

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

JACQUELINE FRANKLIN, ASHLEIGH
PARK, LILY SHEPARD, STACIE ALLEN,
MICHAELA DEVINE, KARINA
STRELKOVA And DANIELLE LAMAR,
individually, and on behalf of a class of
similarly situated individuals, Appellants.

RUSSELL ROAD FOOD AND BEVERAGE,
LLC, Respondent

No. 74332

DOCKETING STATEMENT
CIVIL APPEALS

Electronically Filed
Nov 22 2017 10:18 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

Revised 9/30/11

1. Judicial District Eighth Department 31
County Clark Judge Joanna S. Kishner
District Ct. Case No. A-14-709372-C

2. Attorney filing this docketing statement:

Attorney Lauren Calvert, Esq. Telephone (702) 333-1111
Firm Morris//Anderson
Address 716 South Jones Blvd.
Las Vegas, Nevada 89107

Client(s) JACQUELINE FRANKLIN, ASHLEIGH PARK, LILY SHEPARD, STACIE ALLEN, MICHAELA DEVINE, KARINA STRELKOVA And DANIELLE LAMAR, individually, and on behalf of a class of similarly situated individuals, Appellants

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Jeffery A. Bendavid, Esq. Telephone (702) 384-8424
Firm MORAN BRANDON BENDAVID MORAN
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Las Vegas, Nevada 89101

Client(s) RUSSELL ROAD FOOD AND BEVERAGE, LLC, Respondent

Attorney Gregory J. Kamer, Esq. Telephone (702) 259-8640
Firm KAMER ZUCKER ABBOTT
Address 3000 W. Charleston Blvd., Suite 3
Las Vegas, Nevada 89102

Client(s) RUSSELL ROAD FOOD AND BEVERAGE, LLC, Respondent

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input checked="" type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input checked="" type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>Class Certification</u> |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

8. Nature of the action. Briefly describe the nature of the action and the result below:

This matter arises out of a proposed class action by exotic dancers against the owners of Crazy Horse III Gentlemen's Club, a Las Vegas strip club, for failure to pay a minimum hourly wage, as required by the Minimum Wage Amendment to the Nevada Constitution, and for unjust enrichment. On October 3, 2017, the District Court granted Defendant's Motion for Summary Judgment and denied Plaintiff's Motion for Summary Judgment. On August 23, 2017, the District Court granted Defendant's Motion To Dismiss Plaintiffs' Third Amended Complaint Pursuant To N.R.C.P. 12(B)(1) and N.R.C.P. 12(H)(3); granted Defendant's Motion to Strike Plaintiffs' Renewed Motion For Class Certification; and denied Plaintiffs' Renewed Motion for Class Certification.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the District Court erroneously applied Nevada law with regard to determination of employment status and as a consequence erroneously denied summary judgment in favor of Plaintiffs and the Class and erroneously granted summary judgment in favor of Defendants.

Whether the District Court erroneously applied Nevada law with regard to determination of class certification and as a consequence erroneously denied class certification in favor of Plaintiffs.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Barber v. D. 2801 Westwood, Inc., Supreme Court No. 74183

Both appeals address denial of class certification, summary judgment in favor of Defendants and summary judgment against Plaintiffs in putative class actions against owners of gentlemen's clubs in Clark County, Nevada, for exotic dancers' claims under the Minimum Wage Amendment and for unjust enrichment.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: This matter arises out of a proposed class action by exotic dancers against the owners of a Las Vegas strip club, for failure to pay a minimum hourly wage as required by the Nevada Constitution, Article 15, Section 16, known as the Minimum Wage Amendment (the "MWA").

13. Trial. If this action proceeded to trial, how many days did the trial last? 0 _____

Was it a bench or jury trial? Not Applicable

14. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
None.

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from October 12, 2017

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

Not Applicable

16. Date written notice of entry of judgment or order was served October 12, 2017

Was service by:

☐ Delivery

☒ Mail/electronic/fax

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See *AA Primo Builders v. Washington*, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

18. Date notice of appeal filed October 17, 2017

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:
Not Applicable

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:
This Appeal rises from the District Court's Order Granting Defendants' Motion for Summary Judgment and the Denial of Plaintiffs' Motion for Summary Judgment, on October 3, 2017.

Further, on August 23, 2017, the District Court granted Defendant's Motion To Dismiss Plaintiffs' Third Amended Complaint Pursuant To N.R.C.P. 12(B)(1) and N.R.C.P. 12(H)(3); granted Defendant's Motion to Strike Plaintiffs' Renewed Motion For Class Certification; and denied Plaintiffs' Renewed Motion for Class Certification.

21. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

JACQUELINE FRANKLIN, ASHLEIGH PARK, LILY SHEPARD, STACIE ALLEN, MICHAELA DEVINE, SAMANTHA JONES, KARINA STRELKOVA and DANIELLE LAMAR, individually, and on behalf of Class of similarly situated individuals, Plaintiffs; and RUSSELL ROAD FOOD AND BEVERAGE, LLC, Defendant.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Plaintiff SAMANTHA JONES was formally dismissed from this action on June 12, 2017, by way of Stipulation and Order.

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Appellants claim they are entitled to a minimum hourly wage; restitution of fees, fines and tip-outs paid to Defendant under a theory of unjust enrichment; wait time penalties; attorney's fees; and punitive damages.

23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

24. If you answered "No" to question 23, complete the following:

(a) Specify the claims remaining pending below:
Not Applicable

(b) Specify the parties remaining below:
None.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

Order is Independently Appealable under NRAP 3A(b).

26. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

JACQUELINE FRANKLIN, ASHLEIGH PARK, LILY SHEPARD, STACIE ALLEN,
MICHAELA DEVINE, KARINA STRELKOVA And DANIELLE LAMAR, individually,
and on behalf of a class of similarly situated individuals, Appellants

Name of appellant

Lauren Calvert, Esq.

