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9 *K-Kel, Inc., and*  
10 *Local counsel for Petitioners*  
11 *OLYMPUS GARDEN, INC.,*  
12 *d/b/a Olympic Garden, and D.*  
13 *WESTWOOD, INC., d/b/a Treasures*

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22 *Co-Counsel Pro Hac Vice for all*  
23 *Petitioners except SHAC, LLC*

24 [Counsel continued, following page]

25 SUPREME COURT  
26 OF THE STATE OF NEVADA

27 K-KEL, INC., d/b/a Spearmint Rhino  
28 Gentlemen's Club, et al.,

Appellants,  
vs.

NEVADA DEPARTMENT OF  
TAXATION, et al.,

Respondents.

Electronically Filed  
Mar 09 2016 01:44 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

Supreme Court Docket: 69886

District Court Case: A-11-648894-J  
Consolidated with A-14-697515-J

**Amended Case Appeal Statement**

[counsel continued]

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**VEGAS, LLC, d/b/a/ Déjà vu, and**  
**LITTLE DARLINGS OF LAS VEGAS,**  
**LLC, d/b/a Little Darlings**

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*Counsel for Petitioner*  
**SHAC, LLC**

## Case Appeal Statement

This Amended Case Appeal Statement clarifies (in section 3, below) which petitioners are parties to this appeal, and which attorneys represent those parties. Otherwise, it is no different from the Case Appeal Statement.

### 1. Appellant filing this case appeal statement:

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, D. WESTWOOD, INC., d/b/a Treasures, DEJA VU SHOWGIRLS OF LAS VEGAS, LLC, d/b/a/ Déjà vu, and LITTLE DARLINGS OF LAS VEGAS, LLC, d/b/a Little Darlings.

1                   **2. Judge issuing the decision, judgment, or order appealed from:**

2  
3                   The Honorable Jerry A. Wiese II.

4                   **3. Each appellant, and the name and address of counsel for each**  
5                   **appellant:**

6                   **a. K-KEL, INC., d/b/a Spearmint Rhino Gentlemen's Club**

7                   *Counsel:*

8                   WILLIAM H. BROWN (7623)  
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24                  **b. SHAC, L.L.C. d/b/a Sapphire**

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1  
2 **c. D. WESTWOOD, INC., d/b/a Treasures, DEJA VU**  
3 **SHOWGIRLS OF LAS VEGAS, LLC, d/b/a/ Déjà vu, LITTLE**  
4 **DARLINGS OF LAS VEGAS, LLC, d/b/a Little Darlings,**  
5 **and OLYMPUS GARDEN, INC., d/b/a Olympic Garden**

6 *Counsel:*

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15 *Local counsel for certain Petitioners:*

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23 *[For Petitioners*

24 DEJA VU SHOWGIRLS OF LAS  
25 VEGAS, LLC, d/b/a/ Déjà vu, and  
26 LITTLE DARLINGS OF LAS VEGAS,  
27 LLC, d/b/a Little Darlings]

28 *Local counsel for certain Petitioners:*

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*[For Petitioners*

OLYMPUS GARDEN, INC., d/b/a Olympic Garden, D.  
WESTWOOD, INC., d/b/a Treasures]

1  
2 **4. Each respondent, and the name and address of counsel for each**  
3 **respondent:**

4 **a. NEVADA DEPARTMENT OF TAXATION, and NEVADA**  
5 **COMMISSION**

6 *Counsel:*

7 ADAM PAUL LAXALT

8 Attorney General

9 DAVID J. POPE (8617)

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19 **5. Attorney(s) appearing pro hac vice under SCR 42:**

20 **a. BRADLEY J. SHAFER**

21 Michigan Bar No. P36604

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23 3800 Capital City Blvd., Suite #2

24 Lansing, Michigan 48906-2110

25 The district court granted Mr. Shafer permission to appear pro  
26 hac vice under SCR 42 on April 23, 2008.<sup>1</sup> See order admitting to  
27 practice (**Ex. 1**).

28 <sup>1</sup> This case is actually the continuation of an earlier case, but in a different form. The case began as *Déjà Vu Showgirls of Las Vegas LLC, et al. v. Nev. Dept. Tax, et al.* (A554970). There, the plaintiffs (the petitioners here) challenged facially, and as applied, the constitutionality of Nevada's Live Entertainment Tax (NRS Chapter 368A, the "LET"). After an unsuccessful administrative challenge, they filed a de novo action (as opposed to a petition for judicial review). The district court found that was error under *S. California Edison v. First Judicial Dist. Court of State of Nevada*, 127 Nev.

