	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.

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REQUEST NO. 6: 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.
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 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.

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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 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 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 and overbroad.	See Defendants' explanation in Request 1.
REQUEST NO. 9: 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 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 Defendants' explanation in Request 1.

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REQUEST NO. 10: 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.	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.	See generally Defendants' explanation in Request 1. Specifically, this information is relevant to the Plaintiffs claims regarding the affect of LET on business.
REQUEST NO. 11: Any and all documents constituting all customer data from any loyalty club or similar databases from January 2002 through the present.	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.	See generally Defendants' explanation in Request 1. Specifically, this information is relevant to the Plaintiffs claims regarding the affect of LET on business.

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REQUEST NO. 12: 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.
REQUEST NO. 13: 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 (the Nevada Department of Taxation) is actually requesting that Plaintiff produce information "submitted to the Nevada Department of Taxation"). 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.

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	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.	
REQUEST NO. 14: 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.
REQUEST NO 15: 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.

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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, business plans, valuations or other information forming the basis for the loss from January 2002 to the present.	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.	See Defendants' explanation in Request 1. Specifically, this information is relevant to the Plaintiffs claims regarding the affect of LET on business.
REQUEST NO. 17: 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.	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,	See Defendants' explanation in Request 1.

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	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.	
REQUEST NO. 18: 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 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 overly broad and unduly burdensome.	See Defendants' explanation in Request 1.
REQUEST NO 19: 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 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 and overly broad.	See Defendants' explanation in Request 1.

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REQUEST NO. 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 2002 to the present.	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 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 overly broad and unduly burdensome.	See Defendants' explanation in Request 1.
REQUEST NO 21: All Federal Tax returns and schedules filed by the Plaintiffs from January 2002 to the present.	Objection. Federal Tax returns are privileged and confidential. 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.	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.
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 2002 to the present.	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	See Defendants' explanation in Request 1.

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	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 overly broad and unduly burdensome.	
REQUEST NO. 23: 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 (the Nevada Department of Taxation) is actually requesting that Plaintiff produce correspondence "to and from the Nevada Department of Taxation"). 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.
REQUEST NO. 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 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.

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	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.	

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 15th day of August, 2011.

CATHERINE CORTEZ MASTO
Attorney General

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

Attorney General's Office
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Las Vegas, NV 89101

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:

William H. Brown, Esq.
Turco & Draskovich
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An employee of Office of Attorney General

IN THE SUPREME COURT FOR STATE OF NEVADA

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

Appellants,

vs.

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

Respondents.

Supreme Court Case No. 60037

District Court Case No. A533273

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

LITTLE DARLINGS OF LAS VEGAS, INC., et al. Plaintiffs vs. NEVADA DEPARTMENT OF TAXATION. et al. Defendants	CASE NO. A-533273 DEPT. NO. XI **Transcript of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS

TUESDAY, MARCH 15, 2011

APPEARANCES:

FOR THE PLAINTIFFS:	WILLIAM H. BROWN, ESQ. BRADLEY J. SHAFER, ESQ.
FOR THE DEFENDANTS:	BLAKE A. DOERR, ESQ. DAVID J. POPE, ESQ. VIVIENNE RAKOWSKY, ESQ.
COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

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

LAS VEGAS, NEVADA, TUESDAY, MARCH 15, 2011, 9:04 A.M.

(Court was called to order)

THE COURT: Little Darlings of Las Vegas versus Nevada Department of Taxation and all the related cases. Do I have everyone I need?

Counsel, if you could all identify yourselves for purposes of the record.

MR. BROWN: Good morning, Your Honor. William Brown on behalf of the plaintiffs, local counsel. With me is Brad Shafer.

MR. POPE: 'Morning, Your Honor. David Pope with the Attorney General's Office on behalf of the defendants. And with me are Blake Doerr and Vivienne Rakowsky, also with the AG's Office on behalf of the defendants.

THE COURT: Good morning. At our last hearing I believe I told you that I was going to have my assistant go through and try and do some research because I had concerns about the descriptions in the column called "NAICS Description" on the document that was presented in camera DV Sealed 0015 and the following pages.

After Mr. Kutinac completed his very extensive review of the entities to the best he could identify them, it appears, as we discussed in court, that some of those descriptors may not be very accurate. For instance, one of the strip clubs is identified as "clothing accessory stores."

So --

MR. SHAFER: Okay.

THE COURT: Well, that's why I did this, because you haven't seen it.

MR. SHAFER: I appreciate it.

THE COURT: Yeah. So that's why we're doing this extra work, and I wasn't the one who was going to bless the entire time I did the research.

So what my inclination is, and I know that this is a concern because you've expressed it already, is to come up with a coding system on which this document which has been presented in camera which begins on DV Sealed 0015 can have a code which identifies the name of the tax-paying entity. For instance, the one on the first line might be Number 1, and that you could then keep a copy of the code with "1 = name" that was on the line in 1 in a sealed envelope and provide a sealed envelope with that information to me, but all of the other information that is on the sheet besides that that is in Column "LET Taxpayer" will be disclosed to the plaintiffs. So that's my inclination. But I know it is a rather item of concern, so I'm happy to hear what you think we should do.

MR. DOERR: You know, after the hearing last time we spoke with Mr. Shafer about it, and he expressed concern about not even wanting the information that we spoke about. There were several phone calls back and forth. He expressed some

desire to have some information about some -- the taxpayers who requested exemptions, but he never called us back. So we don't really know what he wants.

MR. SHAFER: Your Honor --

THE COURT: Wait. Let's let him finish.

MR. SHAFER: Sorry.

THE COURT: Is there anything else you want to say?

MR. DOERR: That's really all I had to say about it.

THE COURT: Okay.

MR. SHAFER: Your Honor, this goes back to the letter with the exhibits after all the discovery disputes. It goes to Question Number 1. What I have told this Court and what I have told them, I am willing to limit my requests to those categories that I have identified, and I identified them in a redline under Judge -- in the document that was given to Judge Togliatti. I think we spoke about those when I was here last. Certainly one of the categories that I wanted was the category that you said apparently something is misidentified. But I am not asking for all the information in the entire two-page chart, only those categories that I've previously identified and those categories that are set forth in that letter that encompasses to Judge Togliatti what the outstanding discovery disputes were. And I believe that's Issue Number 1. And I lay out those categories there.

THE COURT: Okay. So --

MR. DOERR: I have a -- I need a clarification. Did you say that one that was -- I'm sorry. You said it was --

THE COURT: The item that is the first item on the chart, which is why I started this enterprise --

MR. DOERR: Right.

THE COURT: -- because it appeared to me not to be accurate, has an NAICS description of "clothing accessory stores." And I remember last time we were here you said you rely upon what the taxpayer puts on the form. They have a code they use, and if they use the wrong code, you keep it; right?

MR. DOERR: So, just for clarification, that's in the top list, in the top category; is that correct?

THE COURT: It is in the page DV Sealed 15. And the first taxpayer on the list on the first NAICS description it attributes to that taxpayer "clothing accessory stores."

MR. DOERR: Uh-huh. So that's identified as a gentlemen's club.

THE COURT: I knew from driving on the I-15 that entity was probably not a clothing accessory store.

MR. DOERR: But it's included under "Gentlemen's Clubs," under that category.

THE COURT: It is included on how you broke it down, because you broke it down yourself, is what you told me, when it appeared to you the code was wrong, you put them together.

MR. DOERR: That's correct.

THE COURT: Which is why I have $34 million in tax revenue from that first group you grouped together.

MR. DOERR: And that's --

THE COURT: Right?

MR. DOERR: -- identified as a clothing store; correct?

THE COURT: Yes.

MR. DOERR: So --

MR. SHAFER: Which apparently isn't even one of the categories that I asked about.

THE COURT: Well, but --

MR. DOERR: Well, I think you're misunderstanding what she's saying, Brad.

THE COURT: -- you understand that the AG's Office tried to do, even when perhaps the taxpayer may have tried to say they were something else, they tried to -- because they're smart, too, they tried to group them as the gentlemen's clubs.

MR. SHAFER: Okay.

THE COURT: So what I'm proposing is essentially what I do in cases where doctors break up and I have to protect patient privacy, and I've had it in a case involving a brothel, where we try and protect customer identities, that we're just going to do a code that protects the identity of those entities to the extent they need to be properly

protected at this point in time, but to give the plaintiff the information they need to do an adequate investigation prior to me making a determination on the constitutionality issues.

MR. POPE: What is that information, Your Honor, with regard to the categories that they are requesting information for?

MR. DOERR: Your Honor, are you saying to do this coding system for the for first group?

THE COURT: I think you should do that for more than the first group. I think you should do it for all of them. But I think the only group that is truly of concern ultimately in this case is the first group. I think you need the -- he needs the information on the other groups because he's going to argue that the tax is unfairly directed at gentlemen's clubs only. And if you don't have the information as to those other three pages who aren't gentlemen's clubs, then he's going to have a hard time showing that difference in the revenue, tax revenue.

MR. DOERR: I'm going to express my concern that we can even get that much documentation to him.

THE COURT: Well, no, it's not -- it's not a documentation issue. You're going to take this DV Sealed 15 and the four following pages --

MR. DOERR: Okay.

THE COURT: -- you're going to black out the column

that says "LET Taxpayer" --

MR. DOERR: Uh-huh.

THE COURT: -- you're going to write on the line that's 1, you're going to write "1" or some other number that you guys choose, hopefully sequentially, and then you're going to say, the number I put there covered up the name whatever the name of that entity is and 1 equals that entity.

MR. DOERR: Uh-huh. What about the backup documentation for this?

THE COURT: I'm not going to order that produced at this time. Only this very nice long document.

MR. DOERR: I guess then my concern would be there are certain groups of taxpayers where there are only -- there's only one entity.

THE COURT: Like the Sun City Summerlin Community Association? No, that's in a big group.

MR. DOERR: Some of the other groups at that -- and the 5 percent taxpayer group, I know there are single taxpayers.

THE COURT: Okay. Well, we'll deal with that when we get there.

So how long do you think? Because everybody, when I give them this task, because you're not the first person I've asked to do it, has a different time that it's going to take them to do this coding.

MR. DOERR: The way I understand it, I could have something today.

THE COURT: I usually think it takes about a week to get it done. So how about a week?

MR. DOERR: How about a week.

THE COURT: Okay. Do you want me to place these documents and Dan's summary that he did of who the people really were in a sealed envelope?

MR. DOERR: Yes.

THE COURT: Okay. Denita, this is going to be Court's Exhibit 1 for today. Please place it in a sealed envelope, because it was an in-camera review that I did in connection with this discovery dispute.

If we could now go to the renewed motion for preliminary injunction.

MR. SHAFER: Your Honor, could I just bring up one other discovery issue?

THE COURT: Is it on my calendar today?

MR. SHAFER: Not exactly. But it deals with the overall discovery dispute. But I see you have a lot of things going on. I just want to --

THE COURT: Well, why don't we go to your motion for preliminary injunction.

MR. SHAFER: Okay. That's fine.

THE COURT: Thank you.

MR. SHAFER: Your Honor, we have exhaustively briefed this issue, and I'm not going to take up a lot of the Court's time. There are three ways that a tax can violate the First Amendment. Number one, it can be a direct tax on First Amendment-protected activity, which this is. Live entertainment is constitutionally protected. So facially the statute's unconstitutional for that reason.

The third reason -- and I'll get to the second one in a minute, but the third reason is that the statute is a content-based tax. Again, Your Honor, this Court can resolve that facially, because we know, for example, that NASCAR is exempted, animal shows are exempted, Minor League Baseball is exempted, and what is not exempted are strippers.

We've gone through the 25 sets of exemptions and exceptions that are contained in the statute, and certainly many, many of those are specifically content related and therefore under all the precedent of the United States Supreme Court this statute is unconstitutional.

The third issue is the gerrymandering, is this directed towards a small group of taxpayers. Your Honor had the foresight in going through the chart, not the chart that I haven't seen yet, but the chart that I have seen, and pointed out that irrespective of their mathematical errors on that chart the numbers exceed 80 percent in regard to the gentlemen's clubs. And while I believe that additional

discovery will substantiate that, as well, I think it's clear that the lion's share of this tax relates to only the gentlemen's clubs.

We have shown Your Honor the legislative history that talks about the fact that they weren't actually concerned that if they said, we're just going to tax adult entertainment, that that was a flag for the courts, and so we don't want to raise that flag so what we'll do is we'll make it a general tax and then we'll exempt out just about everybody except the gentlemen's clubs. And we've submitted that -- all of that evidence to Your Honor.

The only other thing, Your Honor, that I really wanted to say about the motion for preliminary injunction is the issue of irreparable harm. I have set forth in great detail, Your Honor, the various representations of my brother counsels here both before the Nevada Tax Commission and before Judge Togliatti in regard to the application or the inapplicability of the NAC. The NAC is out there. Your Honor, they specifically raised and requested Judge Togliatti in the first -- in their response to the first motion for preliminary injunction to dismiss the request for relief, if not the lawsuit in and of itself, because they claimed that we didn't even have standing to ask for an injunction because we were not paying the tax. Again, that goes directly to the NAC in regard to if we don't have the names and addresses of the

customers and we can't give the tax back to them, that we're not entitled to this.

Again, Your Honor, the NAC is nothing we ever invoked in this litigation. They were the ones that invoked it before the Nevada Tax Commission. We submitted, Your Honor, the transcript of the Nevada Tax Commission where one of the commissioners even recognizes that and says, that's an additional basis and I agree and that we, my clients would be unjustly enriched if they were to get the tax back, the multi millions of dollars that they paid because they don't give it back to the customers. And he describes as a flow through.

And, Your Honor, I understand that now because they're in a box that they are now taking the position that the NAC doesn't apply. But that certainly is not the position that they have stated both to the Nevada Tax Commission and to Judge Togliatti, Your Honor.

In addition, the next motion we're going to do is the motion to dismiss and/or for summary judgment. If there is one --

THE COURT: Can we wait till we get to that one.

MR. SHAFER: Pardon me?

THE COURT: Can we wait till we get to that one.

MR. SHAFER: Yes, Your Honor. But I just want to explain it in the context of the irreparable harm. Because if there's one valid argument they have in there, it's the

Eleventh Amendment immunity issue; and, unless they're going to concede that the State of Nevada is waiving Eleventh Amendment immunity, I can't get damages. Maybe my clients can get the tax back, but they can't get damages. And not having these millions and millions of dollars for years and years, since basically 2004, my clients can at least assert that they have been damaged. But we can't get that -- we can't get that money back if in fact Your Honor agrees with them that the Eleventh Amendment immunity applies. We can get 1983 injunctive and declaratory relief, but we can't get damages, because it's the State of Nevada.

So because of all that and the reasons that we put in the brief, we can show irreparable harm, Your Honor. And I'd ask the Court to enjoin the tax. Unless --

THE COURT: Okay. Can you tell me what the new evidence or new law is that you've presented to me since Judge Togliatti made her decision on this issue on the law and the facts prior to my being assigned to this case.

MR. SHAFER: Sure. Your Honor, the first thing is the motion to dismiss based on Eleventh Amendment immunity. That's number one, because now they're saying we're not entitled to damages.

Number two, that -- the hearing on the dismissal of that was not in December, it was much earlier, but --

THE COURT: Oh, I know. It was a long time ago.

MR. SHAFER: Yes. It took months and months for the -- for the orders to be entered. And one of the additional things is we submitted the transcript, Your Honor, of these three attorneys standing up, each giving a slightly different opinion in regard to the application of the NAC.

THE COURT: Okay.

MR. SHAFER: Thank you, Your Honor.

THE COURT: There does not appear to me to be any new information or argument that is presented with the motion for preliminary injunction other than the Eleventh Amendment issue, which I do not think is appropriate for injunctive relief.

So if we could now go to the motion for partial summary judgment.

MR. POPE: Thank you, Your Honor. David Pope of the Attorney General's Office on behalf of the defendants.

And if I may approach, Your Honor, I have two new cases I would like to discuss.

THE COURT: Why are you giving them to me now?

MR. POPE: I had a 60-page opposition to reply to.

THE COURT: One's from 1986, the other's from 1986.

MR. POPE: Okay. Your Honor, this motion is about dismissing certain claims and/or the granting of partial summary judgment on other claims.

First of all with regard to the 1983 claims, they

should all be dismissed. Defendants are not persons for purposes of damages in 1983 claims, and if there was any doubt remaining about 1983 claims existing in this case, the National Private Truck Council case should have erased that. That case states that neither injunctive or declaratory relief can be obtained pursuant to 1983 actions in State Court cases when the effect is to enjoin the collection of taxes. The reason for this goes way back. Based on federalism, courts are not to get involved with state taxation issues. And if this type of an action in Federal Court would mess with the state's ability to collect its revenue, it would have the same effect in State Court.

So in addition to that case there are these two new cases I just presented to Your Honor. Thank you for accepting those. In re Boughton Trucking & Materials versus County Will was a decision by the Illinois Appellate Court. And there the court found that the trial court properly dismissed plaintiff's complaints for failure to exhaust the remedies available to them. The court had noted that the central tenet of the U.S. Supreme Court's decision in the Felder v. Casey case, which is 47 US 131, was that states may not place a greater burden upon 1983 claimants than those burdens imposed by federal law because the Tax Injunction Act and the U.S. Supreme Court's decision in Real Estate Association, Inc., v. McNary, which is cited as 454 US 100, require exhaustion of

administrative remedies.

The exhaustion required in the case at hand is essentially the same as what would be required to get into a Federal Court, and therefore these 1983 claims cannot be maintained.

In addition, in the Lindercamp v. Bismarck School District decision, that was the decision by the North Dakota Supreme Court -- there the court imposed under state law limitations similar to the Tax Injunction Act in 1983 actions brought in State Court claims challenging the levy of state taxes. The court held that taxpayer may not bring a 1983 action in a State Court seeking to enjoin, suspend, or restrain the assessment, levy, or collection of any tax under state law where an adequate state remedy is available.