Name of counsel of record

11/22/17

Date

/s/ Lauren Calvert

Signature of counsel of record

Clark County, State of Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 22nd day of November, 2017, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

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Kathleen Paustian, Esq.
3205 Skipworth Dr.
Las Vegas, Nevada 89107
Settlement Judge

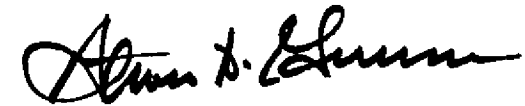
Jeffery A. Bendavid, Esq.
MORAN BRANDON BENDAVID MORAN
630 S. 4th Street
Las Vegas, Nevada 89101

Attorneys for Respondent

Dated this 22nd day of November, 2017

/s/ Erickson Finch

Signature



CLERK OF THE COURT

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18 rusinglopez@rllaz.com

19 *Attorneys for Plaintiffs*

14
15 **DISTRICT COURT OF THE STATE OF NEVADA**
16 **IN AND FOR CLARK COUNTY**

17 JACQUELINE FRANKLIN,
18 ASHLEIGH PARK, LILY SHEPARD,
19 STACIE ALLEN, MICHAELA
20 DIVINE, VERONICA VAN
21 WOODSEN, SAMANTHA JONES,
22 KARINA STRELKOVA, LASHONDA
23 STEWART, DANIELLE LAMAR, and
24 DIRUBIN TAMAYO, individually,
25 and on behalf of a class of similarly
26 situated individuals,

27 Plaintiffs,

28 v.

25 RUSSELL ROAD FOOD AND
26 BEVERAGE, LLC, SN INVESTMENT
27 PROPERTIES, LLC (both d/b/a Crazy
28 Horse III Gentlemen's Club), DOE
CLUB OWNERS I-X, and DOE CLUB
EMPLOYERS I-X,

Defendants.

CASE NO.: A-14-709372-C
DEPT. 31

**PLAINTIFFS' THIRD
AMENDED CLASS ACTION
COMPLAINT FOR:**

FAILURE TO PAY WAGES;
UNJUST ENRICHMENT;
ATTORNEY FEES

DEMAND FOR JURY TRIAL

ARBITRATION EXEMPTION: CLASS
ACTION

1 Plaintiffs, on behalf of themselves and a class of all persons similarly situated
2 (collectively, the "Dancers"), allege as follows:

3 **JURISDICTION AND PARTIES**

4 1. This Court has jurisdiction over the subject matter and the person of defendants.
5 Venue is proper in Clark County.

6 2. Defendants Russell Road Food and Beverage and SN Investment Properties are
7 Nevada limited liability companies.

8 3. Russell Road Food and Beverage and SN Investment Properties own and
9 operate "Crazy Horse III Gentlemen's Club" (the "Club"). The Club is a Las Vegas strip club.

10 4. On information and belief, Defendants Doe Club Owners I-X are residents of
11 Clark County, Nevada, and are owners or operators of the Club.

12 5. On information and belief, Defendants Doe Club Employers I-X are residents
13 of Clark County, Nevada, and employed Dancers at the Club.

14 6. Plaintiffs do not know at this time the true names and capacities of defendants
15 Doe Club Owners I-X and Doe Club Employers I-X, but these defendants may include other
16 owners, operators, shareholders, officers, directors, or agents of the Club.

17 7. The defendants are referred to collectively in this complaint as "Crazy Horse."

18 8. Plaintiffs Jacqueline Franklin, Ashleigh Park, Lily Shepard, Stacie Allen,
19 Michaela Divine, Veronica Van Woodsen, Samantha Jones, Karina Strelkova, LaShonda
20 Stewart, Danielle Lamar, and Dirubin Tamayo were, at times relevant to this action, residents
21 of Clark County, Nevada. Each Plaintiff has worked at the Club as an exotic dancer at various
22 relevant times, including times within all applicable statutes of limitations.

23 **CLASS ACTION ALLEGATIONS**

24 9. This proposed class action is brought under NRCP 23(a) and 23(b)(3).

25 10. The proposed class consists of all persons who work or have worked at the Club
26 as dancers at any time during the time period prescribed by applicable statutes of limitations
27 and going forward until the entry of judgment in this action..

28 11. The proposed class is so numerous that joinder of all members is impracticable.

1 The exact number of class members is unknown, but is believed to be in excess of 3000
2 dancers.

3 12. There are questions of law and fact common to the class that predominate over
4 any questions solely affecting individual class members including, but not limited to, whether
5 Crazy Horse violated Nev. Const. Art. XV, Sec. 16 (the "Minimum Wage Amendment") by
6 not paying the class members any wages, and whether Crazy Horse was unjustly enriched at
7 the expense of class members.

8 13. Plaintiffs, like other members of the class, claim they were harmed in the same
9 manner and to the same extent by Crazy Horse's illegal employment practices, and have the
10 same interest in the outcome of the litigation.

11 14. Each class member's claim against Crazy Horse arises from the same course of
12 conduct by Crazy Horse.

13 15. Plaintiffs will fairly and adequately protect the interests of the class. There are
14 no conflicts between the Plaintiffs' claims and the claims of other class members.

15 16. Plaintiffs have retained competent counsel experienced in class action
16 litigation, and they will vigorously pursue the class claims throughout this litigation.

17 17. Individual class members have little interest in controlling the prosecution of
18 separate actions since the amounts of their claims are too small to warrant the expense of
19 prosecuting litigation of this volume and complexity.

20 18. A class action is superior to other available methods for the fair and efficient
21 adjudication of this controversy.

22 19. Plaintiffs anticipate no difficulty in the management of this litigation. Crazy
23 Horse's business records should permit identification of and notice to the class members.

24 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

25 20. Crazy Horse heavily monitors its dancers, including dictating their appearance,
26 interactions with customers, and work schedules.