1  
2  
3 **6. Whether appellants were represented by retained or appointed**  
4 **counsel:**

5 Retained.

6 **7. Whether appellants are represented by retained or appointed**  
7 **counsel on appeal:**

8 Retained.

9  
10 **8. Whether leave to proceed in forma pauperis was sought, or**  
11 **granted:**

12 No, leave was not sought.

13 **9. Date proceedings commenced in district court:**

14 September 23, 2011.<sup>2</sup>

15  
16 **10. The nature of the action, the result in district court (including**  
17 **type of judgment or order being appealed and relief granted by**  
18 **district court):**

19 This matter began as a facial and as applied challenge to the  
20 constitutionality of Nevada's Live Entertainment Tax (NRS Chapter 368A,  
21 the "LET"). Initially, the petitioners challenged the LET administratively, a  
22 process that culminated with a final decision from the Nevada Tax

23 Adv. Op. 22, 255 P.3d 231, 233 (2011), so the court dismissed the de novo  
24 action and ordered that it "shall proceed a petition for judicial review"—  
25 which is this case. See order entered 11-1-2011 (**Ex. 2**). The order granting  
26 Mr. Shafer pro hac vice admission was entered at the outset of this challenge,  
in the de novo action. See order granting pro hac vice permission (**Ex. 1**).

27 <sup>2</sup> As discussed (note 1, above), this case began as a lawsuit filed on January 9,  
28 2008, but on November 1, 2011, the district court ordered it to "proceed as a  
petition for judicial review[]" which was filed on September 23, 2011. See  
order entered 11-1-2011 (**Ex. 2**).

Commission dated October 12, 2007 rejecting the challenge (the “NTC decision”).

Following the NTC decision, the petitioners sued (as plaintiffs) in *Déjà Vu Showgirls of Las Vegas LLC, et al. v. Nev. Dept. Tax, et al.* (A554970). But the district court dismissed the suit and ordered that it “shall proceed as a petition for judicial review.” See order entered 11-1-2011 (**Ex. 2**). Accordingly, the petitioners appealed the NTC decision via a petition for judicial review under NRS Chapter 233B.

On January 15, 2016, the district court entered its order denying judicial review of the NTC decision. The court found there was substantial evidence supporting Nevada Tax Commission’s decisions and they did not violate NRS 233B.135. Consequently, the court affirmed the NTC decision, and denied the petitioner’s petition for judicial review (the “district court’s order”).

Now, the petitioners appeal the district court’s order.

Date: March 9, 2016

Respectfully submitted,

LAMBROSE | BROWN

By: /s/ William H. Brown

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*Attorney for Petitioner,*

*K-Kel, Inc.*

## Certificate of Service

I hereby certify that I am an employee of LAMBROSE | BROWN and that on this date I served the foregoing **Case Appeal Statement** to the parties listed below by causing a full, true, and correct copy to be e-filed and e-served via the Supreme Court of Nevada's e-filing and e-service system.

### E-service

### With a courtesy copy to:

Adam Paul Laxalt  
Attorney General

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Date: March 9, 2016

By: /s/ William Brown  
An employee of  
LAMBROSE | BROWN



# EXHIBIT 1

ORIGINAL

16

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FILED

APR 23 11 08 AM '08

*Cliff Shafer*  
CLERK OF THE COURT

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\* Pending Admission Pro Hac Vice

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A554970  
Dept. No.: IX

ORDER ADMITTING TO PRACTICE

BRADLEY J. SHAFER, ESQ. having filed his Motion to Associate Counsel under

Nevada Supreme Court Rule 42, together with a Verified Application for Association of

RECEIVED

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DEPT IX

1 Counsel, a Certificate of Good Standing for the states of Michigan and Arizona, and the State  
2 Bar of Nevada Statement; said application having been noticed, no objections having being  
3 made, and the Court being fully apprised in the premises, and good cause appearing, it is  
4 hereby

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

9 DATED this 21<sup>st</sup> <sup>April 2008</sup> day of March, 2008.

10  
11   
12 DISTRICT COURT JUDGE

13 Submitted by:

14 GHANEM & SULLIVAN, LLP

15   
16 DIANA L. SULLIVAN, ESQ.

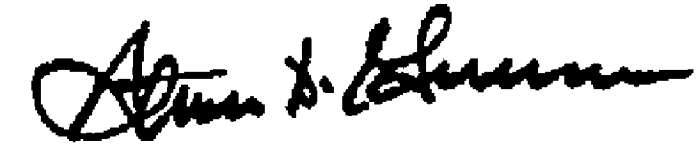
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19 Las Vegas, NV 89101

20 Attorneys for Plaintiffs  
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# EXHIBIT 2



CLERK OF THE COURT

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3 **Attorney General**  
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5 **Senior Deputy Attorney General**  
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20 **Attorneys for Nevada Department of Taxation**

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

**Plaintiffs,**

**vs.**

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

**Defendants.**

Case No. 06A533273  
Dept. No. XI

*Coordinated with:*

Case No. 08A554970  
Dept. No. XI

**ORDER**

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

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

9 Plaintiffs,

10 v.

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

14 Defendants.

Case No. 08A554970  
Dept. No. XI

15 ORDER

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

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

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

...

...

...

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

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

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

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

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

24  
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26 ...

27 ...

28 ...

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555 E. Washington, Suite 3900  
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With regard to DEFENDANTS' MOTION TO COMPEL, this Court finds that any further discovery would be inappropriate and is hereby ordered cancelled.


IT IS SO ORDERED.

DATED this 27<sup>th</sup> day of October, 2011.

  
DISTRICT COURT JUDGE  
mf

Respectfully submitted:

CATHERINE CORTEZ MASTO  
Attorney General

By:   
David J. Pope  
Senior Deputy Attorney General