Your Honor, the state's remedy, starting with the administrative remedies and then the refund statute, provided an adequate remedy, and therefore these 1983 actions cannot be maintained in this case or these cases.

With regard to the other claims, it's important to consider what happened chronologically with regard to Case 1. None of the plaintiffs none of the Case 1 plaintiffs had filed -- or, I mean, had exhausted administrative remedies prior to that case being commenced. They hadn't requested refunds, they hadn't had a hearing before the NTC. And it's also important to note that at that time no case had been presented

to Nevada Tax Commission, and the Nevada Tax Commission hadn't decided the issue. So exhaustion of administrative remedies wouldn't have been futile.

Therefore, Case 1 can only have a facial constitutional challenge, because, as our Supreme Court has stated in the Malacon case, a facial constitutional challenge should not require exhaustion of administrative remedies and can go directly to District Court, whereas that same court -- that same decision states that as applied challenges require exhaustion of administrative remedies and cannot go directly to District Court.

With regard to Case 2, the original six Case 2 plaintiffs filed their complaint after exhausting administrative remedies. They filed administrative requests for refund, which were denied. They appealed those to the Nevada Tax Commission. They had a hearing before the Nevada Tax Commission. They filed briefs and presented exhibits, presented their case, got a final decision. That case should have been filed as a judicial review. And there are several points that I want to make, Your Honor, to support this argument.

First of all, NRS Chapter 233B was amended in 1989 to remove the language that allowed final decisions of agencies to proceed to District Court as de novo actions. In addition, in 1999 NRS 372.680, which is the refund statute for

the sales and use tax chapter and is apparently the statute after which the LET refund statute was modelled, was changed to require a final decision from the Nevada Tax Commission before the denial of a refund action could proceed to District Court. And the logical reason for requiring final decision from the Nevada Tax Commission before proceeding to District Court is because the plain language of the statutory scheme requires or only provides for a judicial review and does not provide for a de novo action.

With these changes to the statutory scheme the plain language of the statutory scheme and of NRS 372.680 and therefore NRS 368A.290, which is the LET refund statute, because it was based on the sales and use tax statute, the plain language of the scheme and of the refund statute itself provides for only a -- or for a judicial review pursuant to Chapter 233B.

This same argument was supported by the Legislative Council Bureau's amicus brief filed in the case of Southern California Edison pending before -- currently pending before the Nevada Supreme Court.

Contrary to plaintiffs' arguments, Nevada and California have gone separate ways with regard to their statutory remedies for tax refunds. California law cannot be persuasive with regard to this issue, as explained in the briefs.

Unlike NRS 365.460, neither NRS 372.680, the sales and use tax refund statute, or NRS 368A.690 -- or .290, the LET refund statute, require additional -- have any additional requirements. This statute was the statute at issue in the Saveway case. The statute requires that the taxpayer -- after a refund has been denied, the taxpayer has to sue the treasurer in State Court.

So, although the tax is administered by the Department and the Commission, they have to sue somebody else to get the money back. The court in the -- our Nevada Supreme Court said that that statute, that type of refund statute was more like a de novo action statute because you had to sue somebody else. The Commission wasn't part of the administrative record.

With regard to NRS 360.245(7), that statute was changed, and it says that if a local government who's a party to an appeal before the NTC is limited to judicial review -- or it says that they would be limited to a judicial review and they can intervene and get involved, and that way they're permitted to proceed with the judicial review.

It would be inconsistent, then, to argue that somebody else gets a trial de novo pursuant to 372.680 or 368A.290.

Finally, NRCP 81(a) provides that the rules of civil procedure do not govern procedure and practice in any special

statutory proceeding insofar as they are consistent or in conflict with the procedure and practice provided by the applicable statute. The applicable statute here would be NRS Chapter 233B.

If, on the other hand, this Court finds that there is ambiguity with regard to the refund statute, then all the legislative history cited to you in the defendants' brief clarifies that ambiguity, and the remedy provided for by the word "action" in the refund statute is a judicial review.

Therefore, this Case 2 should have been filed as a judicial review. It wasn't. The time for doing so has passed, and the case should be dismissed.

If, as in one of the Supreme Court cases where the complaint was deemed to be a judicial review and the case proceeded as a judicial review, if that happens in this case, then only the original six plaintiffs -- Case 2 plaintiffs can be a part of that case. NRS 233B.130 limits a judicial review to the administrative record and to the parties involved in those -- in that record. Deja Vu and Little Darlings didn't exhaust their administrative remedies. They could have. Plaintiffs argued in their brief that they started filing or became subject to the tax in July 2005. Case 1 was started in '06. They didn't have to wait three years to request a refund. They could have submitted a refund request. At that time it wouldn't have been futile to exhaust administrative

remedies. They didn't get into this case, and now they're prohibited from being part of the administrative record.

In addition, pursuant to Nevada case Public Service Commission of Nevada versus Eighth Judicial District Court, cite is 107 Nev. 680, plaintiffs cannot have two cases pending at the same time both of which are seeking declaratory relief. Case 1 was filed first. It has a claim for declaratory relief. Case 2 was filed thereafter, has the same claim in it. Therefore, that claim needs to be dismissed out of Case 2.

THE COURT: But don't you think the consolidation takes care of that issue because we're going to handled it all at one time?

MR. POPE: Well, they haven't been consolidated, Your Honor. They're coordinated.

THE COURT: Okay. Did I do that, or did Judge Togliatti do that?

MR. POPE: We had a discussion with you, and I think we all kind of agreed to the coordination.

THE COURT: Okay. All right.

MR. POPE: That was when you handled the one hearing for us.

THE COURT: Yeah. Prior to me being assigned to you as your judge, yeah.

MR. POPE: Correct.

Therefore, if Case 2 proceeds as a judicial review, it should not contain a claim for declaratory relief in Case 1. Case 1 requests relief, and it should be dismissed from Case 2.

In addition, Your Honor, defendants have not waived the right to raise this issue that Case 2 should proceed as a judicial review. Pursuant to NRCP 12(h), issues of subject matter jurisdiction can be raised at any time. This is such an issue. If the case -- if Your Honor rules that the case should have proceeded as a judicial review, as we believe it should have, then the time for filing a judicial review has passed, and the Court doesn't have subject matter jurisdiction.

In addition, in the Campbell case, which is another Nevada case, summary judgment was granted on the basis of administrative res judicata, which is another argument we're making in this motion.

With regard to all these issues plaintiffs can show no set of facts that would entitle them to relief, and the claims should be dismissed, and/or there are no genuine issues of material fact. The defendants are entitled to judgment as a matter of law.

With regard to the '83 claims, it's a question of law, and the National Private Truck case and the other cases cited take care of those claims. So with regard to the Case 2

being dismissed or proceeding as a judicial review, it's an issue of statutory construction, which is a question of law. And we believe that the authorities we've cited take care of that issue.

With regard to whether plaintiffs can have two declaratory relief actions pending at the same time, that's also taken care of by a case I just cited.

With regard to Deja Vu and Little Darlings being dismissed from Case 2 it's a question of law that is decided by the cited authorities, also.

Therefore, applying either standards -- either standard, Your Honor, the defendants request dismissal of all of the 1983 claims from both Case 1 and Case 2, the dismissal of Case 2 for failure to file a timely judicial review, or, alternatively and provided that Case 2 proceeds as a judicial review, the dismissal of the claim for declaratory relief and the dismissal of Deja Vu Showgirls and Little Darlings pursuant to NRS 233B.130, which limits District Court review to the administrative record and parties included in it.

Thirdly, Your Honor, dismissal of the as applied challenge from Case 1 is none of the Case 1 plaintiffs had exhausted administrative remedies when they commenced that case.

Your Honor, I'd also like to mention that in 1989 233B.130 was amended to add subsection (6), which said that

233B is the exclusive remedy for judicial review of or judicial action, same word that's in our refund statute regarding final decisions of agencies.

And with that, we request any other relief that the Court deems just and fair. Thank you.

THE COURT: Thank you.

MR. SHAFER: Judge, do you want me to go to the podium?

THE COURT: Wherever it's easier, as long as you keep your voice up so we can pick you up on the recording.

MR. SHAFER: I apologize for not being up here before. We've normally just argued from our chairs.

But first of all, Your Honor, he cites a case involving the Tax Injunction Act, which is true, and, as the Court is very well aware, we tried to file this lawsuit first in Federal Court so that the State judges wouldn't have to deal with that. The State was the one that in fact filed the motion to dismiss. The Federal Court dismissed it, and the Ninth Circuit affirmed, and therefore under the Tax Injunction Act we can't get a remedy in Federal Court. But, as we pointed out to the Court, there are, you know, literally a billion cases that say that the State Courts have concurrent jurisdiction with the Federal Courts with regard to 1983 relief, and, more importantly, that State Courts can't require exhaustion of administrative remedies in regard to 1983

actions, either, the seminal case allowing for injunctive and declaratory relief, Your Honor, being the Patsy case.

Now, interestingly, brother counsel made the argument that, well, it's only the refund action and it's not the -- you know, we can't get declaratory relief action in the second action, you know. And I hate doing this, but here's what they said in the Federal Court in regard to their reply to plaintiffs' opposition to the motion to dismiss. And this is at page 6. And they say, "The court in Scottsman affirmed a direct --" and we've all referred to Scottsman quite a bit "-- a direct refund action to the tax even though the taxpayer did not first pursue its remedy through the administrative levels. In doing so the Nevada Supreme Court implicitly acknowledged that the refund remedy was available notwithstanding the limitations of NRS 374.675."

And then they put a footnote there, and I'll get back to -- I will get back to the footnote in a minute.

"If the remedy of the refund action is available under NRS 374, it is available under NRS Chapter 368A, which is in pari materia," and they cite State Division of Insurance versus State Farm Mutual.

Now, this is what they say in Footnote 4, Your Honor. "Scottsman 1 and 2 arguably implied declaratory relief is an available option. The Supreme Court suggested this when it noted, 'It (a refund action),'" they put that qualification

in there, clarification, "'is the only effective remedy available to Scottsman. Prospective relief alone (i.e., future exemption from tax) would hardly afford Scottsman a meaningful remedy for the unconstitutional deprivation of its property.'" They cite Scottsman. "When that case was earlier up on appeal it was noted, but not discussed, that the suit was for declaratory relief."

So what they said in the District Court, the Federal District Court, in order to get dismissal of that, in order to say that there was a plain, efficient, speedy remedy in State Court is directly opposite of what he just said to Your Honor two minutes ago.

Now, in their motion to dismiss the amended complaint filed back in 2006 in the United States District Court, Your Honor, they refer to the action under 368A as an action. And they say this at page 7. "Within 90 days of denial of the Commission of a taxpayer's appeal of a claim for refund the taxpayer may bring an action in court." And they cite it. Then they say, "By default jurisdiction for such actions lie in the District Court." They cite the Nevada constitutional provision. And then they say, "Therefore, the Nevada Supreme Court has original appellate jurisdiction." They cite Nevada Constitution Article VI, Section 4.

Your Honor, if you look at the Saveway case, which is almost an identical-worded statute, which, by the way, the

statute that we're talking about here, 368A.290, was enacted far after all these statutory amendments and therefore, if there was any type of demand for us to file a petition for judicial review, it would have been statutorily put in there. What Saveway says is they filed a petition for a writ of judicial review, the District Court dismissed it with prejudice, and the Supreme Court affirmed.

Had we filed a petition of judicial review, they would be here with Saveway, and they would say, Your Honor, look at what they did, they did exactly what the plaintiff did in Saveway, they did the wrong thing, it's supposed to be an original action, they didn't file it, dismiss it out, collateral estoppel, administrative collateral estoppel and res judicata.

Your Honor, the statute is clear. It is an action against the Department. It is not a petition for judicial review in regard to the Commission's ruling. Had they wanted to say that, they could have said that. We researched this quite heavily. We had -- we had conferences with now Judge Sullivan, who was my co-counsel at the time. And the statute is what the statute is. We filed an original action seeking a refund under the statute, naming the Department as the defendant.

Now, it isn't jurisdictional, Your Honor, because, as we pointed out to the Court, in fact the District Court

where they first tried this stunt up in Carson City said, no, that would be a direct violation of what the statute says. The statute says to file this, they filed that, and that judge is going to consider that portion of the case, you know, under the rules of a petition for writ of judicial review. That judge didn't dismiss it.

Now, what's more interesting about that, Your Honor, is that while the plaintiffs filed to get up to the Nevada Supreme Court and then got a stay of those proceedings to take that issue about what standards govern in regard to the action, the State of Nevada didn't take any type of petition to the Nevada Supreme Court saying, oh, no, this is jurisdictional, they didn't file the correct legal proceeding. And in that case it's just an action against the Department. If you take a look at the briefing that was submitted in that, one of the arguments that is made by some of the amici is that they should have brought other counties in and things like that as parties.

Well, take a look at our second action. It's not only against the Department, it's against the Commission, as well, Your Honor. The Commission is labelled as a defendant. There is no basis or reason whatsoever to dismiss that action, Your Honor. We did exactly what the statute said. We have briefed -- it's no secret that the briefing in front of Your Honor is the same briefing that's in front of the Supreme

Court on the California Edison case. And, you know, we all -- we all apologize for the detail of all that, but, you know, that's what it is. And clearly the analogous statutes are there. This statute was enacted after the statutory amendments. It is what it is. It says what it says. We filed the exact action that it calls for. Your Honor, there's no basis whatsoever to dismiss that.

The only other thing I have to say, Your Honor, is that brother counsel says the Deja Vu plaintiffs could have exhausted administrative remedies. Well, we've submitted to Your Honor the letters from the Commission saying that they're sitting on all the appeals. My clients have made the appeals. The Commission is sitting on the appeals, all the appeals that are being generated not only from the Deja Vu plaintiffs, but from my other clients, as well, pending the outcome of this lawsuit. So there's nothing that they could have done.

THE COURT: Can you address for me the issue of damages under your 1983 action.

MR. SHAFER: Well, Your Honor, you know, when they're right, they're right.

THE COURT: Okay. Thanks.

MR. SHAFER: But, Your Honor, what I want to -- you know -- and we addressed this in our briefing, and we didn't try to say anything to the contrary.

THE COURT: I understand. Okay.

MR. SHAFER: Yeah. The declaratory relief and injunctive relief --

THE COURT: It's okay to say they're right on that issue.

MR. SHAFER: But that -- but, Your Honor --

THE COURT: That actually gives you more credibility on other issues when you say, Judge, they're right.

MR. SHAFER: Thank you, Your Honor.

THE COURT: All right.

MR. SHAFER: But it doesn't apply to the injunctive and declaratory relief.

THE COURT: Is there anything else you want to add?

MR. POPE: Just briefly, Your Honor.

Your Honor, Patsy does not say that exhaustion is not required in all cases. And I've cited to at least two subsequent at least State Court cases that explain why.

The Scottsman case was decided after the statutory changes to 233B and also to 372.680, and therefore, you know, the law changes. The case -- I need to take that back and rearrange it.

The cases were decided -- the Scottsman cases were decided before the changes to 233B and 372.680, and also in that case I believe that the parties had stipulated to facts and filed motions for summary judgment. So no one raised this issue in that case.

With regard to the Saveway case there's the same thing. That case was also decided before the statutory changes, at least the 233B change.

And with regard to comments made before the Federal District Court, the same as with these issues, laws change, and, you know, the Department's -- we're making the arguments that are appropriate for this case. Thank you.

THE COURT: Thank you.

The motion is granted in part. With respect to the plaintiffs' claim for damages under 1983, those claims are precluded and are dismissed.

With respect to the dec relief claims, for purposes of this litigation I am consolidating those claims between the two cases. The remaining issues will remain coordinated, but the dec relief claims are being consolidated so there won't be a duplication.

Any questions? Have a nice day.

MR. SHAFER: Thank you, Your Honor.

MR. POPE: Thank you, Your Honor.

THE COURT: So you're going to get that produced in about a week. I'm going to set it on my chambers calendar to look at on March 25th. If there is an issue with the production, just somebody send a status report, and I'll schedule a conference call. Okay. Have a nice day.

THE PROCEEDINGS CONCLUDED AT 9:44 A.M.

CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
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Florence M. Hoyt
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capacity only,)
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Defendants.)
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CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2011, service of the: **VERIFIED AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, DAMAGES, AND ATTORNEY FEES AND COSTS** was made this by e-mailing/mailing a true and correct copy of same to the address listed below:

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4819-0252-7753, v. 1

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capacity only,)
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Defendants.)
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CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2011, service of the: **VERIFIED AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, DAMAGES, AND ATTORNEY FEES AND COSTS** was made this by e-mailing/mailing a true and correct copy of same to the address listed below:

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DISTRICT COURT

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COMES NOW, Defendants Department of Taxation, Nevada Tax Commission, Nevada State Board of Examiners, and Michele Jacobs, in her official capacity only, by and through their attorneys, CATHERINE CORTEZ MASTO, Attorney General, BLAKE A. DOERR, Senior Deputy Attorney General, DAVID POPE, Senior Deputy Attorney General, and VIVIENNE RAKOWSKY, Deputy Attorney General, and hereby submit their Answer to Plaintiff's Verified Amended Complaint for Declaratory and Injunctive Relief, Damages, and Attorney Fees and Costs.

INTRODUCTION

1. Answering paragraph 1, Answering Defendants deny that they as well as their agents, employees and representatives are acting under the color of state law to deprive the Plaintiffs of their rights, privileges and immunities secured to them by the Constitution of the State of Nevada and the Constitution of the United States. The Answering Defendants deny that the Live Entertainment Tax as established by Title 32, Chapter 368A of the Nevada Revised Statutes is an impermissible tax on constitutionally protected expression. Answering Defendants deny that the Live Entertainment Tax is unconstitutional either on its face or as applied. Defendants are without sufficient knowledge or information upon which to form a belief as to the truth or falsity as to the balance of the allegations contained therein, and upon said basis, deny each and every allegation contained therein.