27 21. An exotic dancer's opportunity for profit or loss working at the Club does not
28 depend upon her managerial skill, even though individual dancers may use their interpersonal

1 skills to solicit larger tips.

2 22. Crazy Horse provides all the risk capital, funds advertising, and covers facility
3 expenses for its strip club.

4 23. Working as an exotic dancer at the Club does not require the kind of initiative
5 demonstrated by an independent business owner.

6 24. Exotic dancers are integral to the operation and business success of the Club.

7 25. Exotic dancers are employees of the Nevada strip clubs in which they work
8 under Nevada law.

9 26. The Minimum Wage Amendment requires Nevada employers to pay their
10 employees at least a minimum hourly wage.

11 27. Tips or gratuities given to employees by an employer's patrons cannot be
12 credited as being a part of or offset against the wage rates required by the Minimum Wage
13 Amendment.

14 28. A Nevada employer cannot require employees contractually to waive their right
15 to a minimum wage.

16 29. At no time has Crazy Horse paid its Dancers a minimum wage as required by
17 Nevada law.

18 30. Crazy Horse imposed various monetary fines on the Dancers for failure to
19 comply with its rules and regulations.

20 31. Crazy Horse imposed various fees on the Dancers as a condition of
21 employment, such as fees to work a shift and fees for declining to dance on the stage during
22 a shift.

23 32. Crazy Horse required its Dancers, as a condition of employment, to pay fixed
24 sums to Crazy Horse management and other employees, including but not limited to, the
25 "house mom," the DJ, the manager, the bartenders and the bouncers.

26 33. Crazy Horse has retained benefits, including unpaid wages and improper fees
27 and fines described in this complaint. These benefits, in equity and good conscience, belong
28 to the Dancers.

1 34. Crazy Horse has a statutory duty to inform its employees of their legal rights
2 guaranteed under Nevada law. Crazy Horse failed and continues to fail to comply with this
3 statutory duty.

4 35. Crazy Horse, willfully and for its own pecuniary benefit, has refused to pay
5 wages due and payable to its Dancers when demanded.

6 36. Crazy Horse, willfully and for its own pecuniary benefit, failed to pay wages
7 due to its Dancers upon resignation or discharge.

8 37. Crazy Horse intentionally has refused to recognize the Dancers' clear legal
9 status and rights as employees so that it can reap financial benefit at its employees' expense.

10 38. Crazy Horse intentionally has refused to pay its employees a minimum wage
11 so that it can reap financial benefit at its employees' expense.

12 39. Crazy Horse imposes illegal fines and fees on its employees as a condition of
13 employment so that it can reap financial benefit at its employees' expense.

14 40. Crazy Horse intentionally has concealed from its employees their status and
15 rights as employees under Nevada law so that it can reap financial benefit at its employees'
16 expense.

17 41. Crazy Horse's conduct as described herein constitutes oppression, fraud or
18 malice as defined by NRS 42.005.

19 **COUNT ONE**

20 **(Nev. Const. Art. XV, Sec. 16 – Failure to Pay Wages)**

21 42. Plaintiffs incorporate the foregoing allegations as though fully set forth herein.

22 43. Crazy Horse owes the Dancers a sum, to be proven at trial, representing unpaid
23 wages for each hour worked at no less than the hourly rate specified in the Minimum Wage
24 Amendment, plus applicable penalty wages specified by NRS 608.040 for failure to pay
25 wages to discharged or resigning employees when due.

26 44. The Minimum Wage Amendment entitles plaintiffs to an award of their
27 reasonable attorney fees and costs.
28

COUNT TWO

(Unjust Enrichment)

45. Plaintiffs incorporate the foregoing allegations as though fully set forth herein.

46. The fees and fines paid by the Dancers to Crazy Horse as described in this Complaint constitute a benefit conferred on Crazy Horse by the Dancers. Crazy Horse appreciated, accepted, and retained this benefit.

47. The wages earned by Dancers but not paid by Crazy Horse as described in this complaint constitute a benefit conferred on Crazy Horse by the Dancers. Crazy Horse appreciated, accepted, and retained this benefit.

48. Crazy Horse has been unjustly enriched by accepting and retaining benefits from its Dancers, including the unpaid wages, fees and fines described in this complaint. These benefits, in equity and good conscience, belong to the Dancers.

REQUEST FOR RELIEF

Plaintiffs request an award of:

- A. Damages for all unpaid wages for each Plaintiff and class member, in an amount to be determined at trial;
- B. Damages for additional penalty wages specified by Nevada law for failure to pay wages to discharged or resigning employees when due, in an amount to be determined at trial;
- C. Restitution to the Dancers of all fees, fines, and other monies improperly extracted or withheld from them by Crazy Horse and not otherwise accounted for as damages for failure to pay wages;
- D. Pre-judgment and post-judgment interest due on such sums at the highest rate permitted by law;
- E. Reasonable attorney fees and costs; and
- F. Such other and further relief as may be fair and equitable under the circumstances.

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DATED this 16 day of September, 2015.

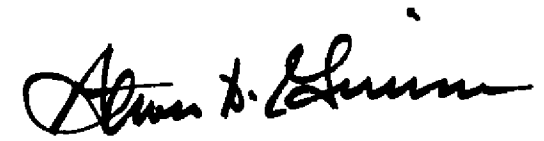
Carl Pir

Las Vegas, Nevada 89107

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CLERK OF THE COURT

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12 Las Vegas, Nevada 89101
13 (702) 384-8424
14 *Attorneys for Russell Road Food and Beverage, LLC*

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 JACQUELINE FRANKLIN, ASHLEIGH)
18 PARK, LILY SHEPARD, STACIE ALLEN,) Case No.: A-14-709372-C
19 MICHAELA DIVINE, VERONICA VAN)
20 WOODSEN, SAMANTHA JONES,) Dept. No.: 31
21 KARINA STRELKOVA, LASHONDA,)
22 STEWART, DANIELLE LAMAR, and)
23 DIRUBIN TAMAYO, individually,)
24 and on behalf of a class of similarly)
25 situated individuals,)

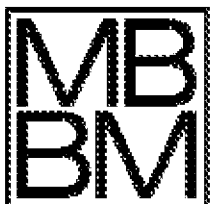
26 Plaintiffs,)

27 vs.)

28 RUSSELL ROAD FOOD AND)
BEVERAGE, LLC, a Nevada limited)
Liability company (d/b/a CRAZY)
HORSE III GENTLEMEN'S CLUB),)
DOE CLUB OWNER, I-X,)
ROE CLUB OWNER, I-X, and)
ROE EMPLOYER, I-X,)

Defendants.)

DEFENDANT, RUSSELL ROAD FOOD AND BEVERAGE, LLC'S ANSWER TO
PLAINTIFF'S THIRD AMENDED CLASS ACTION COMPLAINT AND
COUNTERCLAIMS



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-8568

1 COMES NOW, Defendant, RUSSELL ROAD FOOD AND BEVERAGE, a Nevada
2 limited liability, dba CRAZY HORSE III GENTLEMEN'S CLUB (the "Defendant"), by
3 and through its attorney of record, GREGORY J. KAMER, ESQ., of KAMER ZUCKER
4 ABBOTT, and JEFFERY A. BENDAVID, ESQ., of MORAN BRANDON BENDAVID
5 MORAN, hereby submit its ANSWER TO PLAINTIFFS' THIRD AMENDED CLASS
6 ACTION COMPLAINT AND COUNTERCLAIM.
7

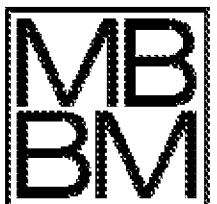
8 JURISDICTION AND PARTIES

9 1. As to Paragraph 1 of Plaintiffs' Third Amended Class Action Complaint on
10 file herein, Defendant is without knowledge or information sufficient to form a belief as to
11 the truth of the allegations contained therein and therefore denies the same.
12

13 2. As to Paragraph 2 of Plaintiffs' Third Amended Class Action Complaint on
14 file herein, Defendant hereby admits Russell Road Food and Beverage is a Nevada limited
15 liability company. As to the remaining allegations, Defendant is without knowledge or
16 information sufficient to form a belief as to the truth of the allegations contained therein and
17 therefore denies the same.
18

19 3. As to Paragraph 3 of Plaintiffs' Third Amended Class Action Complaint on
20 file herein, Defendant hereby admits Russell Road Food and Beverage owns and operates
21 "Crazy Horse III Gentlemen's Club (the "Club"). As to the remaining allegations Defendant
22 hereby denies the allegations contained therein and therefore denies the same.
23

24 4. As to Paragraph 4 of Plaintiffs' Third Amended Class Action Complaint on
25 file herein, Defendant is without knowledge or information sufficient to form a belief as to
26 the truth of the allegations contained therein and therefore denies the same.
27



28
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BENDAUID MORAN
ATTORNEYS AT LAW

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FAX: (702) 384-6568

5. As to Paragraph 5 of Plaintiffs' Third Amended Class Action Complaint on file herein, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies the same.

6. As to Paragraph 6 of Plaintiffs' Third Amended Class Action Complaint on file herein, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies the same.

7. As to Paragraph 7 of Plaintiffs' Third Amended Class Action Complaint on file herein, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies the same.

8. As to Paragraph 8 of Plaintiffs' Third Amended Class Action Complaint on file herein, Defendant hereby denies the allegations contained therein.

CLASS ACTION ALLEGATIONS

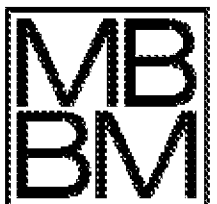
9. As to Paragraph 9 of Plaintiffs' Third Amended Class Action Complaint on file herein, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies the same.

10. As to Paragraph 10 of Plaintiffs' Third Amended Class Action Complaint on file herein, Defendant hereby denies the allegations contained therein.

11. As to Paragraph 11 of Plaintiffs' Third Amended Class Action Complaint on file herein, Defendant hereby denies the allegations contained therein.

12. As to Paragraph 12 of Plaintiffs' Third Amended Class Action Complaint on file herein, Defendant hereby denies the allegations contained therein.

13. As to Paragraph 13 of Plaintiffs' Third Amended Class Action Complaint on file herein, Defendant hereby denies the allegations contained therein.



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1 14. As to Paragraph 14 of Plaintiffs' Third Amended Class Action Complaint on
2 file herein, Defendant hereby denies the allegations contained therein.

3 15. As to Paragraph 15 of Plaintiffs' Third Amended Class Action Complaint on
4 file herein, Defendant hereby denies the allegations contained therein.

5 16. As to Paragraph 16 of Plaintiffs' Third Amended Class Action Complaint on
6 file herein, Defendant hereby denies the allegations contained therein.

7 17. As to Paragraph 17 of Plaintiffs' Third Amended Class Action Complaint on
8 file herein, Defendant hereby denies the allegations contained therein.

9 18. As to Paragraph 18 of Plaintiffs' Third Amended Class Action Complaint on
10 file herein, Defendant hereby denies the allegations contained therein.

11 19. As to Paragraph 19 of Plaintiffs' Third Amended Class Action Complaint on
12 file herein, Defendant hereby denies the allegations contained therein.

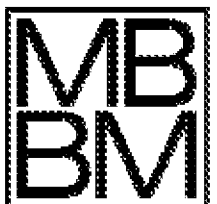
13 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

14 20. As to Paragraph 20 of Plaintiffs' Third Amended Class Action Complaint on
15 file herein, Defendant hereby denies the allegations contained therein.

16 21. As to Paragraph 21 of Plaintiffs' Third Amended Class Action Complaint on
17 file herein, Defendant hereby denies the allegations contained therein.