JURISDICTION AND VENUE

2. Answering paragraph 2, Answering Defendants believe this court lacks subject matter jurisdiction with regard to the granting of a refund and the declaratory relief requested as these issues have been decided by a final decision of the Nevada Tax Commission and Plaintiffs did not file a petition for judicial review pursuant to NRS 233B.130. Defendants admit that the statutes and rules of civil procedure cited by Plaintiffs speak for themselves. Further, Defendants are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 2, and upon said basis, deny each and every remaining allegation contained therein.

. . .

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3. Answering paragraph 3, Answering Defendants are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the allegations contained therein, and upon said basis, deny each and every allegation contained therein. Answering Defendants deny that they are persons for purposes of 42 U.S.C. § 1983 and further assert that all 42 U.S.C. § 1983 claims were dismissed by this Court.

4. Answering paragraph 4, Answering Defendants assert that because Plaintiffs' 42 U.S.C. § 1983 claims were dismissed by this Court, a request for attorney's fees and costs pursuant to 42 U.S.C. § 1988 is moot. With respect to any other authorization for attorney's fees and costs, Answering Defendants are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the allegations contained therein, and upon said basis, deny each and every allegation contained therein.

5. Answering paragraph 5, Answering Defendants assert that because Plaintiffs' Motion for Preliminary Injunction and Plaintiffs' Renewed Motion for Preliminary Injunction were denied by this Court, Plaintiffs' claim for injunctive relief is moot. Further, Plaintiffs' claims for Declaratory Relief under 42 U.S.C. § 1983 were dismissed by this Court. With respect to any other allegations, Answering Defendants are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the allegations contained therein, and upon said basis, deny each and every allegation contained therein.

6. Answering Paragraph 6, Answering Defendants are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the allegations contained therein, and upon said basis, deny each and every allegation contained therein.

PARTIES

7. Answering paragraph 7, Answering Defendants repeat and reallege its answers to paragraphs 1 through 6, inclusive, as though fully set forth at this point and incorporated herein by reference.

8. Answering paragraphs 8, 9, 10, 11, 12, 13, 14, 15, and 16, Answering Defendants are without sufficient knowledge or information upon which to form a belief as to

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

9. Answering paragraph 17, Answering Defendant Nevada Department of Taxation admits that it is a governmental entity created under the laws of the State of Nevada and that it administers and enforces the statutory provisions of Chapter 368A of the Nevada Revised Statutes, and collects the Live Entertainment Tax, for all non-gaming licensed taxpayers in Nevada. The Nevada Department of Taxation further Answers that the Answering Defendants are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the balance of allegations contained paragraph 17, and upon said basis, deny each and every allegation contained therein. Other Answering Defendants answer that they are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the allegations contained therein, and upon said basis, deny each and every allegation contained therein.

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

11. Answering paragraph 19, Answering Defendant State Board of Examiners admits that it is a governmental entity created under the laws of the State of Nevada, consisting of the governor, the secretary of state, and the attorney general. Answering Defendant Nevada State Board of Examiners further admits that pursuant to NRS 368A.250, it is authorized to approve refunds of amounts collected by the Nevada Department of

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Taxation in excess of the amount legally due. The answering Defendant State Board of Examiners further answers that it is without sufficient knowledge as to the remaining allegations and therefore denies the same. Other Answering Defendants answer that they are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the allegations contained therein, and upon said basis, deny each and every allegation contained therein.

12. Answering paragraph 20, Answering Defendant Michelle Jacobs admits that she is an employee of the Nevada Department of Taxation and was, in some official capacity, responsible for the administration of Chapter 368A. Other Answering Defendants further answer that they are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the allegations contained therein, and upon said basis, deny each and every allegation contained therein.

STATEMENT OF FACTS

13. Answering paragraph 21, Answering Defendants repeat and reallege its answers to paragraphs 1 through 20, inclusive, as though fully set forth at this point and incorporated herein by reference.

14. Answering paragraph 22, Answering Defendants admit that on or about July 22, 2003, the State of Nevada enacted a Tax on Live Entertainment pursuant to Chapter 368A. Answering Defendants further answer that they are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the balance of allegations contained paragraph 22, and upon said basis, deny each and every allegation contained therein.

15. Answering paragraph 23, Answering Defendant Nevada Department of Taxation admits that it collects the tax imposed by Chapter 368A (Plaintiffs incorrectly cite Chapter 367A) from taxpayers who/which are not licensed gaming establishments. Answering Defendant Nevada Department of Taxation further admits that pursuant to NRS 368A.140 it shall adopt such regulations as are necessary to carry out this function. Other Answering Defendants further answer that they are without sufficient knowledge or information upon

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which to form a belief as to the truth or falsity of the allegations contained therein, and upon said basis, deny each and every allegation contained therein.

16. Answering paragraph 24, Answering Defendants deny that one of the primary purposes for the enactment of Chapter 368A was to impose an excise tax upon those establishments in the State of Nevada that provide exotic dancing, topless dancing and fully nude performance dance entertainment. Answering Defendants are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the balance of allegations contained therein and, upon said ground, deny each and every allegation contained therein.

17. Answering paragraph 25, Answering Defendants admit that the statutory sections cited therein, as they existed when enacted, speak for themselves. Answering Defendants are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the balance of allegations contained therein and, upon said ground, deny each and every allegation contained therein.

18. Answering paragraph 26, Answering Defendants admit that Chapter 368A was amended by Assembly Bill No. 554 which reduced the scope of the exception as contained in NRS 368A.200(5)(d) from a maximum seating capacity limitation of 300 to 200. Answering Defendants deny that the specific purpose of the amendment was to extend the tax obligation as contained in Chapter 368A to "adult" entertainment establishments including a number of Plaintiffs in this action. Answering Defendants further answer that they are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the remaining allegations contained therein and, upon said ground, deny each and every remaining allegation contained therein.

19. Answering paragraph 27, 28, 29, 30, 31, 32, 33, and 34, Answering Defendants admit that the Plaintiffs mentioned therein are required to pay the Live Entertainment Tax found in Chapter 368A of the NRS. Answering Defendants further answer that they are without sufficient knowledge or information upon which to form a belief as to the truth or falsity

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

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

21. Answering paragraph 36, Answering Defendants admit that the Plaintiffs present some type of live entertainment upon their premises. With respect to the balance of the allegations, the Answering Defendants are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the allegations contained therein and, upon said ground, deny each and every allegation contained therein.

22. Answering paragraph 37, Answering Defendants admit the allegations contained therein.

23. Answering paragraph 38, Answering Defendants deny that the Live Entertainment Tax as mandated by chapter 368A is both illegal and unconstitutional. Answering Defendants further deny that Plaintiffs are under threat of criminal prosecution and/or subject to the imposition of fines. Answering Defendants are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the balance of the allegations contained therein and, upon said ground, deny each and every allegation contained therein.

24. Answering paragraph 39, Answering Defendants deny that Chapter 368A is a direct tax on "First Amendment" freedoms. Answering Defendants further deny that the Live Entertainment Tax is unconstitutional on its face and as applied to Plaintiffs. Answering Defendants further answer that they are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the remaining allegations contained therein and, upon said ground, deny each and every remaining allegation contained therein.

25. Answering paragraph 40, Answering Defendants deny that Plaintiffs' ability to provide constitutionally protected entertainment and Plaintiffs' constitutional rights have been

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infringed upon due to Chapter 368A. This Court has found that the Plaintiffs have not suffered irreparable harm, making the allegation that the Plaintiffs have suffered and will continue to suffer irreparable harm, moot. Answering Defendants further answer that they are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the balance of the allegations contained therein and, upon said ground, deny each and every allegation contained therein.

EXCERPTS OF THE TAX ON LIVE ENTERTAINMENT STATUTE

26. Answering paragraph 41, Answering Defendants repeat and reallege its answers to paragraphs 1 through 40, inclusive, as though fully set forth at this point and incorporated herein by reference.

27. Answering paragraph 42, Answering Defendants admit that the excerpts from the statute appear to be the same language found in the statute cited therein and that the statutory sections cited therein speak for themselves.

28. Answering paragraphs 43, 44 and 45, Answering Defendants admit that the statutory sections cited therein speak for themselves.

29. Answering paragraph 46, Answering Defendants admit that pursuant to NRS 368A.140(2)(a) (Plaintiffs incorrectly cite Chapter 368A.142(2)) the Nevada Department of Taxation is statutorily required to collect the Live Entertainment Tax from non-gaming licensed taxpayers, and pursuant to NRS 368A.140(2)(b) is empowered to adopt such regulations as are necessary to carry out the provisions of paragraph (a), and further admit that the Statute speaks for itself. Answering Defendants further answer that they are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the balance of the allegations contained therein and, upon said ground, deny each and every allegation contained therein.

30. Answering paragraph 47, Answering Defendants admit that pursuant to NRS 368A.200(5) the tax imposed by Chapter 368A is not applicable to a variety of statutorily mandated circumstances and further admit that any statutory sections cited or referred to therein speak for themselves.

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31. Answering paragraphs 48 and 50, Answering Defendants admit that the statutory sections cited therein speak for themselves.

32. Answering paragraph 49, Answering Defendants deny that the Plaintiffs do not have ability to seek injunctive relief in state court against the collection of the Live Entertainment Tax. With respect to the balance of the allegations, Answering Defendants admit that the statutory sections cited therein speak for themselves.

COUNT I – DECLARATORY RELIEF

32. Answering paragraph 51, Answering Defendants repeat and reallege its answers to paragraphs 1 through 50, inclusive, as though fully set forth at this point and incorporated herein by reference.

33. Answering paragraph 52, Answering Defendants deny each and every allegation contained therein.

34. Answering paragraph 53, Answering Defendants deny that the Live Entertainment Tax is an unconstitutional and/or impermissible tax, deny Plaintiffs' claim that they are not subject to the Live Entertainment Tax and deny each and every remaining allegation contained therein.

35. Answering paragraph 54, Answering Defendants admit that the court could have had subject matter jurisdiction to review the final decision of the Nevada Tax Commission applying the standard set forth in NRS 233B.135 had the original six Plaintiffs filed a timely petition for judicial review. Answering Defendants further admit that the court has dismissed all claims pled pursuant to 42 U.S.C. §1983 and therefore Plaintiffs claim for declaratory relief pursuant to 42 U.S.C. §1983 has been dismissed. With regard to any remaining allegations contained within paragraph 54, including the allegation that this court has the authority to declare the rights and other relations of the Plaintiffs and of the Defendants pursuant to state law, Answering Defendants are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of any remaining allegations contained therein and, upon said ground, deny each and every remaining allegation contained therein.

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36. Answering paragraph 55, Answering Defendants deny each and every allegation contained therein.

37. Answering paragraph 56, Answering Defendants deny each and every allegation contained therein.

COUNT II – INJUNCTIVE RELIEF

38. Answering paragraph 57, Answering Defendants repeat and reallege its answers to paragraphs 1 through 56, inclusive, as though fully set forth at this point and incorporated herein by reference.

39. Answering paragraph 58, Answering Defendants deny that any action taken or to be taken by Defendants to enforce any portion of Chapter 368A has deprived and will deprive Plaintiffs of their constitutional rights. Answering Defendants further deny that any action taken or to be taken by Defendants to enforce any portion of Chapter 368A has caused or will cause Plaintiffs irreparable harm as this Court has found that the Plaintiffs have not suffered irreparable harm. Answering Defendants admit that this court has dismissed Plaintiffs' claims for injunctive relief pursuant to 42 U.S.C. § 1983 and has denied Plaintiffs' original motion for injunctive relief and Plaintiffs' renewed motion for injunctive relief because Plaintiffs have not suffered and will not suffer irreparable harm. Answering Defendants are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of any remaining allegations contained therein and, upon said ground, deny each and every remaining allegation contained therein.

40. Answering paragraph 59, Answering Defendants deny that Chapter 368A of the NRS violates Plaintiffs' constitutional rights and further deny the allegation that an adequate remedy at law does not exist. Answering Defendants are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of any remaining allegations contained in paragraph 59 and, upon said ground, deny each and every remaining allegation contained therein.

41. Answering paragraph 60, Answering Defendants are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the

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

42. Answering paragraph 61, Answering Defendants deny that Chapter 368A is blatantly and patently unconstitutional and that Plaintiffs have a substantial likelihood of success of prevailing on their constitutional claims against Chapter 368A. Answering Defendants further deny that they will suffer no harm by the entry of an injunction. An injunction would result in the State of Nevada embracing a loss of revenue at a time when it is needed most. The Answering Defendants deny that balancing of equities tip in favor of the Plaintiffs. Answering Defendants are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the balance of the allegations contained therein and, upon said ground, deny each and every allegation contained therein.

COUNT III – DAMAGES AGAINST DEFENDANTS

43. Answering paragraph 62, Answering Defendants repeat and reallege its answers to paragraphs 1 through 61, inclusive, as though fully set forth at this point and incorporated herein by reference.

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

45. Answering paragraph 64, Answering Defendants deny that Chapter 368A is an illegal and/or unconstitutional tax, and that as a direct and proximate cause of the application and/or enforcement of Chapter 368A that the Plaintiffs have suffered significant and substantial damages. Answering Defendants are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the balance of allegations contained therein and, upon said ground, deny each and every allegation contained therein.

46. Answering paragraph 65, Answering Defendants deny that Defendants will be liable for alleged losses pursuant to 42 U.S.C. § 1983 because those claims have been dismissed by this Court. Answering Defendants are without sufficient knowledge or

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information upon which to form a belief as to the truth or falsity of the balance of allegations contained therein and, upon said ground, deny each and every allegation contained therein.

47. Answering paragraph 66, Answering Defendants deny each and every allegation contained therein.

COUNT IV – ATTORNEY FEES AND COSTS

48. Answering paragraph 67, Answering Defendants repeat and reallege its answers to paragraphs 1 through 66, inclusive, as though fully set forth at this point and incorporated herein by reference.

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

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

AFFIRMATIVE DEFENSES

1. As for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint, Plaintiffs fail to state a claim upon which relief may be granted.

2. As for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint, Answering Defendants claim all immunities, defenses, exemptions, and limitations on liability pursuant to the provisions of Chapter 41 of the Nevada Revised Statutes.

3. As for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint, Answering Defendants are entitled to qualified immunity as a matter of law.

4. As for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint Answering Defendants are not "persons" for purposes of 42 U.S.C. § 1983 and therefore no remedy in the form of monetary damages is available under that statute.

5. As for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint the Defendants are not "persons" for purposes of 42 U.S.C. § 1983 and therefore no remedy in the form of injunctive relief is available under that statute.

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6. As and for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint, Plaintiffs are not entitled to attorneys fees under 42 U.S.C. § 1983 or 42 U.S.C. § 1988.

7. As for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint, this Court has dismissed all of the Plaintiffs 42 U.S.C. § 1983 claims.

8. As and for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint, the Answering Defendants allege that the Plaintiff has failed to comply with NRS 233B.130 which solely allows for judicial review.

9. As for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint this court lacks subject matter jurisdiction as Plaintiffs failed to file a judicial review pursuant to NRS 233B.130 and NRS 368A.290 seeking review of the Nevada Tax Commission's final decision dated October 12, 2007.

10. As for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint Déjà vu and Little Darlings have not exhausted administrative remedies and are not parties of the administrative record as required by NRS 233B.130.

11. As for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint Plaintiffs have failed to plead that this court has jurisdiction over some Plaintiffs.

12. As for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint this action is barred by administrative res judicata.

13. This action is barred by the application of issue preclusion and claim preclusion.

14. As for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint the "as applied" constitutional challenge is limited to judicial review of the Nevada Tax Commission's decision dated October 12, 2007 because "as applied" challenges require exhaustion of administrative remedies. In this case, the original six Plaintiffs pursued administrative remedies, obtained a final decision from the Nevada Tax Commission and failed to file a judicial review. Having failed to file a petition for judicial review, Plaintiffs "as applied" claim has been decided by the final decision of the Nevada Tax Commission dated.

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15. As for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint the claim against Michelle Jacobs in her official capacity is duplicative.

16. As for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint Plaintiffs cannot obtain equitable relief when there is an adequate remedy at law.

17. As for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint pursuant to Chapter 368A of the Nevada Revised Statutes, Plaintiffs are not entitled to an injunction, writ of mandate, or any other legal or equitable process to prevent or enjoin the collection of the tax, penalty or interest imposed by Chapter 368A.

18. As for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint, the Nevada Department of Taxation properly assessed tax as authorized and required by, and in accordance with, Chapter 368A of the Nevada Revised Statutes and the applicable Nevada Administrative Code provisions.

19. As for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint, this Court has found that the Plaintiffs have not suffered irreparable harm.

20. As for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint, this Court has denied the Plaintiffs' Motion for Preliminary Injunction and Plaintiffs' Renewed Motion for Preliminary Injunction.

21. As for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint the Federal District Court as well as the Ninth Circuit have denied the Plaintiffs' request for an injunction.

22. As for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint, the Defendants are entitled to sovereign immunity.

23. As for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint, this action is barred by Nevada Revised Statutes 41.031 and 41.0337, due to Plaintiffs' failure to name the State of Nevada as a defendant.

24. As for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint, if the Plaintiffs sustained damages as a result of the tax as alleged, such damages, if any, were caused and contributed to by the negligence or other wrongful conduct of the Plaintiffs.

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25. As for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint, if the Plaintiffs sustained any damages as a result of the tax as alleged, that such damages, if any, were caused and contributed to by the wrongful conduct of those persons whose conduct on their part is imputed to the Plaintiffs.

26. As for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint, if the Plaintiffs sustained any damages as a result of the tax as alleged, that such damages, if any, occurred because the Plaintiffs were the active and primary cause of any damages or injury herein.

27. As for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint, if the Plaintiffs sustained any damages, Plaintiffs' claims are barred based on the doctrine of unclean hands.

28. As and for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint, the Answering Defendants allege that this Court lacks jurisdiction to hear Plaintiff's claims.

29. As and for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint, the claims are barred by the applicable statutes of limitations and/or statutes of repose.

30. As and for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint, the Plaintiffs' claims are barred and/or diminished as a result of the failure of the Plaintiff to mitigate its damages.