18 22. As to Paragraph 22 of Plaintiffs' Third Amended Class Action Complaint on
19 file herein, Defendant is without knowledge or information sufficient to form a belief as to
20 the truth of the allegations contained therein and therefore denies the same.

21 23. As to Paragraph 23 of Plaintiffs' Third Amended Class Action Complaint on
22 file herein, Defendant hereby denies the allegations contained therein.



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1 24. As to Paragraph 24 of Plaintiffs' Third Amended Class Action Complaint on
2 file herein, Defendant hereby denies the allegations contained therein.

3 25. As to Paragraph 25 of Plaintiffs' Third Amended Class Action Complaint on
4 file herein, Defendant hereby denies the allegations contained therein.

5 26. As to Paragraph 26 of Plaintiffs' Third Amended Class Action Complaint on
6 file herein, the Minimum Wage Amendment speaks for itself.

7 27. As to Paragraph 27 of Plaintiffs' Third Amended Class Action Complaint on
8 file herein, the Minimum Wage Amendment speaks for itself.

9 28. As to Paragraph 28 of Plaintiffs' Third Amended Class Action Complaint on
10 file herein, the Minimum Wage Amendment speaks for itself.

11 29. As to Paragraph 29 of Plaintiffs' Third Amended Class Action Complaint on
12 file herein, the Dancers were and/are not employees as such, were not required to be paid
13 minimum wage.

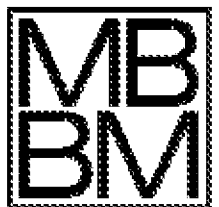
14 30. As to Paragraph 30 of Plaintiffs' Third Amended Class Action Complaint on
15 file herein, Defendant hereby denies the allegations contained therein.

16 31. As to Paragraph 31 of Plaintiffs' Third Amended Class Action Complaint on
17 file herein, Defendant hereby denies the allegations contained therein.

18 32. As to Paragraph 32 of Plaintiffs' Third Amended Class Action Complaint on
19 file herein, Defendant hereby denies the allegations contained therein.

20 33. As to Paragraph 33 of Plaintiffs' Third Amended Class Action Complaint on
21 file herein, Defendant hereby denies the allegations contained therein.

22 34. As to Paragraph 34 of Plaintiffs' Third Amended Class Action Complaint on
23 file herein, Defendant hereby denies the allegations contained therein.



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1 35. As to Paragraph 35 of Plaintiffs' Third Amended Class Action Complaint on
2 file herein, Defendant hereby denies the allegations contained therein.

3 36. As to Paragraph 36 of Plaintiffs' Third Amended Class Action Complaint on
4 file herein, Dancers are not and were not employees, as such, were not required to be paid
5 minimum wage.
6

7 37. As to Paragraph 37 of Plaintiffs' Third Amended Class Action Complaint on
8 file herein, Defendant hereby denies the allegations contained therein.

9 38. As to Paragraph 38 of Plaintiffs' Third Amended Class Action Complaint on
10 file herein, Dancers are not and were not employees, as such, were not required to be paid
11 minimum wage.
12

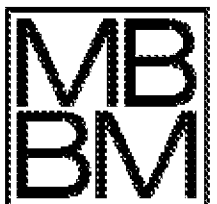
13 39. As to Paragraph 39 of Plaintiffs' Third Amended Class Action Complaint on
14 file herein, Defendant hereby denies the allegations contained therein.

15 40. As to Paragraph 40 of Plaintiffs' Third Amended Class Action Complaint on
16 file herein, Defendant hereby denies the allegations contained therein.

17 41. As to Paragraph 41 of Plaintiffs' Third Amended Class Action Complaint on
18 file herein, all punitive damage claims have been dismissed and struck and therefore, all
19 such allegations and pleadings should be struck in accordance with the Court's Order.
20 Defendant hereby denies the allegations contained therein.
21

22 **COUNT ONE**
23 **(NEV. Const.Art. XV, Sec. 16-Failure to Pay Wages)**

24 42. As to Paragraph 42 of Plaintiffs' Third Amended Class Action Complaint on
25 file herein, Defendant hereby repeats and re-alleges their prior responses to Plaintiffs' Third
26 Amended Class Action Complaint in Paragraphs 1 through 41.



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1 43. As to Paragraph 43 of Plaintiffs' Third Amended Class Action Complaint on
2 file herein, Defendant hereby denies the allegations contained therein.

3 44. As to Paragraph 44 of Plaintiffs' Third Amended Class Action Complaint on
4 file herein, Defendant hereby denies the allegations contained therein.

5
6 **COUNT TWO**
7 (Unjust Enrichment)

8 45. As to Paragraph 45 of Plaintiffs' Third Amended Class Action Complaint on
9 file herein, Defendant hereby repeats and re-alleges their prior responses to Plaintiffs' Third
10 Amended Class Action Complaint in Paragraphs 1 through 44.

11 46. As to Paragraph 46 of Plaintiffs' Third Amended Class Action Complaint on
12 file herein, Defendant hereby denies the allegations contained therein.

13 47. As to Paragraph 47 of Plaintiffs' Third Amended Class Action Complaint on
14 file herein, Defendant hereby denies the allegations contained therein.

15 48. As to Paragraph 48 of Plaintiffs' Third Amended Class Action Complaint on
16 file herein, Defendant hereby denies the allegations contained therein.

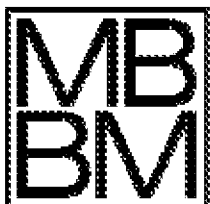
17
18 **AFFIRMATIVE DEFENSES**

19 **FIRST AFFIRMATIVE DEFENSE**

20 Plaintiffs' Third Amended Class Action Complaint fails to state a claim against
21 Defendant, Russell Road Food and Beverage upon which relief can be granted.

22 **SECOND AFFIRMATIVE DEFENSE**

23 Plaintiffs lack standing to bring their claims asserted in this lawsuit against the
24 Defendant, Russell Road Food and Beverage.
25
26



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1 **THIRD AFFIRMATIVE DEFENSE**

2 Defendant, Russell Road Food and Beverage denies the allegations of Plaintiffs'
3 Third Amended Class Action Complaint and demand strict proof thereof.

4 **FOURTH AFFIRMATIVE DEFENSE**

5 Defendant, Russell Road Food and Beverage pleads the applicable statute of
6 limitation to each of Plaintiffs' claims.

7 **FIFTH AFFIRMATIVE DEFENSE**

8 Plaintiffs' claims are barred by the Doctrine of Estoppel and Waiver.

9 **SIXTH AFFIRMATIVE DEFENSE**

10 There is no basis in law or facts for Plaintiffs' claims for punitive damages asserted
11 in Plaintiffs' Third Amended Class Action Complaint.

12 **SEVENTH AFFIRMATIVE DEFENSE**

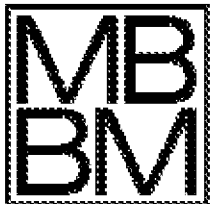
13 Defendant, Russell Road Food and Beverage is not guilty of any of the allegations
14 made against them in Plaintiffs' Third Amended Class Action Complaint.

15 **EIGHTH AFFIRMATIVE DEFENSE**

16 Defendant, Russell Road Food and Beverage's actions were justified and Defendant,
17 Russell Road Food and Beverage's actions are therefor, immune from liability.

18 **NINTH AFFIRMATIVE DEFENSE**

19 Defendant, Russell Road Food and Beverage has complied with all requirements of
20 Federal and State law with respect to the transactions with the Plaintiffs who bring suit
21 against Defendant, Russell Road Food and Beverage.



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1 **TENTH AFFIRMATIVE DEFENSE**

2 Some or all of Plaintiffs' claims are barred by the Doctrines of Set Off and
3 Recoupment.

4 **ELEVENTH AFFIRMATIVE DEFENSE**

5 Plaintiffs' claims are barred by the Doctrine of Unclean Hands.
6

7 **TWELFTH AFFIRMATIVE DEFENSE**

8 Plaintiffs' claims are barred by the Doctrines of Consent.

9 **THIRTEENTH AFFIRMATIVE DEFENSE**

10 Plaintiff's claims are barred by the Doctrines of Ratification and Acquiescence.
11

12 **FOURTEENTH AFFIRMATIVE DEFENSE**

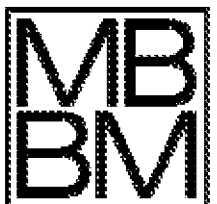
13 Plaintiffs have not suffered any injury by reason of any act, or omission, by the
14 Defendant, Russell Road Food and Beverage; therefore, they do not have any right or
15 standing to assert the claims at issue.

16 **FIFTEENTH AFFIRMATIVE DEFENSE**

17 This action cannot be maintained as a class action under Rule 23 of the Nevada
18 Rules of Civil Procedure because: (i) the questions of law and fact are not common to the
19 class, the legal issues differ from class member to class member, and the factual issues will
20 differ depending on a number of different facts applicable to the various punitive class
21 members; and (ii) the claims or defenses of the representative are not typical of the claims or
22 defenses of the class; and (iii) the Plaintiffs will not fairly and adequately protect the interest
23 of the class.
24
25

26 **SIXTEENTH AFFIRMATIVE DEFENSE**

27 This class is not certifiable as a class action.
28



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1 **SEVENTEENTH AFFIRMATIVE DEFENSE**

2 Defendant, Russell Road Food and Beverage denies that Plaintiffs are adequate class
3 representatives.

4 **NINETEENTH AFFIRMATIVE DEFENSE**

5 Defendant, Russell Road Food and Beverage is not liable because they acted in good
6 faith in conformity with applicable rules, regulations, and statutory interpretations.

7 **TWENTIETH AFFIRMATIVE DEFENSE**

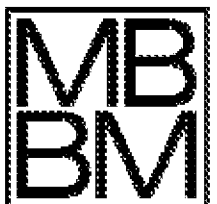
8 The actions alleged in the Plaintiffs' Third Amended Class Action Complaint are
9 barred, in whole or in part, by the Doctrine of Laches because Plaintiffs, having notice of
10 the facts constituting the basis of the alleged causes of action, nevertheless delayed
11 institution of the lawsuit, and such delay has worked to the disadvantage and prejudice of
12 the Defendant, Russell Road Food and Beverage.

13 **TWENTY FIRST AFFIRMATIVE DEFENSE**

14 Defendant, Russell Road Food and Beverage alleges that the actions,
15 communications, and conduct of the Defendant, Russell Road Food and Beverage alleged in
16 the Plaintiffs' Third Amended Class Action Complaint were ratified, approved and/or
17 agreed to by Plaintiffs.

18 **TWENTY SECOND AFFIRMATIVE DEFENSE**

19 Any Plaintiffs who performed at Russell Road Food and Beverage's business
20 establishment entered into an Entertainment Agreement with Russell Road Food and
21 Beverage, by its terms, covenants, conditions, and provisions, established the legal
22 relationship between the Russell Road Food and Beverage and Plaintiffs as being that of
23 Independent Contractor and Entertainer and further establishes that Plaintiffs' are not any
24



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1 other legal relationship of any type or kind. The Entertainment Agreement expressly
2 provides and the Plaintiffs who entered into such an Agreement expressly acknowledged
3 and agreed that by signing the Agreement they were not employees or agents of Russell
4 Road Food and Beverage, and are therefore, not entitled to minimum wages or other
5 employment compensations. Accordingly, Plaintiffs are not entitled to invoke Nevada
6 Minimum Wage Amendment.
7