31. As and for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint, the Plaintiffs' claims are barred by the doctrine of latches.

32. As and for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint, the Plaintiffs' claims are barred because the Plaintiffs have waived its claims.

33. As and for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint, the Plaintiffs' claims are barred by the doctrine of estoppel.

34. As and for a separate, distinct affirmative defense to Plaintiffs' Amended Complaint, a refund would result in unjust enrichment to Plaintiff.

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35. Answering Defendants allege that at the time of filing of this Answer, all possible affirmative defenses may have not been alleged pending the development of sufficient facts after reasonable inquiry; therefore, , Answering Defendants reserve the right to amend this Answer to allege additional affirmative defenses if warranted by subsequent investigation.

WHEREFORE, the answering Defendants pray as follows:

1. That Plaintiffs take nothing by reason of the Amended Complaint on file herein;

2. That the Amended Complaint be dismissed with prejudice as against the answering Defendants;

3. That this Court enter judgment in favor of the Defendants; and

4. For such other and further relief as the Court may deem just and proper under the circumstances.

DATED this _____ day of April, 2011.

Respectfully submitted:

CATHERINE CORTEZ MASTO
Attorney General

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

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CERTIFICATE OF SERVICE

I, hereby certify that on the 6th day of April, 2011, I served the **ANSWER TO VERIFIED AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, DAMAGES, AND ATTORNEY FEES AND COSTS**, by causing to be delivered to the Department of General Services for mailing at Las Vegas, Nevada, a true copy thereof, addressed to:

William H. Brown, Esq.
The William H. Brown Law Office, Ltd.
330 S. Third St., Ste. 860
Las Vegas, NV 89101

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

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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 **ORDER**

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

Defendants' 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 came on for hearing on March 15, 2011;

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

The Court having considered the papers and pleadings as well as the oral argument hereby orders:

Defendants' Motion for Partial Summary Judgment on the Plaintiffs' Claims for Refund and Motion to Dismiss the as Applied Challenge to the Live Entertainment Tax and the Claims for Damages Pursuant to 42 U.S.C. 1983 is GRANTED IN PART and DENIED IN PART.

With regard to all of Plaintiffs' claims asserted under 42 U.S.C. 1983, Defendants' motion to dismiss is GRANTED and all claims asserted under 42 U.S.C. 1983 are hereby DISMISSED;

With regard to Defendants' motion to dismiss and/or for partial summary judgment on the basis that Case 1 should be limited to a facial challenge because none of the Case 1 Plaintiffs exhausted administrative remedies before commencing Case 1 and therefore Case

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1 should not contain an "as applied" challenge, Defendants' motion is GRANTED IN PART AND DENIED IN PART as the claim for declaratory relief in Case 1 is now consolidated with the claim for declaratory relief in Case 2 (these claims for declaratory relief are not the claims for declaratory relief asserted under 42 U.S.C. 1983, as all claims asserted under 42 U.S.C. 1983 have been dismissed as previously indicated in this order);

With regard to the remainder of Defendants' motion to dismiss and/or for partial summary judgment, Defendant's motion is DENIED WITHOUT PREJUDICE.

IT IS SO ORDERED.

DATED this 5th day of April, 2011.

DISTRICT COURT JUDGE

Respectfully submitted:

CATHERINE CORTEZ MASTO
Attorney General

By: _____
David J. Pope
Senior Deputy Attorney General

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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 **ORDER DENYING PLAINTIFFS' RENEWED MOTION FOR PRELIMINARY INJUNCTION ON ORDER SHORTENING TIME**

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. . .

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

Defendants' Renewed Motion for Preliminary Injunction on Order Shortening Time came on for hearing on March 15, 2011;

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

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

. . .

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The Court having considered the papers and pleadings as well as the oral argument and finding that the Plaintiffs' did not offer any new evidence, new law or new information, hereby orders:

Defendants' Renewed Motion for Preliminary Injunction on Order Shortening Time is DENIED.

IT IS SO ORDERED.

DATED this 5th day of April, 2011.

DISTRICT COURT JUDGE

Respectfully submitted:

CATHERINE CORTEZ MASTO
Attorney General

By: _____
Blake A. Doerr
Senior Deputy Attorney General

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

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 Business As	**Crazy Horse Too Gentlemen's Club**	~~**Dominic P. Gentile**~~ ~~*Retained*~~ ~~7023860066(W)~~
Doing Business As	**Deja Vu Showgirls**	~~**William H. Brown**~~ ~~*Retained*~~ ~~702-474-4222(W)~~
Doing Business As	**Little Darlings**	
Doing Business As	**Olympic Garden**	~~**Dominic P. Gentile**~~ ~~*Retained*~~ ~~7023860066(W)~~
Doing Business As	**Scores**	~~**Dominic P. Gentile**~~ ~~*Retained*~~ ~~7023860066(W)~~
Doing Business As	**Spearmint Rhino Gentlemen's Club**	~~**Dominic P. Gentile**~~ ~~*Retained*~~ ~~7023860066(W)~~
Doing Business As	**Treasures**	~~**Dominic P. Gentile**~~ ~~*Retained*~~ ~~7023860066(W)~~

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

EVENTS & ORDERS OF THE COURT

04/08/2011 **Status Check** (3:00 AM) (Judicial Officer Gonzalez, Elizabeth)
04/08/2011, 04/22/2011
Status RE: Coding Report

Minutes
03/25/2011 3:00 AM

04/08/2011 3:00 AM

04/22/2011 3:00 AM
- The Court has reviewed Second Supplemental Production served on March 15, 2011, and ORDERED, matter off calendar.

Return to Register of Actions

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CATHERINE CORTEZ MASTO
Attorney General
DAVID J. POPE
Senior Deputy Attorney General
Nevada Bar No. 008617
BLAKE A. DOERR
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vrakowsky@ag.nv.gov
Attorneys for Nevada Department of Taxation

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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

NOTICE OF ENTRY OF ORDER

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. . .

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

PLEASE TAKE NOTICE that an Order Denying Plaintiffs' Renewed Motion for Preliminary Injunction on Order Shortening Time was entered on 5th day of April, 2011, and e-filed on the 6th day of April, 2011, a copy of which is attached hereto.

DATED this 12th day of April, 2011.

Respectfully submitted:

CATHERINE CORTEZ MASTO
Attorney General

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

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

CERTIFICATE OF SERVICE

I, hereby certify that on the 12th day of April, 2011, I served the **NOTICE OF ENTRY OF ORDER**, by causing to be delivered to the Department of General Services for mailing at Las Vegas, Nevada, a true copy thereof, addressed to:

William H. Brown, Esq.
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

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

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

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CLERK OF THE COURT

ORDD
CATHERINE CORTEZ MASTO
Attorney General
DAVID J. POPE
Senior Deputy Attorney General
Nevada Bar No. 008617
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Attorneys for Nevada Department of Taxation

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

Defendants' Renewed Motion for Preliminary Injunction on Order Shortening Time came on for hearing on March 15, 2011;

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

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

. . .

. . .

. . .

The Court having considered the papers and pleadings as well as the oral argument and finding that the Plaintiffs' did not offer any new evidence, new law or new information, hereby orders:

Defendants' Renewed Motion for Preliminary Injunction on Order Shortening Time is DENIED.

IT IS SO ORDERED.

DATED this 5th day of April, 2011.

DISTRICT COURT JUDGE

Respectfully submitted:

CATHERINE CORTEZ MASTO
Attorney General

By: Blake A. Doerr
Senior Deputy Attorney General

Attorney General's Office
100 N. Carson Street
Carson City, NV 89701

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CLERK OF THE COURT

NEOJ
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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

NOTICE OF ENTRY OF ORDER

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. . .

. . .

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

PLEASE TAKE NOTICE that an Order was entered on 5th day of April, 2011, and e-filed on the 6th day of April, 2011, a copy of which is attached hereto.

DATED this 12th day of April, 2011.

Respectfully submitted:

CATHERINE CORTEZ MASTO
Attorney General

By: /S/ 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

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

CERTIFICATE OF SERVICE

I, hereby certify that on the 12th day of April, 2011, I served the **NOTICE OF ENTRY OF ORDER**, by causing to be delivered to the Department of General Services for mailing at Las Vegas, Nevada, a true copy thereof, addressed to:

William H. Brown, Esq.
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

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

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

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CLERK OF THE COURT

ORDR
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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 **ORDER**

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

Defendants' 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 came on for hearing on March 15, 2011;

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

The Court having considered the papers and pleadings as well as the oral argument hereby orders:

Defendants' Motion for Partial Summary Judgment on the Plaintiffs' Claims for Refund and Motion to Dismiss the as Applied Challenge to the Live Entertainment Tax and the Claims for Damages Pursuant to 42 U.S.C. 1983 is GRANTED IN PART and DENIED IN PART.

With regard to all of Plaintiffs' claims asserted under 42 U.S.C. 1983, Defendants' motion to dismiss is GRANTED and all claims asserted under 42 U.S.C. 1983 are hereby DISMISSED;

With regard to Defendants' motion to dismiss and/or for partial summary judgment on the basis that Case 1 should be limited to a facial challenge because none of the Case 1 Plaintiffs exhausted administrative remedies before commencing Case 1 and therefore Case

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

1 should not contain an "as applied" challenge, Defendants' motion is GRANTED IN PART AND DENIED IN PART as the claim for declaratory relief in Case 1 is now consolidated with the claim for declaratory relief in Case 2 (these claims for declaratory relief are not the claims for declaratory relief asserted under 42 U.S.C. 1983, as all claims asserted under 42 U.S.C. 1983 have been dismissed as previously indicated in this order);

With regard to the remainder of Defendants' motion to dismiss and/or for partial summary judgment, Defendant's motion is DENIED WITHOUT PREJUDICE.

IT IS SO ORDERED.

DATED this 5th day of April, 2011.

DISTRICT COURT JUDGE

Respectfully submitted:

CATHERINE CORTEZ MASTO
Attorney General

By: Becka Dalton for
David J. Pope
Senior Deputy Attorney General

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

RECEIVED
MAY 18 2011
BY:

DISTRICT COURT
CLARK COUNTY, NEVADA

DÉJÀ VU SHOWGIRLS OF LAS VEGAS, LLC, ET AL,

Plaintiff(s),

vs.

NEVADA DEPARTMENT OF TAXATION, ET AL,

Defendant(s).

Case No. **06 A533273**
Dept. No. **XI**

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CLERK OF THE COURT

3rd AMENDED ORDER SETTING CIVIL NON-JURY TRIAL AND CALENDAR CALL

IT IS HEREBY ORDERED THAT:

A. The above entitled case is set to be tried on a **Five week stack** to begin, **Monday, November 14, 2011, at 1:30p.m.**

B. A calendar call will be held on **Thursday, November 10, 2011, at 9:15a.m.** Parties must bring to Calendar Call the following:

(1) Typed exhibit lists;
(2) List of depositions;
(3) List of equipment needed for trial, including audiovisual equipment;[1] and
(4) Courtesy copies of any legal briefs on trial issues.

The Final Pretrial Conference will be set at the time of the Calendar Call.

C. The Pre-Trial Memorandum must be filed no later than **4:00p.m. on November 9, 2011**, with a courtesy copy delivered to Department XI. All parties, (attorneys and parties in proper person) **MUST** comply with **All REQUIREMENTS** of

[1] If counsel anticipate the need for audio visual equipment during the trial, a request must be submitted to the District Courts AV department following the calendar call. You can reach the AV Dept at 671-3205 or via E-Mail at SLATW@clarkcountycourts.us

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CLERK OF THE COURT

E.D.C.R. 2.67, 2.68 and 2.69. Counsel should include the Memorandum an identification of orders on all motions in limine or motions for partial summary judgment previously made, a summary of any anticipated legal issues remaining, a brief summary of the opinions to be offered by any witness to be called to offer opinion testimony as well as any objections to the opinion testimony.

D. All motions in limine, must be in writing and filed no later than **September 23, 2011. Orders shortening time will not be signed except in extreme emergencies.**

E. All original depositions anticipated to be used in any manner during the trial must be delivered to the clerk prior to the final Pre-Trial Conference. If deposition testimony is anticipated to be used in lieu of live testimony, a designation (by page/line citation) of the portions of the testimony to be offered must be filed and served by facsimile or hand, two (2) judicial days prior to the final Pre-Trial Conference. Any objections or counterdesignations (by page/line citation) of testimony must be filed and served by facsimile or hand, one (1) judicial day prior to the final Pre-Trial Conference commencement. Counsel shall advise the clerk prior to publication.

F. In accordance with EDCR 2.67, counsel shall meet, review, and discuss exhibits. All exhibits must comply with EDCR 2.27. Two (2) sets must be three hole punched placed in three ring binders along with the exhibit list. The sets must be delivered to the clerk prior to the final Pre-Trial Conference. Any demonstrative exhibits including exemplars anticipated to be used must be disclosed prior to the calendar call. Pursuant to EDCR 2.68, at the final Pre-Trial Conference, counsel shall be prepared to stipulate or make specific objections to individual proposed exhibits. Unless otherwise agreed to by the parties, demonstrative exhibits are marked for identification but not admitted into evidence.

G. Each side shall provide the Court, at the final Pre-Trial Conference, proposed findings of facts and conclusions of law with an electronic copy in Word format.

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

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

DATED this 2nd day of May, 2011.

ELIZABETH GONZALEZ - DISTRICT JUDGE

Certificate of Service

I hereby certify that on the date filed, this document was E-Served, mailed or a copy of this Order was placed in the attorney's folder in the Clerk's Office or mailed to the proper person as follows:

David J Pope, Esq. (Attorney General – Civil)

William H Brown, Esq. (Turco & Draskovich)

Bradley J Shafer, Esq.
Shafer & Assoc.
3800 Capital City Blvd., Suite 2
Lansing, MI 48906-2110

Dan Kutinac

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	COURT MINUTES	May 27, 2011

06A533273 Little Darlings Of Las Vegas LLC, K-Kel Inc, et al
vs
Nevada Dept Of Taxation, Olympus Garden Inc, et al

May 27, 2011 **3:00 AM** **Motion to Reconsider**

HEARD BY: Gonzalez, Elizabeth COURTROOM: RJC Courtroom 14C

COURT CLERK: Sandra Harrell

RECORDER:

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- Given the supplemental filing by the AG's office, counsel for plaintiff DIRECTED to respond within ten days. Matter continued to 6/17/11 chambers calendar.

CONTINUED TO: 6/17/11 (CHAMBERS)

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	COURT MINUTES	June 24, 2011

06A533273 Little Darlings Of Las Vegas LLC, K-Kel Inc, et al
vs
Nevada Dept Of Taxation, Olympus Garden Inc, et al

June 24, 2011 **3:00 AM** **Motion to Reconsider**

HEARD BY: Gonzalez, Elizabeth COURTROOM: RJC Courtroom 14C

COURT CLERK: Dameda Scott
RECORDER:
REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- A533273 and A554970 The Court, having reviewed Motion for Reconsideration and the related briefing and being fully informed, GRANTS the motion IN PART. The Order is to be amended to reflect dismissal only of damages claims.

Counsel for Plaintiff is directed to submit a Proposed Order consistent with the foregoing within ten (10) days and distribute a filed copy to all parties involved in this matter. Such order should set forth a synopsis of the supporting reasons proffered to the Court in briefing. This Decision sets forth the Court s intended disposition on the subject but anticipates further order of the Court to make such disposition effective as an order.

Based upon the supplemental briefing the Court is inclined to reconsider the prior motion to dismiss related to the petition for judicial review issue based upon the recent Nv Sup Ct decision in Southern California Edison v. First Judicial District Court, 127 Nev Adv. Op. 22 (May 26, 2011). Counsel for the State to renotice the motion so an appropriate record can be made.

CLERKS NOTE: A copy of this minute order also placed in A554970. A copy of this minute order placed in Regional Justice Center attorney folders for William Brown, Esq. (TURCO & DRASKOVICH) and for Blake Doerr, Esq. and Vivienne Rakowsky, Esq. (DEPUTY ATTORNEY GENERAL, 555 E. Washington Ave., #3900, Las Vegas, NV 89101) (DS 7/1/11).

OPP
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**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. 06A533273
Dept. No. XI

Consolidated with:

Case No. 08A554970
Dept. No. XI

PLAINTIFFS' OPPOSITION TO DEFENDANTS' OBJECTION TO SUBPOENA DUCES TECUM AND SUBPOENA, MOTION TO QUASH SUBPOENAS AND MOTION FOR SANCTIONS PURSUANT TO NRCP 45(C)(1) ON ORDER SHORTENING TIME.

Date of Hearing: August 16, 2011
Time of Hearing: 9:00 a.m.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY

Pending before this Court is Case No. 533273, which is a request for declaratory and injunctive relief ("Case 1"), and Case No. 554970, which is a judicial complaint for tax refund filed specifically pursuant to NRS 368A.290 ("Case 2"). The two actions have now been consolidated by this Honorable Court,[1] and both relate to the alleged unconstitutionality of Title 37, Chapter 368A, of the Nevada Revised Statutes, which imposes taxes on certain aspects of "live entertainment." This statutory scheme and the tax mandated thereby are sometimes referred to hereinafter as "Chapter 368A," the "Live Entertainment Tax," or simply the "LET."

As the five-year deadline for this litigation to be completed, per statute, is this upcoming December, it appears that the State is now trying to "run out the clock" with unnecessary motion practice. Plaintiffs served deposition subpoenas on Michelle Jacobs, Dino DiCianno, and Tesa Wanamaker on August 19, 2011, as well as a deposition subpoena duces tecum pursuant to NRCP 30(b)(6). The language in the duces tecum subpoena is ***identical*** to the one previously served on the State in 2009, and was only re-sent to represent the new dates of the depositions. Without consulting with Plaintiffs' counsel pursuant to EDCR 2.34, the State filed a motion to quash ***all*** of the subpoenas. The State sent an email to Plaintiffs counsel seeking a meet and confer, to which the ***already filed*** motion was attached. As Plaintiffs will demonstrate below, a meet and confer should have alleviated any concerns of the State and could have prevented this unnecessary motion practice. However, the State

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[1] In the Order entered on April 6, 2011, this Court held that "the claim for declaratory relief in Case 1 is now consolidated with the claim for declaratory relief in Case 2." Order, p. 3.

refused to withdraw its motion unless Plaintiffs withdrew ***all*** of the subpoenas.