8 **TWENTY THIRD AFFIRMATIVE DEFENSE**

9 Any and all Plaintiffs performing on the business premises of the Defendant, Russell
10 Road Food and Beverage did so as an Independent Contractor and are therefore, precluded
11 from evoking any of the provisions of Nevada Minimum Wage Amendment.
12

13 **TWENTY FOURTH AFFIRMATIVE DEFENSE**

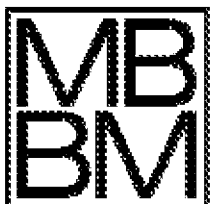
14 Plaintiffs' Third Amended Class Action Complaint is barred by the Principle of
15 Unjust Enrichment.
16

17 **TWENTY FIFTH AFFIRMATIVE DEFENSE**

18 Plaintiffs' Causes of Action for Equitable Relief are barred for the reasons that
19 Plaintiffs' have adequate remedies at law.
20

21 **TWENTY SIXTH AFFIRMATIVE DEFENSE**

22 Plaintiffs' Third Amended Class Action Complaint is frivolous, in that at the time
23 that any Plaintiffs who performed at the Russell Road Food and Beverage entered into an
24 Entertainment Agreement with the Russell Road Food and Beverage, such Plaintiff
25 specifically chose to enter into an Independent Contractor relationship and disclaimed any
26 desire to enter into an employment arrangement, thereby subjecting Plaintiffs', Unnamed
27 Class Members, and their counsels to sanctions, costs, and attorney fees.
28



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1 **TWENTY SEVENTH AFFIRMATIVE DEFENSE**

2 Plaintiffs' Third Amended Class Action Complaint is barred for the reason that
3 Plaintiffs' have failed to mitigate their damages.

4 **TWENTY EIGHTH AFFIRMATIVE DEFENSE**

5
6 Plaintiffs' Third Amended Class Action Complaint is barred by the Principle of
7 Payment.

8 **TWENTY NINTH AFFIRMATIVE DEFENSE**

9 Plaintiffs' Third Amended Class Action Complaint under Nevada Minimum Wage
10 Amendment is barred as the result of the Plaintiffs failure to comply with the legal
11 obligations of employees.

12 **THIRTIETH AFFIRMATIVE DEFENSE**

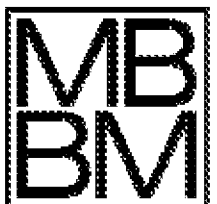
13
14 Defendant, Russell Road Food and Beverage contends that Plaintiffs would not make
15 fair and adequate representatives of any proported class, in that, their specific circumstances
16 are significantly different that most other members of any potential class.

17 **THIRTY FIRST AFFIRMATIVE DEFENSE**

18
19 Defendant, Russell Road Food and Beverage contends that Plaintiffs would not make
20 a fair and adequate representative of any proported class, in that, there would be conflicts
21 between their interest and the interest of many other members of any potential class.

22 **THIRTY SECOND AFFIRMATIVE DEFENSE**

23
24 Any claims of specific Plaintiffs' not common to the entire class of Plaintiffs' are
25 barred.



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1 **THIRTY THIRD AFFIRMATIVE DEFENSE**

2 The acts of Defendant, Russell Road Food and Beverage were neither willful,
3 wanton, intentionally improper, nor taken in reckless disregard of the rights of the Plaintiffs
4 and others.
5

6 **THIRTY FOURTH AFFIRMATIVE DEFENSE**

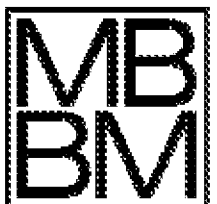
7 Any of the Plaintiffs' claims which seek avoidance of the terms of the Entertainment
8 Agreement are barred as a result of the Plaintiffs' violations of the implied covenants of
9 good faith and fair dealing applicable to each such Agreement.
10

11 **THIRTY FIFTH AFFIRMATIVE DEFENSE**

12 If Plaintiffs are found to be entitled to minimum wage and/or other monetary
13 compensation under Nevada Minimum Wage Claim, Russell Road Food and Beverage is
14 entitled to a set-off against such obligations for all amounts earned by Plaintiffs for their
15 performances at Russell Road Food and Beverage's establishment, exclusive of tips received
16 by Plaintiffs; these amounts being the income and property of the Russell Road Food and
17 Beverage if any employment relationship is determined to exist – the existence of which the
18 Russell Road Food and Beverage specifically denies.
19

20 **THIRTY SIXTH AFFIRMATIVE DEFENSE**

21 By bringing this suit as a Class Action proceeding pursuant to Rule 23 of Nevada
22 Rules of Civil Procedures, the Plaintiffs' are barred and estopped from later seeking, in this
23 action or otherwise, entitlement to any rights, privileges, benefits, or protections that are
24 contained in the Federal Fair Labor Standards Act; 29 USC Section 201, et. Seq.
25
26



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1 **THIRTY SEVENTH AFFIRMATIVE DEFENSE**

2 Some or all of the claims are barred by the Doctrines of Accord and Satisfaction,
3 Settlement, Payment, Release, Judicial Estoppel, and Res Judicata.

4 **THIRTY EIGHTH AFFIRMATIVE DEFENSE**

5
6 Plaintiffs' claims for unjust enrichment and conversion are barred because Plaintiff's
7 and any putative class members, who performed as an entertainer at Defendant's business
8 establishment, entered into agreements with Defendant, agreeing that the business
9 relationship between Defendant and entertainers were not that of employee-employer.

10 **THIRTY NINTH AFFIRMATIVE DEFENSE**

11
12 Plaintiffs' Third Amended Class Action Complaint, and each purported cause of
13 action therein, is barred because Plaintiffs (and any putative class member) who performed
14 at Defendant's business premises, did so as a independent contractor, and are therefore
15 precluded from invoking the provisions of the Nevada wage laws.