II. FACTS AND PROCEDURAL HISTORY

The discovery portion of this litigation began back in March 2009, when Plaintiffs propounded requests for production of documents and interrogatories on Defendants. Pursuant to a prior scheduling order, the discovery deadline was May 27, 2009. The parties had agreed to schedule the depositions of Dino DiCianno and Michelle Jacobs along with a "person most knowledgeable" pursuant to NRCP 30(b)(6). Those depositions were scheduled to take place in May 2009. *See*, Exhibit 1, Email between counsel for the parties, and Exhibit 2, notice of NRCP 30(b)(6) deposition.[2] At that time, the State made absolutely no objection to the Subpoena duces tecum, nor to the fact that it had been faxed to the State. However, Mr. Bradley Shafer, co-counsel for Plaintiffs, had to have knee surgery, and the parties stipulated to extend the discovery and trial deadlines to accommodate Mr. Shafer's recovery so he could be present for the depositions. *See*, Exhibit 3, Email between counsel.

Subsequent to Mr. Shafer's surgery, the parties engaged in disputes regarding the State's responses to Plaintiffs' discovery requests. Obviously, it made no sense to conduct the depositions until those disputes were resolved, so the depositions were put on hold. In early 2011, this Court ruled on the discovery issues, after extensive litigation before the Discovery Commissioner and this Court. Counsel for the parties exchanged emails regarding re-noticing the depositions of Mr. DiCianno, Ms. Jacobs, and the NRCP 30(b)(6) "person most knowledgeable." *See*, Exhibit 4, Email between counsel. Mr. Blake Doerr, counsel for the State, verbally insisted that the previous deposition notice was sufficient, and Plaintiffs did not

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[2] Note that there is a typographical error in the subpoena duces tecum, stating March 14, 2009, instead of ***May*** 14, 2009, but the document is correctly dated April 15, 2009. This is supported by the emails between counsel. Exhibit 1.

need to submit a new one. In order to be thorough, however, counsel for Plaintiffs, served[3] a renewed NRCP 30(b)(6) deposition subpoena duces tecum (Exhibit 5), the requests for which were cut and pasted verbatim from the April 2009 subpoena. *Compare* Exhibit 2 with Exhibit 5. Plaintiffs additionally served deposition subpoenas (without a duces tecum request) for Dino DiCianno, Michelle Jacobs, and Tesa Wanamaker (whose existence and relevance to these cases had been discovered since the original dates for depositions in 2009).

The depositions are currently scheduled for August 26 and 29, 2011. The subpoenas were served on the State on August 2, 2011. The State waited until August 10, 2011, to serve Plaintiffs (after the close of business for counsel Bradley Shafer) with its Motion to Quash all of the Subpoenas. Exhibit 8, Email from State with Motion. The email sent by the State with the already-filed motion belatedly asks for a meet and confer pursuant to EDCR 2.34 to try to resolve the issues. This was the first time Plaintiffs had heard of the State's objections to the duces tecum subpoena which was identical to the one filed in 2009. Plaintiffs were not requesting any new documents, they simply wished to re-emphasize that the "person most knowledgeable" should be prepared, pursuant to NRCP 30(b)(6), to discuss the issues raised, and the documents already produced by the State (after the lengthy discovery dispute before both the Discovery Commissioner and this Court). The deadline listed for producing documents on the re-sent duces tecum (August 19, 2011) was simply in the unforeseen, and

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[3] Plaintiffs served these deposition subpoenas on August 2, 2011, via facsimile as has been an agreed method of service between the parties throughout the entire litigation. *See* Exhibit 6, examples of fax cover sheets and certificates of service showing the State serving Plaintiffs via facsimile, and Exhibit 7, copy of certificates of service showing facsimile to be Plaintiffs' method of service, which was never challenged before now. *See also*, Exhibit 2, the 2009 deposition subpoena duces tecum, which was served by facsimile without objection. In the affidavit of Vivienne Rakowsky submitted with the State's Motion to Quash (p. 3), she blatantly misrepresents that Defendants have never agreed to service by fax. In light of this lie, coupled with the frivolous nature of the State's Motion to Quash, Plaintiffs respectfully submit that it is the State that perhaps should be liable for sanctions, and not the Plaintiffs.

unlikely, event that the State found any additional responsive documents since the last time they supplemented their discovery requests (with documents that had been discovered in a drawer that had been inadvertently overlooked in prior searches). Plaintiffs were certainly not asking for new documents at this late in the game,[4] and had counsel for the State contacted counsel for Plaintiffs ***before*** preparing and filing the motion, as is required by the Court rules, she would have known that the subpoena duces tecum was limited only to the documents already disclosed by the State, which would negate the majority of the State's objections.

However, this motion has been set to be heard tomorrow on a Order Shortening Time. Counsel for Plaintiffs only received the notice of the date and time of the hearing in a fax that was sent again after the close of business in Michigan, and only received on Monday morning. Therefore, counsel for Plaintiffs have had to devote the majority of their day to preparing an opposition to this motion. When counsel for the Plaintiffs and counsel for the State finally conferred telephonically regarding this motion to quash, on August 12, 2011, the State categorically refused to withdraw its motion to quash even after hearing Plaintiffs' explanation of the duces tecum subpoena, and even after Plaintiffs offered to sign a stipulation clarifying the limitation of the duces tecum subpoena. Counsel for the State insisted that the only way the motion to quash would be withdrawn, is if Plaintiffs would completely withdraw

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[4] In comparison, while the Plaintiffs began the discovery process in March 2009, the State has waited over two years, and only recently served Plaintiffs with discovery requests on May 25, 2011, and another set of requests on July 26, 2011. This delay highlights the State's attempts to "run the clock" down on the five-year deadline. The purpose of the State's requests is to conduct an audit on the Plaintiffs within this litigation, which is unnecessary at this juncture, as this Court has not even ruled that the LET is unconstitutional. Only if and when there has been a ruling that Plaintiffs are entitled to a refund of the LET paid, would the massive undertaking of an audit make any sense. However, these issues will be discussed in full detail in Plaintiffs' Opposition to the Motion to Compel that the State has indicated it will be filing this week. Although, they demonstrate that the State felt discovery was appropriate in Case 2's refund requests, despite its pending motion that Case 2 should have been filed as a petition for judicial review, without the ability to conduct discovery.

all of their subpoenas, not just the subpoena duces tecum. Given the State's bizarre and inconsistent behavior regarding recent discovery (*see* n. 4), counsel for Plaintiffs would not be adequately representing the interests of their clients if they withdrew the subpoenas. Therefore the motion to quash remains before this Court.

III. ARGUMENT

A. THE STATE'S OBJECTIONS TO THE INDIVIDUAL SUBPOENAS HAVE NO MERIT.

The State not only objects to the NRCP 30(b)(c) deposition subpoena duces tecum ("Duces Tecum Subpoena"), but it also objects to and moves to quash Plaintiffs' deposition subpoenas for Mr. DiCianno, Ms. Jacobs, and Ms. Wanamaker. Mtn. Quash, p. 25.

While the service of the deposition via facsimile has been shown above to be an agreed-upon method of service throughout this litigation (*See*, Exhibits 6 and 7), the State objects to the method of service. Given the evidence presented to this Court, Plaintiffs request that the service of the individual deposition subpoenas (without duces tecum requests) be considered sufficient.

Further, the State claims that Ms. Wanamaker is no longer an employee of the Department, and "because the Subpoena was vague as to the purpose of producing this witness ("testify at the taking of a deposition in the above case"), ***at this time***, the Defendants cannot offer a substitute witness." Mtn. Quash, p. 25 (emphasis added). During the meet and confer that was requested ***after*** the drafting and filing of the State's motion, counsel for the parties discussed the purpose of producing Ms. Wanamaker. During the discovery process, it was uncovered that Ms. Wanamaker was a Revenue Officer who was tasked with going from business to business to determine if the entity was subject to the LET. She left her card at one

of the Plaintiff establishments during one such visit. Obviously, the purpose of the Department in sending Revenue Officers to physically observe the type of entertainment being provided at business establishments is germane to Plaintiffs' contention that the tax is content-based and unconstitutionally aimed at gentlemen's clubs. This purpose was explained to Defense counsel during the belated meet and confer. Had the meet and confer been conducted ***before*** the filing of the motion as required by EDCR 2.34, the State would have been well aware of the purpose of producing Ms. Wanamaker, and if indeed she is no longer a state employee and cannot be produced[5] (as Mr. DiCianno - - who is no longer with the state - - is being produced), the State could have designated a substitute witness. In fact, at the belated meet and confer, Mr. Doerr, counsel for the State, indicated that Revenue Officers are assigned per zip code, and that there may be Revenue Officers currently employed by the Department who could act as a substitute witness, and testify as to their instructions for the visits, the visits themselves, and the procedures of reporting the results of the visits. Therefore, there is no reason why the subpoena for Ms. Wanamaker should be quashed, as Defendants clearly were willing to produce a substitute deponent if the purpose had been disclosed, as they indicated in their motion to quash.

As to the subpoenas for Ms. Jacobs and Mr. DiCianno, they were issued individually, because the State was not quite sure who was going to be designated as the "person most knowledgeable" pursuant to NRCP 30(b)(6), and it was contemplated that perhaps it would be a third person who has been employed with the Department for many years. *See* Exhibit 4. Therefore, to the extent that the State is now attempting to argue that the subpoenas to Ms.

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[5] Plaintiffs request that if the State continues to contend that it cannot produce Ms. Wanamaker, that this Court order the State to provide Plaintiffs' counsel with her last known address so that Plaintiffs may subpoena her individually.

Jacobs and Mr. DiCianno are limited to the Duces Tecum Subpoena, they are mistaken, something that could have been remedied before the motion to quash was filed had a meet and confer taken place. Regardless, this issue is moot, as the State as agreed to produce Mr. DiCianno and Ms. Jacobs for deposition. Mtn. Quash, p. 25.

B. <u>THE STATE'S OBJECTIONS TO THE NRCP 30(b)(6) DUCES TECUM SUBPOENA ARE UNNECESSARY AND WITHOUT MERIT.</u>

The majority of the State's motion to quash is dedicated to objecting to the duces tecum requests. Mtn. Quash, pp. 7-25. Defendants' objections to the duces tecum have already been litigated extensively before the Discovery Commissioner and this Court. Plaintiffs do not seek any new documents beyond those already produced by the State over the course of the discovery. Had Defendants complied with EDCR 2.34, they could have avoided these unnecessary objections.

The NEV. R. CIV. P. Rule 30(b)(6) deposition subpoena duces tecum properly seeks the Defendants' interpretation of documents produced by Defendants over the course of discovery. All of the areas of inquiry seek information relevant to this action and reasonably known by Defendants. Had Defendants believed otherwise, they would have objected to the identical Rule 30(b)(6) deposition notice previously served upon them in April of 2009. Exhibit 2. They did not. Instead, they only now interpose objections in hopes of delaying and running out the clock. Defendants' objections are without merit and should be overruled.

Defendants repeatedly object to the interrogatories on the basis that, "[b]ecause the Defendants did not write the legislation, the Defendants do not have an individual who can testify under oath without speculation with regards to his area of inquiry. The Legislative history speaks for itself." This objection is completely improper. It is well settled that a Rule

30(b)(6) deposition may permissibly seek information beyond a deponent's personal knowledge. Interpreting the similarly worded federal rule, the federal court explained:

> The duty to prepare a Rule 30(b)(6) designee goes beyond matters personally known to the witness or to matters in which the designated witness was personally involved. **Buycks-Roberson v. Citibank Federal Savs. Bank**, 162 F.R.D. 338, 343 (N.D.Ill.1995); **Securities and Exchange Commission v. Morelli**, 143 F.R.D. 42, 45 (S.D.N.Y.1992). The duty to produce a prepared witness on designated topics extends to matters not only within the personal knowledge of the witness but on matters reasonably known by the responding party. **Alexander v. Federal Bureau of Investigation**, 186 F.R.D. 137, 141 (D.D.C.1998). "By its very nature, a Rule 30(b)(6) deposition notice requires the responding party to prepare a designated representative so that he or she can testify on matters not only within his or her personal knowledge, but also on matters reasonably known by the responding entity." **Alliance v. District of Columbia**, 437 F.Supp.2d 32, 37 (D.D.C.2006), citing **Alexander**, *supra*, at 141.
>
> The fact that an organization no longer has a person with knowledge on the designated topics does not relieve the organization of the duty to prepare a Rule 30(b)(6) designee. **Taylor**, 166 F.R.D. at 361. There, the court recognized that it is not uncommon to find that a corporation no longer employs individuals who have memory of distant events, or to find that individuals with knowledge are deceased. **Id**. "These problems do not relieve a corporation from preparing its Rule 30(b)(6) designee ***to the extent matters are reasonably available, whether from documents, past employees, or other sources***." **Id**. A party producing a Rule 30(b)(6) witness "must prepare deponents by having them review prior fact witness deposition testimony ***as well as documents and deposition exhibits***." **Id**. at 362.

Great American Ins. Co. of New York v. Vegas Const. Co., Inc., 251 F.R.D. 534, 539 (D.Nev. 2008) (emphasis added).

Therefore, there is no merit to the Defendants' argument that the Rule 30(b)(6) deposition notice is improper, simply because it seeks information beyond the personal knowledge of the individuals the Department has chosen to designate.

Further, "the use of Rule 30(b)(6) deposition for the purpose of obtaining the factual basis for a defendants asserted position statements is not novel." **U.S. E.E.O.C. v. Caesars Entertainment**, 237 F.R.D. 428, 433 (D. Nev. 2006). The use of this technique is valid, unless

it would (1) invade the attorney-client privilege or work, or (2) be an overly burdensome method of discovering the information. **Id**. The Rule 30(b)(6) notice here violates neither. "Because of its nature, the deposition process provides a means to obtain more complete information and is, therefore, favored." **Great American Ins.**, 251 F.R.D. at 539 (quoting **Marker v. Union Fidelity Insurance**, 125, F.R.D. 121, 126 (M.D.N.C. 1989)).

> Courts severely scrutinize claims that a Rule 30(b)(6) would be unduly burdensome: Several courts have recognized that preparing a Rule 30(b)(6) designee may be an onerous task and that it is not uncommon for a corporation to claim:
>
> "... that it no longer employs individuals who have member of a distant event or that such individuals are deceased. . . . These problems do not relieve a corporation from preparing its Rule 30(b)(6) designee to the extent matters are reasonably available, whether from ***documents***, past employee, or ***other sources***."
>
> [**U.S. v.**] **Taylor**, 166 F.R.D. [359,] 360-61 [(M.D.N.C. 1996)] (internal citation omitted). Although adequately preparing a Rule 30(b)(6) deposition can be burdensome, "this is merely the result of the concomitant obligation for the privilege of being able to use the corporate form in order to conduct business." **Id**. at 362. **Spring Comm. v. Theglobe.com, Inc.**, 263 F.R.D. 524 (D. Kan. 2006) (acknowledging compliance with Rule 30(b)(6) may be onerous but that the Rule's requirements "negate any possibility that an inquiring party will be directed back and forth from on corporate representative to another, vainly searching for a deponent who is able to provide a response which would be binding the corporation.").

Id. at 540 (emphasis added; clarification added).

Defendants are the entities and officials charged with enforcing the Nevada's Live Entertainment Tax. Plaintiffs have alleged that the LET has been legislatively gerrymandered to apply disproportionately to gentlemen's clubs, as borne out by the legislative history. Plaintiffs have also alleged that the LET in practice does in fact disproportionately apply to and burden gentlemen's clubs in violation of their First Amendment Rights. Defendants have denied that the LET is gerrymandered in purpose or effect. Plaintiffs are entitled to inquire into the meaning of documents relevant to Defendants' defenses. As the enforcers of the LET,

Defendants must necessarily interpret and apply the LET. It is entirely proper for Plaintiffs to inquire into the meaning and effect of legislative actions and changes reflected in the history of the LET. These are matters reasonably known to Defendants

Saying that a document "speaks for itself," as Defendants contend, is not sufficient to avoid deposition on the meaning of the document. In **Sigmund v. Starwood Urban Retail VI**, LLC, 236 F.R.D. 43, 46 (D.D.C. 2006), the court rejected a party's objection to requests for admission seeking the other party's interpretation of documents," on the basis that the documents speak for themselves. **Id**. Where the meaning of is at issue, the inquiry is relevant. **Id**. (quoting **Booth Oil Site Admin. Group v. Safety-Kleen Corp.**, 194 F.R.D.. 76, 80 (W.D.N.Y. 2000) and **Deiderich v. Dep't of the Army**, 132 F.R.D. 76, 80 (S.D.N.Y. 1990) ("objections that documents . . . 'speak for themselves' are improper"). The same is true here. The parties dispute the meaning and effect of the LET, amendments to the LET, and legislative history reflecting the same. It would not be inappropriate for Defendants to look to the legislative history in interpreting an applying the LET in the exercise of their duty. The same is true of documents Defendants produced over the course of discovery relating to the administration of the LET and amounts collected by the Department of Taxation from different entities and classes of businesses.

In addition, the Defendants also object to having a Rule 30(b)(6) designee testify about documents already produced by the Defendants regarding the administration of the LET. The "table" set forth by Defendants (Mtn. Quash, pp. 21-24), repetitively objects to the categories of documents produced in response to Plaintiffs' document requests. These objections, like the motion as a whole, is completely unnecessary. Defendants already interposed their objections

to Plaintiffs' document requests, especially their claim that certain documents and information was privileged pursuant to NRS 368A.180.

The parties have already thoroughly litigated Defendants' NRS 368A.180 confidentially objections. Those documents that have been produced by the Defendants according to requests identified in the Rule 30(b)(6) notice, have been produced either voluntarily during discovery, or according the direction Court or the Discovery Commissioner. Apparently, Defendants seek to re-litigate this issue in hopes of running this case past the deadline. As discussed herein, Plaintiffs made clear in the belated meet and confer conference that they were not seeking any new documents other than those already produced by the State (with the exception to any documents supplemented in the ordinary course of discovery). The 368A.180 objection is meritless.

Defendants' "table" neglects identifying the subjects of these document requests, which must be discerned by reference to the attached document request (Mtn. Quash, Ex. B). Defendants object to providing a designee regarding "[a]ny and all documents related to any payments of the 10% LET" (Request 1, Mtn. Quash at p. 23, ¶ 16); "[a]ny and all documents related to any payments of the five percent LET" ((Request 2, Mtn. Quash at p. 23, ¶ 17); "[a]ny and all Live Entertainment Tax Returns or similar documents submitted to the Department relating to the payment or anticipated payment of the Ten Percent LET" (Request 3, Mtn. Quash at p. 23, ¶ 18); "[a]ny and all Live Entertainment Tax Returns or similar documents submitted to the Department relating to the payment or anticipated payment of the Five Percent LET" (Request 5, Mtn. Quash at p. 24, ¶ 20); "[a]ny and all Live Entertainment Tax Returns or similar documents submitted to the Department relating to the payment or anticipated payment of the Five Percent LET" (Request 6, Mtn. Quash at p. 24, ¶ 21); "[a]ny

and all Live Entertainment Tax Returns, Live entertainment Tax Reports, or similar documents relating to any payments of the Live Entertainment Tax" (Request 7, Mtn. Quash at p. 24, ¶ 22); "[a]ny and all documents relating to projections of revenue to be generated by, or amounts to be collected pursuant to, the Live Entertainment Tax" (Request 9, Mtn. Quash at p. 24, ¶ 23); and '[a]ny and all documents relation to projections of revenue generated by, or amounts to be collected pursuant to any proposed live entertainment tax." (Request 10, Mtn. Quash at p. 24, ¶ 24).

All of these areas of inquiry are relevant to Plaintiffs' contentions, and Defendants' denial, that the Live Entertainment Tax has the purpose or effect of disproportionately burdening gentlemen's clubs and therefore violates Plaintiffs' First Amendment Rights. All of the documents are documents submitted to or created by Defendants over the course of administering the LET. Obviously these are relevant areas of inquiry and reasonably within the knowledge of the Defendants. Again, all of the documents produced were the result of the parties fully litigating the Defendants NRS 368A.180 objections. The Defendants' objections to these items, and attempt to re-litigate the same, is completely unnecessary and could have been completely avoided had Defendants complied with EDCR 2.34(d). Defendants' unnecessary objections should be overruled in full.

C. THE STATE'S REQUEST FOR SANCTIONS IS DISINGENUOUS.

Incredibly, the Defendants "move for sanctions to be imposed because the Plaintiffs chose to burden the Defense with duplicate requests for the same documents that have already been produced and have caused the Defendants to prepare this Objection." Mtn. Quash, p. 10. This is disingenuous at best, and at worst, would merit sanctions being assessed against the State. As discussed above, Plaintiffs served the Duces Tecum Subpoena with identical

wording (except for the dates) so that it could not be construed as an additional request for documents. The August 19th deadline was in the off-chance the State discovered new documents as it has done throughout the course of this litigation.

Had the State sought a "meet and confer" pursuant to EDCR 2.34, ***before*** preparing, let alone filing, this motion, Defense counsel would have been aware that no new documents were being sought, and that these subpoenas were simply re-noticed deposition subpoenas so that proper procedure was followed. The State would not have then wasted the taxpayer's valuable money on preparing an unnecessary motion, and engendering even more motion practice in these cases. Instead, the State prepared and filed the motion first, then emailed it to counsel for Plaintiffs, only ***then*** requesting a meet and confer, which is in violation of EDCR 2.34, which states:

> 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.

EDCR 2.34 (emphasis added). The affidavit of counsel for Defendants, Vivienne Rakowsky, does not even state that she held (or attempted to hold) a discovery dispute conference ***before*** preparing or filing her objections and motion to quash. Affidavit, Mtn. Quash, pp. 3-4. In fact, it is simply an affidavit in support of the Order Shortening Time.

There is no affidavit stating that a discovery dispute conference had been even attempted prior to filing the motion. There is mention in the Memorandum (Mtn. Quash, p. 6) that the meet and confer was ***requested*** "contemporaneously with filing this Objection and Motion." The meet and confer was not even requested before the filing of the motion, let alone conducted. Clearly, in this case, such a conference would have shown that there was no need for the motion at all, as the concerns asserted by the State could have been alleviated by

the Plaintiffs. It is reasonable to infer that if anyone is subject to sanctions, it is the State (for both this violation of rules which resulted in avoidable, frivolous, and delaying motion practice, as well as the obvious lie contained in Ms. Rakowsky's affidavit in paragraph 6. *See* n. 3, *supra*, and Exhibits 6 and 7), and not the Plaintiffs.

XII. CONCLUSION.

For the reasons set forth above, Plaintiffs respectfully request that this Honorable Court deny, in its entirety, the Defendants' Plaintiffs' Opposition To Defendants' Objection To Subpoena Duces Tecum And Subpoena, Motion To Quash Subpoenas And Motion For Sanctions Pursuant To NRCP 45(C)(1) On Order Shortening Time, and compel the State to produce the named individuals or the suitable designee(s) and/or substitute deponants. In the alternative, Plaintiffs request that this Court permit Plaintiffs to re-serve the NRCP 30(b)(6) deposition subpoena duces tecum in a format that clarifies that no new documents need to be produced unless responsive documents are discovered which have not been previously disclosed per this Court's order. Plaintiffs further respectfully request that this Court assess sanctions against the Defendants for failing to comply with EDCR 2.34, and for disregarding the fact that service via facsimile has been a mutually agreeable form of service throughout this litigation, both actions having now caused unnecessary litigation, and cost the taxpayers of Nevada and Plaintiffs unwarranted time and money.

DATED this 15th day of August, 2011.

Respectfully submitted,

BY: *s/William H. Brown*
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**Admitted Pro Hac Vice*

Exhibit 1

Exhibit 1

Andrea Pritzlaff

From: Andrea Pritzlaff [AEAdams@acd.net]
Sent: Thursday, March 12, 2009 9:29 AM
To: Blake A. Doerr
Subject: Live Entertainment Tax

Blake:

We are aiming to get some discovery documents to you next week. Since you will have about a month to respond, we are looking at taking depositions at the end of April through May (our discovery deadline is May 27th, I believe). Would you please check with Mr. DiCianno regarding his schedule at the end of April through May?

Thanks,

Andrea

----- Original Message -----
From: Blake A. Doerr
To: Andrea Pritzlaff
Cc: David J. Pope
Sent: Thursday, February 26, 2009 3:22 PM
Subject: RE: COMP_Amended_Complaint[1].pdf - Adobe Reader

Andrea,

After discussing this with my client, we would stipulate to an amended Complaint for both cases for the addition of the clarification regarding the as-applied challenge. However, we would not stipulate to an amended Complaint which contains the additional allegation of the due process claim. Also, any stipulation is contingent up you providing us with the actual version(s) of the amended Complaint so that we can review it prior to us signing any such stipulation.

With respect to the 30 day extension of the expert report. We would not object to the filing of your expert report within 30 days after your disclosure however, we would ask that our 30 day extension be for both the disclosure and the production of a report—in other words, we would be both disclosing and filing our expert report 30 days after we receive your expert report.

With respect to Mr. DiCianno's deposition, he has informed us that his availability is limited to Mondays and Fridays and that he believes he is currently available Monday March 30, 2009. Please let us know if you would like us to confirm Mr. Dicianno's availability for any specific time on March 30, 2009 or on any subsequent Monday or Friday.

Respectfully,
Blake Doerr

From: Andrea Pritzlaff [mailto:AEAdams@acd.net]
Sent: Thursday, February 26, 2009 11:13 AM
To: Blake A. Doerr
Subject: Re: COMP_Amended_Complaint[1].pdf - Adobe Reader
Importance: High

Have you guys made a decision regarding the expert report and the motion to amend the complaint? I only have a couple of more hours to get this to our local counsel. Thanks.

----- Original Message -----
From: Blake A. Doerr
To: Andrea Pritzlaff
Sent: Wednesday, February 25, 2009 5:20 PM
Subject: RE: COMP_Amended_Complaint[1].pdf - Adobe Reader

Thank you.

I will be in touch.

From: Andrea Pritzlaff [mailto:AEAdams@acd.net]
Sent: Wednesday, February 25, 2009 1:56 PM
To: Blake A. Doerr
Subject: Re: COMP_Amended_Complaint[1].pdf - Adobe Reader

Sorry, there was a typo in my last email. The additional lettered sub-paragraph will be added to the end of paragraph 53, not 52.

Thanks,
Andrea

----- Original Message -----
From: Blake A. Doerr
To: aeadams@acd.net
Sent: Wednesday, February 25, 2009 3:45 PM
Subject: COMP_Amended_Complaint[1].pdf - Adobe Reader

Andrea,
Here is the Amended Complaint which was filed.
We will speak to you tomorrow.
Blake

Exhibit 2

Exhibit 2

BRADLEY J. SHAFER
ALSO MEMBER, AZ BAR

LAW OFFICES
SHAFER & ASSOCIATES, P.C.
A PROFESSIONAL CORPORATION
3800 CAPITAL CITY BLVD., STE. #2
LANSING, MI 48906
E-MAIL: shaferassociates@acd.net
PHONE: 517-886-6560
FAX: 517-886-6565

ANDREA E. PRITZLAFF
MATTHEW J. HOFFER

April 15, 2009

VIA FACSIMILE and
UPS OVERNIGHT MAIL

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

RE: *Plaintiffs' Notice of Rule 30(b)(6) Deposition of Defendants*
Subpoena and Subpoena Duces Tecum
Deja Vu Showgirls et al. v. Nevada Department of Taxation et al., and
K-Kel, Inc., et al v. Nevada Department of Taxation, et al
Clark County Cases Nos. A533273; and A554970

Dear Mr. Pope:

Enclosed please find the Plaintiffs' Notice of Rule 30(b)(6) deposition of Defendants, and a Subpoena and Subpoena Duces Tecum to the State of Nevada. I am assuming that you are willing to accept service on the State's behalf. Please notify me immediately if that is not the case. Once again, we would prefer to have copies of the requested documents sent to this office in lieu of producing them for copying and inspection at Sullivan Brown.

In our previous discussions the question arose as to whether the State of Nevada is a party to the above-captioned suits. The State is not a named Defendant in either of these cases. Therefore, we are issuing this Subpoena to ensure that all the appropriate discovery takes place. Some requests are duplicated on the belief that the State may be in possession of additional documents no in Defendants' possession. There is, of course, no need to provide again documents produced via the discovery submitted to Defendants. The same is true regarding the areas for inquiry in the Rule 30(b)(6) deposition notices.

I also want to note that although discovery already propounded on Defendant's only references Case No. 533273, it is our intention that the deposition testimony, answers to interrogatories and items produced be available for use in both suits. I see no need for either of us to duplicate out efforts.

Thank you for your time and attention. If you have any questions or concerns, please do not hesitate to contact me directly.

Very truly yours,

SHAFER & ASSOCIATES, P.C.

By: Bradley J. Shafer

BJS/dah
Enclosures

SHAFER & ASSOCIATES, P.C.
3800 CAPITAL CITY BOULEVARD, SUITE 2
LANSING, MICHIGAN 48906
TELEPHONE: (517) 886-6560
FACSIMILE: (517) 886-6565

FACSIMILE

To:	**DAVID J. POPE, ESQ.**	From:	Matthew J. Hoffer, Esq.
Firm:	Nevada Attorney General's Office	Date:	**April 15, 2009**
Fax:	(702) 486-3768	Pages:	24
Re:	DV Showgirls v Nevada Dept of Taxation		

Message: *Please see attached.*

Please contact this office at (517) 886-6560 and ask for Denise if you have any problems with this transmittal.

☐ *Urgent* ☐ *Please review* ☐ *Please comment* ☐ *For your Records*

DISTRICT COURT

CLARK COUNTY, NEVADA

DÉJÀ VU SHOWGIRLS, et al. v. NEVADA DEPARTMENT OF TAXATION, et al.;
Case No. A533273.

And

K-KEL, INC., et al. v. NEVADA DEPARTMENT OF TAXATION, et al.;
Case No. A533273.

PLAINTIFFS' NOTICE OF RULE 30(b)(6) DEPOSITION OF DEFENDANTS

NOW COME the above-captioned Plaintiffs, by and through their attorneys, and pursuant to Rule 30(b)(6) of the Nevada Rules of Civil Procedure hereby give notice of the deposition of the Defendants. The deposition(s) shall commence at The Nevada Department of Taxation, 1150 College Parkway, Suite 115, Carson City, Nevada 89706, on Thursday March 14, 2009 at 9:00 AM local time and shall continue day-to-day until completed.

Defendants shall designate and produce for deposition one or more officers, directors, managing agents, or other persons who consent to testify on behalf of the Defendants, and who possess the knowledge to testify on its behalf in regard to the matters described below.

DEFINITIONS

A. As used in this deposition notice, the term "Request" or "Requests" shall refer to the identified paragraph number(s) of Plaintiffs' First Request for the Production of Documents and Things to Defendants.

B. As used in this deposition notice, the phrase "Chapter 368A" or the "Live Entertainment Tax" shall refer to Chapter 368A of the Nevada Revised Statutes as referred in Plaintiffs' Complaint.

C. As used in this deposition notice, the phrase "Ten Percent LET" shall refer to the tax imposed by N.R.S. § 368A.200(1)(a).

D. As used in this deposition notice, the phrase "Five Percent LET" shall refer to the tax imposed by N.R.S. § 368A.200(1)(b).

E. As used in this deposition notice, the term "Department" shall refer to the Nevada Department of Taxation.

F. As used in this deposition notice, the term "Commission" shall refer to the Nevada Gaming Commission.

G. As used in this deposition notice, the term "Board" shall refer to the State Gaming Control Board.

H. As used in this deposition notice, the term "regulation" shall refer to any regulation promulgated or adopted by either the Department or the Commission pursuant to the provisions of NRS § 368A.140.

I. As used in this deposition notice, the term "business entity" shall have the meaning ascribed to it in NRS § 368A.050.

J. As used in this deposition notice, the term "document" means any writing, letter, opinion, printing, memorandum, report, compilation, survey, summary, evaluation, correspondence, list, directive, study, contract, agreement, chart, graph, index, data sheet, data processing card or tape, note, entry, telegrams, telefax, advertisement, brochure, circular, tape, record, receipt, invoice, bulletin, paper, book, pamphlet, account, photograph, magazine or newspaper article, records of meetings, conference records, telephone records, records of conversation or any other form of communication, journal, and any other written, typewritten, handwritten, or other graphic matter, any electronic or other recording of any kind or nature, any mechanical or electronic sound or video recordings or transcripts thereof, however produced or reproduced, and all copies or facsimiles of documents by whatever means made.

K. As used in this deposition notice, the phrase "person or persons" shall refer to individuals and not the collective knowledge of any group of persons.

L. As used in this deposition notice, the phrase "relating to" includes referring to, pertaining to, showing, describing, analyzing, containing, having, discussing, or concerning, in any manner or fashion whatsoever.

M. As used in this deposition notice, the term "you" (or "your") shall refer collectively to the above-captioned defendants.

AREAS OF INQUIRY

1. The initial proposal of and subsequent drafting, consideration, revisions, enactment of the Live Entertainment Tax.

2. The initial proposal of and subsequent drafting, consideration, revisions, enactment of each amendment to the Live Entertainment Tax.

3. The business entities or classes of business entities meant to be subject to the Live Entertainment Tax.

4. The business entities or classes of business entities meant to be exempted from the Live Entertainment Tax.

5. The governmental interest(s) to be served by the Live Entertainment Tax and the manner by which the Live Entertainment Tax functions to further such governmental interest(s).

6. The governmental interest(s) to be served by each amendment to the Live Entertainment Tax and the manner by which each amendment furthers such governmental interest(s).

7. The business entities or classes of business entities meant to be made subject to the Live Entertainment Tax and/or meant to be exempted from the Live Entertainment Tax by each subsequent amendment to the Live Entertainment Tax.

8. The business entities or classes of business entities meant to be exempted from the Live Entertainment Tax pursuant to provisions of the Live Entertainment Tax, including but

not limited to: the exclusions from the definition of "live entertainment" listed in N.R.S. § 368A.090(2)(b) and the exclusions listed in N.R.S. § 368A.200(5).

9. The business entities or classes of business entities meant to be made subject to the Live Entertainment Tax and/or meant to be exempted from the Live Entertainment Tax by each and every regulation promulgated by the Department.

10. The business entities or classes of business entities meant to be made subject to the Live Entertainment Tax and/or meant to be exempted from the Live Entertainment Tax by each and every policy adopted, implemented, or carried out by the Department.

11. The business entities or classes of business entities meant to be made subject to the Live Entertainment Tax and/or meant to be exempted from the Live Entertainment Tax by each and every regulation promulgated by the Commission.

12. The business entities or classes of business entities meant to be made subject to the Live Entertainment Tax and/or meant to be exempted from the Live Entertainment Tax by each and every policy adopted, implemented, or carried out by the Commission.

13. The identity of any business entity requested by any person or entity to be exempt from the Live Entertainment Tax, the reasons proffered for the exemption, the disposition of each such request, and the reasons for the disposition of each such request.

14. The manner by which the initially proposed "5% across the board" tax on live entertainment came to be the Live Entertainment Tax, which taxes certain entertainment at the rate of 10%.

15. The manner by which any provisions of the "live adult entertainment" tax proposed by Senate Bill 247 of 2005 or any other similar proposed tax came to be incorporated into the Live Entertainment Tax.

16. Live Entertainment Taxes collected by the Department pursuant to the Five Percent LET.

17. Live Entertainment Taxes collected by the Department pursuant to the Ten Percent LET.

18. Live Entertainment Taxes collected by or for the Commission pursuant to the Five Percent LET.

19. Live Entertainment Taxes collected by or for the Commission pursuant to the Ten Percent LET.

20. The documents and things produced in response to Requests 1 and 2.

21. The documents and things produced in response to Requests 3 and 4.

22. The documents and things produced in response to Requests 5 and 6.

23. The documents and things produced in response to Request 7.

24. The documents and things produced in response to Request 8.

25. Projections of Live Entertainment Tax revenues relating to each version of the Live Entertainment Tax, and the documents and things produced in response to Request 9.

26. Projections of revenue to be generated by the "live adult entertainment" tax proposed by Senate Bill 247 or any similar proposed tax, and the documents and things produced in response to Request 10.

27. The documents and things produced in response to Requests 11, 12, 13, and 14.

28. The documents and things produced in response to Request 16.

29. The legislative history of the Live Entertainment Tax, and the documents and things produced in response to Request 17.

30. The documents and things produced in response to Request 19.

31. The documents and things produced in response to Requests 20 and 21.

32. The documents and things produced in response to Request 23.

33. The documents and things produced in response to Request 24.

Dated: April 15, 2009

Respectfully Submitted,

BRADLEY J. SHAFER
Michigan Bar No. P36604
Shafer & Associates, P.C.
3800 Capital City Blvd., Suite 2
Lansing, Michigan 48906-2110
Telephone: (517) 886-6560
Facsimile: (517) 886-6565
bjshafer@acd.net
Attorneys for Plaintiffs
Admitted Pro Hac Vice

CC03
BRADLEY J. SHAFER
Michigan Bar No. P36604
Shafer & Associates, P.C.
3800 Capital City Blvd., Suite 2
Lansing, Michigan 48906-2110
Telephone: (517) 886-6560
Facsimile: (517) 886-6565
bjshafer@acd.net
Attorneys for Plaintiffs
Admitted Pro Hac Vice

DISTRICT COURT
CLARK COUNTY, NEVADA

DÉJÀ VU SHOWGIRLS, et al. v. NEVADA DEPARTMENT OF TAXATION, et al.;
Case No. A533273.

And

K-KEL, INC., et al. v. NEVADA DEPARTMENT OF TAXATION, et al.;
Case No. A533273.

TO: THE STATE OF NEVADA

SUBPOENA AND SUBPOENA DUCES TECUM

YOU ARE COMMANDED to appear at The Nevada Department of Taxation, 1150 College Parkway, Suite 115, Carson City, Nevada 89706, on Thursday March 14, 2009 at 1:00PM local time to testify at the taking of a deposition in the above case. Pursuant to Nevada Rules of Civil Procedure 30(b)(6), you are to designate on or more officers, directors, or managing agents, or other persons who consent to testify on your behalf regarding the matters described in the Rule 30(b)(6) Deposition Notice below.

YOU ARE COMMANDED to produce and permit inspection and copying of the documents and objects described in the Duces Tecum Notice below at Sullivan Brown, LLC, 332 South Jones Boulevard, Las Vegas, Nevada 89107 on or before ***April 30, 2009.***

This subpoena and subpoena duces tecum is issued by the attorney below as an officer of the court, as authorized by Nevada Rules of Civil Procedure 45(a)(3).

Signature of Issuing Officer:

Dated: April 15, 2009

BRADLEY J. SHAFER
Attorney for Plaintiffs

DUCES TECUM NOTICE

Pursuant to Nevada Rules of Civil Procedure 34 and 45, you are to produce and make available for inspection and copying, the items described below.

Definitions and Instructions:

A. As used in this Subpoena Duces Tecum, the term "you" (or "your") shall refer to the State of Nevada, including but not limited to the Nevada Legislature and the members thereof.

B. This Subpoena Duces Tecum shall be deemed to be continuing in nature, calling for the prompt production by you of any and all documents which come into your actual or constructive possession, trust, care or control at any time in the future, as well as any and all documents now in your actual or constructive possession, trust, care or control. The specificity of any request shall not be construed as reducing the scope of any more generalized request.

C. As used in this Subpoena Duces Tecum, the phrase "Chapter 368A" or the "Live Entertainment Tax" shall refer to Chapter 368A of the Nevada Revised Statutes.

D. As used in this Subpoena Duces Tecum, the phrase "Ten Percent LET" shall refer to the tax imposed by N.R.S. § 368A.200(1)(a).

E. As used in this Subpoena Duces Tecum, the phrase "Five Percent LET" shall refer to the tax imposed by N.R.S. § 368A.200(1)(b).

F. As used in this Subpoena Duces Tecum, the term "Department" shall refer to the Nevada Department of Taxation.

G. As used in this Subpoena Duces Tecum, the term "Commission" shall refer to the Nevada Gaming Commission.

H. As this Subpoena Duces Tecum, the term "Board" shall refer to the State Gaming Control Board.

I. As used in this Subpoena Duces Tecum, the term "regulation" shall refer to any regulation promulgated or adopted by either the Department of Taxation or the Commission.

J. As used in this Subpoena Duces Tecum, the term "business entity" shall have the meaning ascribed to it in NRS § 368A.050.

K. As used in this Subpoena Duces Tecum, the term "document" means any writing, letter, opinion, printing, memorandum, report, compilation, survey, summary, evaluation, correspondence, list, directive, study, contract, agreement, chart, graph, index, data sheet, data processing card or tape, note, entry, telegrams, telefax, advertisement, brochure, circular, tape, record, receipt, invoice, bulletin, paper, book, pamphlet, account, photograph, magazine or

newspaper article, records of meetings, conference records, telephone records, records of conversation or any other form of communication, journal, and any other written, typewritten, handwritten, or other graphic matter, any electronic or other recording of any kind or nature, any mechanical or electronic sound or video recordings or transcripts thereof, however produced or reproduced, and all copies or facsimiles of documents by whatever means made.

L. As used in this Subpoena Duces Tecum, the phrase "person or persons" shall refer to individuals and not the collective knowledge of any group of persons.

M. As used in this Subpoena Duces Tecum, the phrase "relating to" includes referring to, pertaining to, showing, describing, analyzing, containing, having, discussing, or concerning, in any manner or fashion whatsoever.

N. If you object to any request herein on the basis of a claim of privilege, please:

1. Identify each such document with sufficient particularity as to the author(s)' address(es) or recipient(s)' address(es), and the contents thereof so as to allow the court sufficient information to be able to rule upon any claim of privilege;
2. Identify all persons in possession of each document;
3. State the nature of the privilege(s) asserted; and
4. State in detail the factual basis for the claim(s) of privilege.

O. In each case where you are asked to identify a person in an objection, state with respect to each person:

1. His or her name;
2. His or her current last known address and telephone number;
3. His or her occupation, employer and business address at the date of the referenced event or transaction; and
4. His or her present occupation, employer and business address and telephone number.

ITEMS TO BE PRODUCED

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

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

RESPONSE:

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

RESPONSE:

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

RESPONSE:

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

RESPONSE:

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

RESPONSE:

6. Any and all documents either submitted to or in any way either considered and/or relied upon by the Nevada Legislature, it committees, subcommittees, employees, analysts, or

the like relating to the purpose of introducing, drafting, considering, revising, adopting, and/or amending the Live Entertainment Tax.

RESPONSE:

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

RESPONSE:

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

RESPONSE:

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

RESPONSE:

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

RESPONSE:

11. Any and all transcripts, audio or video recording, minutes, or other records of any sessions, meetings or hearings of the Nevada Legislature, or its committees or subcommittees relating to the introduction, consideration and enactment of any tax or proposed tax on "live adult entertainment," including but not limited to Senate Bill 247 of 2005.

RESPONSE:

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

RESPONSE:

13. Any and all documents relating to any request by or on behalf of any business entity or class of business entities, that they be exempted from the Live Entertainment Tax.

RESPONSE:

14. Any and all documents relating to the consideration of any request by or on behalf of any business entity or class of business entities, that they be exempted from the Live Entertainment Tax.

RESPONSE:

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

RESPONSE:

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

RESPONSE:

RULE 30(b)(6) DEPOSITION NOTICE

Pursuant to Nevada Rules of Civil Procedure 30 and 45, you are to designate one or more officers, directors, or managing agents, or other persons who consent to testify on your behalf regarding the matters described below.

Definitions:

A. As used in this deposition notice, the term "you" (or "your") shall refer to the State of Nevada, including but not limited to the Nevada Legislature and the members thereof.

B. As used in this deposition notice, the term "Request" or "Requests" shall refer to the identified paragraph number(s) of the accompanying Duces Tecum Notice.

C. As used in this deposition notice, the phrase "Chapter 368A" or the "Live Entertainment Tax" shall refer to Chapter 368A of the Nevada Revised Statutes.

D. As used in this deposition notice, the phrase "Ten Percent LET" shall refer to the tax imposed by N.R.S. § 368A.200(1)(a).

E. As used in this deposition notice, the phrase "Five Percent LET" shall refer to the tax imposed by N.R.S. § 368A.200(1)(b).

F. As used in this deposition notice, the term "Department" shall refer to the Nevada Department of Taxation.

G. As used in this deposition notice, the term "Commission" shall refer to the Nevada Gaming Commission.

H. As used in this deposition notice, the term "Board" shall refer to the State Gaming Control Board.

I. As used in this deposition notice, the term "regulation" shall refer to any regulation promulgated or adopted by either the Department or the Commission pursuant to the provisions of NRS § 368A.140.

J. As used in this deposition notice, the term "business entity" shall have the meaning ascribed to it in NRS § 368A.050.

K. As used in this deposition notice, the term "document" means any writing, letter, opinion, printing, memorandum, report, compilation, survey, summary, evaluation, correspondence, list, directive, study, contract, agreement, chart, graph, index, data sheet, data processing card or tape, note, entry, telegrams, telefax, advertisement, brochure, circular, tape, record, receipt, invoice, bulletin, paper, book, pamphlet, account, photograph, magazine or newspaper article, records of meetings, conference records, telephone records, records of

conversation or any other form of communication, journal, and any other written, typewritten, handwritten, or other graphic matter, any electronic or other recording of any kind or nature, any mechanical or electronic sound or video recordings or transcripts thereof, however produced or reproduced, and all copies or facsimiles of documents by whatever means made.

L. As used in this deposition notice, the phrase "person or persons" shall refer to individuals and not the collective knowledge of any group of persons.

M. As used in this deposition notice, the phrase "relating to" includes referring to, pertaining to, showing, describing, analyzing, containing, having, discussing, or concerning, in any manner or fashion whatsoever.

Areas of Inquiry:

1. The initial proposal of and subsequent drafting, consideration, revisions, enactment of the Live Entertainment Tax.

Designee:

2. The initial proposal of and subsequent drafting, consideration, revisions, enactment of each amendment to the Live Entertainment Tax.

Designee:

3. The business entities or classes of business entities meant to be subject to the Live Entertainment Tax.

Designee:

4. The business entities or classes of business entities meant to be exempted from the Live Entertainment Tax.

Designee:

5. The governmental interest(s) to be served by the Live Entertainment Tax and the manner by which the Live Entertainment Tax functions to further such governmental interest(s).

Designee:

6. The governmental interest(s) to be served by each amendment to the Live Entertainment Tax and the manner by which each amendment furthers such governmental interest(s).

Designee:

7. The business entities or classes of business entities meant to be made subject to the Live Entertainment Tax and/or meant to be exempted from the Live Entertainment Tax by each subsequent amendment to the Live Entertainment Tax.

Designee:

8. The business entities or classes of business entities meant to be exempted from the Live Entertainment Tax pursuant to provisions of the Live Entertainment Tax, including but not limited to: the exclusions from the definition of "live entertainment" listed in N.R.S. § 368A.090(2)(b) and the exclusions listed in N.R.S. § 368A.200(5).

Designee:

9. The business entities or classes of business entities meant to be made subject to the Live Entertainment Tax and/or meant to be exempted from the Live Entertainment Tax by each and every regulation promulgated by the Commission.

Designee:

10. The business entities or classes of business entities meant to be made subject to the Live Entertainment Tax and/or meant to be exempted from the Live Entertainment Tax by each and every policy adopted, implemented, or carried out by the Commission.

Designee:

11. The identity of any business entity requested by any person or entity to be exempt from the Live Entertainment Tax, the reasons proffered for the exemption, the disposition of each such request, and the reasons for the disposition of each such request.

Designee:

12. The manner by which the initially proposed "5% across the board" tax on live entertainment came to be the Live Entertainment Tax, which taxes certain entertainment at the rate of 10%.

Designee:

13. The manner by which any provisions of the "live adult entertainment" tax proposed by Senate Bill 247 of 2005 or any other similar proposed tax came to be incorporated into the Live Entertainment Tax.

Designee:

14. Live Entertainment Taxes collected by or for the Commission pursuant to the Five Percent LET.

Designee:

15. Live Entertainment Taxes collected by or for the Commission pursuant to the Ten Percent LET.

Designee:

16. The documents and things produced in response to Request 1.

Designee:

17. The documents and things produced in response to Request 2.

Designee:

18. The documents and things produced in response to Request 3.

Designee:

19. The documents and things produced in response to Request 4.

Designee:

20. The documents and things produced in response to Request 5.

Designee:

21. The documents and things produced in response to Request 6.

Designee:

22. The documents and things produced in response to Request 7.

Designee:

23. The documents and things produced in response to Request 9.

Designee:

24. The documents and things produced in response to Request 10.

Designee:

25. The documents and things produced in response to Request 12.

Designee:

26. The documents and things produced in response to Request 13.

Designee:

27. The documents and things produced in response to Request 14.

Designee:

Exhibit 3

Exhibit 3

Andrea Pritzlaff

From: Andrea Pritzlaff [AEAdams@acd.net]
Sent: Friday, May 01, 2009 4:10 PM
To: David J. Pope; wbrown@sullivanbrown.com
Cc: Blake A. Doerr
Subject: Re: K-Kel, et al / Nevada Tax Comm

Looks fine to us. Will, what do you think?

----- Original Message -----
From: David J. Pope
To: wbrown@sullivanbrown.com
Cc: Andrea Pritzlaff ; Blake A. Doerr
Sent: Friday, May 01, 2009 4:05 PM
Subject: RE: K-Kel, et al / Nevada Tax Comm

William,

We were drafting one too. Please review the attached document and let us know if you agree with it.

Thanks,

David.

From: wbrown@sullivanbrown.com [mailto:wbrown@sullivanbrown.com]
Sent: Thursday, April 30, 2009 3:26 PM
To: David J. Pope
Cc: William Brown; Andrea Pritzlaff
Subject: K-Kel, et al / Nevada Tax Comm

David,

Have you confirmed these dates with your client?

Discovery Deadline - August 15th
Dispositive Motion Deadline - September 15th
State's Rebuttal Witness Disclosure and Report (if any) due July 15th
State's Responses to our discovery requests due July 1st
Depositions to be scheduled the last week in July, first week in August

I have a draft SAO simply continuing discovery for 60 days. Just let me know how you want to handle.

I hope you're well and I look forward to hearing from you soon.

Sincerely,

William H. Brown, Esq.
SULLIVAN BROWN
332 S. Jones Blvd.
Las Vegas, Nevada 89107
Tel: 702.471.0112
Fax: 702.567.0116
WBrown@SullivanBrown.com

Exhibit 4

Exhibit 4

Andrea Pritzlaff

From: Blake A. Doerr [BDoerr@ag.nv.gov]
Sent: Wednesday, June 29, 2011 6:40 PM
To: Andrea Pritzlaff
Cc: Will Brown; Brad Shafer
Subject: RE: LET Depositions

Andrea,
I will check.
I wanted to reiterate that we have always contemplated the depos happening in Carson City not Las Vegas.
Also, we had agreed to determine exactly who you wanted as the dates got closer because there has been some turnover. Specifically, Mr. DiCianno is no longer with the Department but we had agreed to determine the Person Most Knowledgeable and produce her.
Can you just confirm that this is what we are going to do – or in the alternative, let me know what you believe is supposed to happen so that I can make sure I get the availability of the correct people in the correct location.
Regards,
Blake

From: Andrea Pritzlaff [mailto:Andrea@bradshaferlaw.com]
Sent: Wednesday, June 29, 2011 1:16 PM
To: Blake A. Doerr
Cc: Will Brown; Erika Magana; BradShafer; Sandi Cooper
Subject: LET Depositions

Blake:

Brad is going to be in Las Vegas for a convention in August. He was hoping to conduct depositions on August 18th and 19th, to be continued on August 26th if necessary.

Please let me know if you are available for those dates, and the availability of your designated individuals and Mr. DiCianno.

Thank you,

Andrea E. Pritzlaff, P64147
Shafer & Associates, P.C.
3800 Capital City Blvd., Suite 2
Lansing, Michigan 48906
517-886-6560 - Telephone
517-886-6565 - Facsimile
Andrea@BradShaferLaw.com

Exhibit 5

Exhibit 5

CC03
WILLIAM H. BROWN, ESQ. (7623)
TURCO & DRASKOVICH
815 S. Casino Center Blvd.
Las Vegas, Nevada 89101
Phone: (702) 474-4222
Fax: (702) 474-1320
Will@whbesq.com
Counsel for Plaintiffs

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

DISTRICT COURT
CLARK COUNTY, NEVADA

DÉJÀ VU SHOWGIRLS OF LAS VEGAS, LLC, d/b/a *Déjà Vu Showgirls*, LITTLE DARLINGS OF LAS VEGAS, et al.,	CASE NO.: A533273 DEPT. NO.: XI *Coordinated with* CASE NO.: A554970 DEPT. NO.: XI
Plaintiffs,	
vs.	
NEVADA DEPARTMENT OF TAXATION; NEVADA TAX COMMISSION, et al.	
Defendants.	

TO: ***THE STATE OF NEVADA, Attorney General Catherine Cortez Masto, Senior Deputy Attorney General David J. Pope, Senior Deputy Attorney General Blake Doerr, Deputy Attorney General Vivienne Rakowsky***

SUBPOENA AND SUBPOENA DUCES TECUM

YOU ARE COMMANDED to appear at The Nevada Department of Taxation, 1150 College Parkway, Suite 115, Carson City, Nevada 89706, on Friday, August 26, 2011, at 9:00 a.m. local time to

testify at the taking of a deposition in the above case, and said deposition shall continue day-to-day until completed. Pursuant to Nevada Rules of Civil Procedure 30(b)(6), you are to designate on or more officers, directors, or managing agents, or other persons who consent to testify on your behalf regarding the matters described in the Rule 30(b)(6) Deposition Notice below.

YOU ARE COMMANDED to produce and permit inspection and copying of the documents and objects described in the Duces Tecum Notice below at Turco & Draskovich, 815 S. Casino Center Blvd., Las Vegas, Nevada 89101 on or before ***August 19, 2011.***

This subpoena and subpoena duces tecum is issued by the attorney below as an officer of the court, as authorized by Nevada Rules of Civil Procedure 45(a)(3).

Signature of Issuing Officer:

Dated: August 2, 2011

WILLIAM H. BROWN, ESQ. (7623)
Counsel for Plaintiffs

DUCES TECUM NOTICE

Pursuant to Nevada Rules of Civil Procedure 34 and 45, you are to produce and make available for inspection and copying, the items described below.

Definitions and Instructions:

A. As used in this Subpoena Duces Tecum, the term "you" (or "your") shall refer to the State of Nevada, including but not limited to the Nevada Legislature and the members thereof.

B. This Subpoena Duces Tecum shall be deemed to be continuing in nature, calling for the prompt production by you of any and all documents which come into your actual or constructive possession, trust, care or control at any time in the future, as well as any and all documents now in your actual or constructive possession, trust, care or control. The specificity of any request shall not be construed as reducing the scope of any more generalized request.

C. As used in this Subpoena Duces Tecum, the phrase "Chapter 368A" or the "Live Entertainment Tax" shall refer to Chapter 368A of the Nevada Revised Statutes.

D. As used in this Subpoena Duces Tecum, the phrase "Ten Percent LET" shall refer to the tax imposed by N.R.S. § 368A.200(1)(a).

E. As used in this Subpoena Duces Tecum, the phrase "Five Percent LET" shall refer to the tax imposed by N.R.S. § 368A.200(1)(b).

F. As used in this Subpoena Duces Tecum, the term "Department" shall refer to the Nevada Department of Taxation.

G. As used in this Subpoena Duces Tecum, the term "Commission" shall refer to the Nevada Gaming Commission.

H. As this Subpoena Duces Tecum, the term "Board" shall refer to the State Gaming Control Board.

I. As used in this Subpoena Duces Tecum, the term "regulation" shall refer to any regulation promulgated or adopted by either the Department of Taxation or the Commission.

J. As used in this Subpoena Duces Tecum, the term "business entity" shall have the meaning ascribed to it in NRS § 368A.050.

K. As used in this Subpoena Duces Tecum, the term "document" means any writing, letter, opinion, printing, memorandum, report, compilation, survey, summary, evaluation, correspondence, list, directive, study, contract, agreement, chart, graph, index, data sheet, data processing card or tape, note, entry, telegrams, telefax, advertisement, brochure, circular, tape, record, receipt, invoice, bulletin, paper, book, pamphlet, account, photograph, magazine or newspaper article, records of meetings, conference

records, telephone records, records of conversation or any other form of communication, journal, and any other written, typewritten, handwritten, or other graphic matter, any electronic or other recording of any kind or nature, any mechanical or electronic sound or video recordings or transcripts thereof, however produced or reproduced, and all copies or facsimiles of documents by whatever means made.

L. As used in this Subpoena Duces Tecum, the phrase "person or persons" shall refer to individuals and not the collective knowledge of any group of persons.

M. As used in this Subpoena Duces Tecum, the phrase "relating to" includes referring to, pertaining to, showing, describing, analyzing, containing, having, discussing, or concerning, in any manner or fashion whatsoever.

N. If you object to any request herein on the basis of a claim of privilege, please:

1. Identify each such document with sufficient particularity as to the author(s)' address(es) or recipient(s)' address(es), and the contents thereof so as to allow the court sufficient information to be able to rule upon any claim of privilege;
2. Identify all persons in possession of each document;
3. State the nature of the privilege(s) asserted; and
4. State in detail the factual basis for the claim(s) of privilege.

O. In each case where you are asked to identify a person in an objection, state with respect to each person:

1. His or her name;
2. His or her current last known address and telephone number;
3. His or her occupation, employer and business address at the date of the referenced event or transaction; and
4. His or her present occupation, employer and business address and telephone number.

ITEMS TO BE PRODUCED

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

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

RESPONSE:

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

RESPONSE:

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

RESPONSE:

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

RESPONSE:

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

RESPONSE:

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

RESPONSE:

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

RESPONSE:

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

RESPONSE:

9. Any and all documents either submitted to or in any way either considered and/or relied upon by the Nevada Legislature or its committees or subcommittees relating to the purpose of

introducing, drafting, considering, revising, adopting, and/or amending any tax or proposed tax on "live adult entertainment."

RESPONSE:

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

RESPONSE:

11. Any and all transcripts, audio or video recording, minutes, or other records of any sessions, meetings or hearings of the Nevada Legislature, or its committees or subcommittees relating to the introduction, consideration and enactment of any tax or proposed tax on "live adult entertainment," including but not limited to Senate Bill 247 of 2005.

RESPONSE:

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

RESPONSE:

13. Any and all documents relating to any request by or on behalf of any business entity or class of business entities, that they be exempted from the Live Entertainment Tax.

RESPONSE:

14. Any and all documents relating to the consideration of any request by or on behalf of any business entity or class of business entities, that they be exempted from the Live Entertainment Tax.

RESPONSE:

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

RESPONSE:

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

RESPONSE:

RULE 30(b)(6) DEPOSITION NOTICE

Pursuant to Nevada Rules of Civil Procedure 30 and 45, you are to designate one or more officers, directors, or managing agents, or other persons who consent to testify on your behalf regarding the matters described below.

Definitions:

A. As used in this deposition notice, the term "you" (or "your") shall refer to the State of Nevada, including but not limited to the Nevada Legislature and the members thereof.

B. As used in this deposition notice, the term "Request" or "Requests" shall refer to the identified paragraph number(s) of the accompanying Duces Tecum Notice.

C. As used in this deposition notice, the phrase "Chapter 368A" or the "Live Entertainment Tax" shall refer to Chapter 368A of the Nevada Revised Statutes.

D. As used in this deposition notice, the phrase "Ten Percent LET" shall refer to the tax imposed by N.R.S. § 368A.200(1)(a).

E. As used in this deposition notice, the phrase "Five Percent LET" shall refer to the tax imposed by N.R.S. § 368A.200(1)(b).

F. As used in this deposition notice, the term "Department" shall refer to the Nevada Department of Taxation.

G. As used in this deposition notice, the term "Commission" shall refer to the Nevada Gaming Commission.

H. As used in this deposition notice, the term "Board" shall refer to the State Gaming Control Board.

I. As used in this deposition notice, the term "regulation" shall refer to any regulation promulgated or adopted by either the Department or the Commission pursuant to the provisions of NRS § 368A.140.

J. As used in this deposition notice, the term "business entity" shall have the meaning ascribed to it in NRS § 368A.050.

K. As used in this deposition notice, the term "document" means any writing, letter, opinion, printing, memorandum, report, compilation, survey, summary, evaluation, correspondence, list, directive, study, contract, agreement, chart, graph, index, data sheet, data processing card or tape, note, entry, telegrams, telefax, advertisement, brochure, circular, tape, record, receipt, invoice, bulletin, paper, book, pamphlet, account, photograph, magazine or newspaper article, records of meetings, conference records, telephone records, records of conversation or any other form of communication, journal, and any other written, typewritten, handwritten, or other graphic matter, any electronic or other recording of any kind or nature, any mechanical or electronic sound or video recordings or transcripts thereof, however produced or reproduced, and all copies or facsimiles of documents by whatever means made.

L. As used in this deposition notice, the phrase "person or persons" shall refer to individuals and not the collective knowledge of any group of persons.

M. As used in this deposition notice, the phrase "relating to" includes referring to, pertaining to, showing, describing, analyzing, containing, having, discussing, or concerning, in any manner or fashion whatsoever.

Areas of Inquiry:

1. The initial proposal of and subsequent drafting, consideration, revisions, enactment of the Live Entertainment Tax.

Designee:

2. The initial proposal of and subsequent drafting, consideration, revisions, enactment of each amendment to the Live Entertainment Tax.

Designee:

3. The business entities or classes of business entities meant to be subject to the Live Entertainment Tax.

Designee:

4. The business entities or classes of business entities meant to be exempted from the Live Entertainment Tax.

Designee:

5. The governmental interest(s) to be served by the Live Entertainment Tax and the manner by which the Live Entertainment Tax functions to further such governmental interest(s).

Designee:

6. The governmental interest(s) to be served by each amendment to the Live Entertainment Tax and the manner by which each amendment furthers such governmental interest(s).

Designee:

7. The business entities or classes of business entities meant to be made subject to the Live Entertainment Tax and/or meant to be exempted from the Live Entertainment Tax by each subsequent amendment to the Live Entertainment Tax.

Designee:

8. The business entities or classes of business entities meant to be exempted from the Live Entertainment Tax pursuant to provisions of the Live Entertainment Tax, including but not limited to the exclusions from the definition of "live entertainment" listed in N.R.S. § 368A.090(2)(b) and the exclusions listed in N.R.S. § 368A.200(5).

Designee:

9. The business entities or classes of business entities meant to be made subject to the Live Entertainment Tax and/or meant to be exempted from the Live Entertainment Tax by each and every regulation promulgated by the Commission.

Designee:

10. The business entities or classes of business entities meant to be made subject to the Live Entertainment Tax and/or meant to be exempted from the Live Entertainment Tax by each and every policy adopted, implemented, or carried out by the Commission.

Designee:

11. The identity of any business entity requested by any person or entity to be exempt from the Live Entertainment Tax, the reasons proffered for the exemption, the disposition of each such request, and the reasons for the disposition of each such request.

Designee:

12. The manner by which the initially proposed "5% across the board" tax on live entertainment came to be the Live Entertainment Tax, which taxes certain entertainment at the rate of 10%.

Designee:

13. The manner by which any provisions of the "live adult entertainment" tax proposed by Senate Bill 247 of 2005 or any other similar proposed tax came to be incorporated into the Live Entertainment Tax.

Designee:

14. Live Entertainment Taxes collected by or for the Commission pursuant to the Five Percent LET.

Designee:

15. Live Entertainment Taxes collected by or for the Commission pursuant to the Ten Percent LET.

Designee:

16. The documents and things produced in response to Request 1.

Designee:

17. The documents and things produced in response to Request 2.

Designee:

18. The documents and things produced in response to Request 3.

Designee:

19. The documents and things produced in response to Request 4.

Designee:

20. The documents and things produced in response to Request 5.

Designee:

21. The documents and things produced in response to Request 6.

Designee:

22. The documents and things produced in response to Request 7.

Designee:

23. The documents and things produced in response to Request 9.

Designee:

24. The documents and things produced in response to Request 10.

Designee:

25. The documents and things produced in response to Request 12.

Designee:

26. The documents and things produced in response to Request 13.

Designee:

27. The documents and things produced in response to Request 14.

Designee:

Exhibit 6

Exhibit 6

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
555 East Washington Ave., Suite 3900
Las Vegas, Nevada 89101

CATHERINE CORTEZ MASTO
Attorney General

KEITH G. MUNRO
Assistant Attorney General
JIM SPENCER
Chief of Staff

FAX TRANSMITTAL MEMORANDUM

July 23, 2008

To:	Bradley Shafer, Esq. Shafer & Assoc., PC		From:	David J. Pope, Sr. Deputy Attorney General
Fax:	517-886-6565		Phone:	702-486-3426
Subject:	Déjà vu Showgirls of LV		Fax:	702-486-3416

REMARKS:

Attached please find the Reply Brief in Support of Defendant's Motion to Dismiss.

This fax consists of 10 page(s) including cover page. If you have any difficulties with this transmission, please telephone my assistant Debra at 702-486-3171. Thank you.

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of July, 2008, the foregoing REPLY BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS was served on the party(ies) via facsimile and by mailing of same in the United States mail, postage prepaid thereon, addressed to:

Diana L. Sullivan, Esq.
GHANEM & SULLIVAN, LLP
930 South Fourth Street, Suite 210
Las Vegas, NV 89101
Fax No.: (702) 862-4422

Bradley J. Shafer
SHAFER & ASSOCIATES, P.C.
3800 Capital City Blvd., Suite #2
Lansing, Michigan 48906-2110
Fax No.: (517) 886-6565

Debbie Sullivan
An Employee of the State of Nevada

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

CERTIFICATE OF SERVICE

I, hereby certify that on the 27th day of April, 2011, I served the **DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR CLARIFICATION OF ORDER**, via facsimile and by causing to be delivered to the Department of General Services for mailing at Las Vegas, Nevada, a true copy thereof, addressed to:

William H. Brown, Esq.
Turco & Draskovich
815 S. Casino Center Blvd.
Las Vegas, NV 89101
Fax: (702) 474-1320

Bradley J. Shafer
Shafer & Associates, P.C.
3800 Capital City Blvd., Ste. 2
Lansing, MI 48906-2110
Fax: (517) 886-6565

/s/ Debra Turman
An employee of Office of Attorney General

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

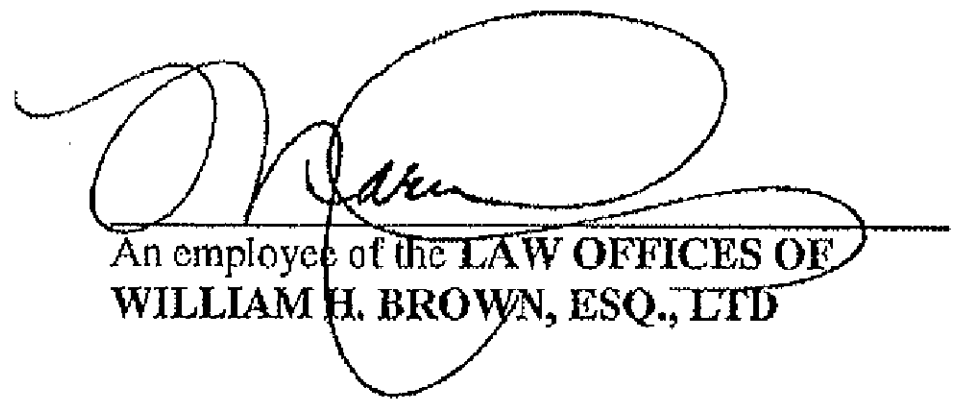
Exhibit 7

Exhibit 7

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of February, 2011, the foregoing **RENEWED MOTION FOR PRELIMINARY INJUNCTION ON ORDER SHORTENING TIME** was served on the party(ies) by faxing a copy and mailing of same in the United States mail, postage prepaid thereon, addressed as follows:

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 the **LAW OFFICES OF WILLIAM H. BROWN, ESQ., LTD**

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of August, 2011, the foregoing **PLAINTIFFS' OPPOSITION TO 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 ENTARTINMENT 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** was served on the party(ies) by faxing a copy and mailing of same in the United States mail, postage prepaid thereon, addressed as follows:

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

s/Erika Magana
an employee of TURCO & DRASKOVICH

Exhibit 8

Exhibit 8

Andrea Pritzlaff

From: Blake A. Doerr [BDoerr@ag.nv.gov]
Sent: Wednesday, August 10, 2011 5:34 PM
To: Andrea Pritzlaff; Brad Shafer
Cc: Vivienne Rakowsky; Traci A. Plotnick
Subject: FW: Deja Vu
Attachments: Objection to Subpoena - Mot to Quash - Mot for Sanctions.pdf

Andrea and Brad,
I think this was sent to your old emails.
Vivienne and Traci, please note the new email addresses from Mr. Shafer and Ms. Pritzlaff.
Blake

From: Vivienne Rakowsky
Sent: Wednesday, August 10, 2011 2:31 PM
To: 'bjshafer@acd.net'; 'AEAdams@acd.net'; 'Will@whbesq.com'
Cc: Blake A. Doerr; David J. Pope
Subject: Deja Vu

Attached please find a courtesy copy of the Objection to the subpoenas and Motion to Quash that we are filing in District Court today in the above referenced matter. Pursuant to EDCR 2.34, and in hope of resolving the issues, we request that you provide us with a convenient time to telephonically confer with you in regarding the subpoenas and scope of the depositions. We would like to have this conference as soon as possible in order to allow time to file a motion for a protective order if necessary. In order not to delay this matter unnecessarily, we have requested that the Court hear this matter on an OST.

Please contact any one of us to schedule this conference at your earliest convenience, but not later than close of business on August 12, 2011.

We 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
Phone: (702) 486-3103
Fax: (702) 486-3416

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	COURT MINUTES	August 16, 2011

06A533273 Little Darlings Of Las Vegas LLC, K-Kel Inc, et al
vs
Nevada Dept Of Taxation, Olympus Garden Inc, et al

August 16, 2011 **9:00 AM** **Motion to Quash**

HEARD BY: Gonzalez, Elizabeth COURTROOM: RJC Courtroom 14C

COURT CLERK: Dameda Scott

RECORDER: Jill Hawkins

REPORTER:

PARTIES PRESENT:

Brown, William H.	Attorney
	Attorney
Doerr, Blake A.	Attorney
Ferrario, Mark E., ESQ	Attorney
Pope, David J.	Attorney
RAKOWSKY, VIVIENNE, ESQ	Attorney

JOURNAL ENTRIES

- After arguments by counsel, COURT STATED ITS FINDINGS AND ORDERED, Motion GRANTED IN PART as fully stated on the record. COURT FURTHER ORDERED, Plaintiff to provide Defendant with last known address of Tessa Wanamaker.