16 **FORTEITH AFFIRMATIVE DEFENSE**

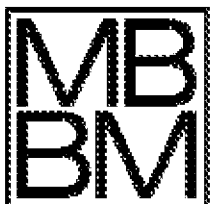
17
18 Plaintiffs' claims and each purported cause of action therein, are barred due to
19 Plaintiffs' and putative class members' breaches of contract.

20 **FORTY FIRST AFFIRMATIVE DEFENSE**

21 No actual, justiciable controversy exists between Defendant and Plaintiffs, and thus
22 Plaintiffs' Third Amended Class Action Complaint must be dismissed as to Defendant.

23 **FORTY SECOND AFFIRMATIVE DEFENSE**

24
25 Plaintiffs and any putative class member are barred from obtaining relief due to
26 unjust enrichment.



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1 **FORTY THIRD AFFIRMATIVE DEFENSE**

2 Plaintiffs' damages and claims are barred to the extent that Defendant is entitles to
3 offset monies already received by Plaintiffs.

4 **FORTY FOURTH AFFIRMATIVE DEFENSE**

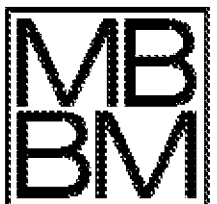
5
6 Plaintiffs' claims are barred to the extent that Plaintiff and putative class members
7 consented to or requested the alleged conduct of Defendant and accepted the benefit of the
8 non-employee status without complaint during the time that they performed at Defendant's
9 establishment.

10 **FORTY FIFTH AFFIRMATIVE DEFENSE**

11
12 That is has been necessary of the Defendant, Russell Road Food and Beverage to
13 employ the services of attorneys to defend the action and a reasonable sum should be
14 allowed Defendant, Russell Road Food and Beverage for attorney's fees, together with costs
15 of suit incurred herein.

16 **FORTY SIXTH AFFIRMATIVE DEFENSE**

17
18 Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have
19 been alleged herein insofar as sufficient facts were not available after reasonable inquiry
20 upon the filing of Defendant, Russell Road Food and Beverage's Answer, and therefore,
21 Defendant, Russell Road Food and Beverage reserves the right to amend this Answer to
22 allege additional affirmative defenses if subsequent investigation warrants.



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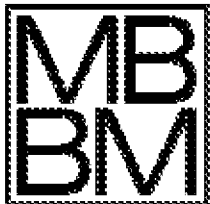
WHEREFORE, Defendant Russell Road Food and Beverage, prays for the following:

1. That Plaintiffs takes nothing by way of their Third Amended Class Action Complaint on file herein;

2. For reasonable attorneys' fees and costs of suit incurred herein; and

3. For such other and further relief as this Court may deem just and proper in the premises.

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1 **COUNTERCLAIMS**

2 Comes now, Defendant/Counterclaimant, RUSSELL ROAD FOOD AND
3 BEVERAGE, LLC, a Nevada limited liability company, dba CRAZY HORSE III
4 GENTLEMEN'S CLUB ("Russell Road"), by and through its attorneys of record,
5 GREGORY J. KAMER, ESQ., of KAMER ZUCKER ABBOTT, and JEFFERY A.
6 BENDAVID, ESQ., of MORAN BRANDON BENDAVID MORAN, hereby asserts the
7 following Counterclaims against Plaintiffs/Counterdefendants, JACQUELINE FRANKLIN,
8 ASHLEIGH PARK, LILY SHEPARD, STACIE ALLEN, MICHAELA DIVINE,
9 VERONICA VAN WOODSEN, SAMANTHA JONES, KARINA STRELKOVA,
10 LASHONDA STEWART, DANIELLE LAMAR, DIRUBIN TAMAYO, DOES I through
11 XX, and ROE BUSINESS ENTITIES I through XX (collectively, the "Counterdefendants").
12
13

14 **I. PARTIES**

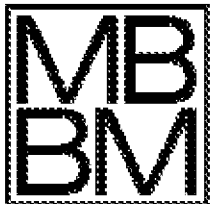
15 1. Defendant/Counterclaimant, Russell Road Food and Beverage, LLC, is a
16 Nevada limited liability company, dba Crazy Horse III Gentlemen's Club, properly
17 conducting business in Clark County, Nevada.
18

19 2. Upon information and belief, Plaintiff/Counterdefendant, Jacqueline
20 Franklin, at all times relevant to this action, was and is a resident of Clark County, Nevada.

21 3. Upon information and belief, Plaintiff/Counterdefendant, Ashleigh Park, at
22 all times relevant to this action, was and is a resident of Clark County, Nevada.
23

24 4. Upon information and belief, Plaintiff/Counterdefendant, Lily Shepard, at all
25 times relevant to this action, was and is a resident of Clark County, Nevada.

26 5. Upon information and belief, Plaintiff/Counterdefendant, Stacie Allen, at all
27 times relevant to this action, was and is a resident of Clark County, Nevada.
28



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1 6. Upon information and belief, Plaintiff/Counterdefendant, Michaela Divine, at
2 all times relevant to this action, was and is a resident of Clark County, Nevada.

3 7. Upon information and belief, Plaintiff/Counterdefendant, Veronica Van
4 Woodsen, at all times relevant to this action, was and is a resident of Clark County, Nevada.

5 8. Upon information and belief, Plaintiff/Counterdefendant, Samantha Jones, at
6 all times relevant to this action, was and is a resident of Clark County, Nevada.

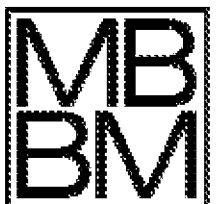
7 9. Upon information and belief, Plaintiff/Counterdefendant, Karina Strelkova, at
8 all times relevant to this action, was and is a resident of Clark County, Nevada.

9 10. Upon information and belief, Plaintiff/Counterdefendant, LaShonda Stewart,
10 at all times relevant to this action, was and is a resident of Clark County, Nevada.

11 11. Upon information and belief, Plaintiff/Counterdefendant, Danielle Lamar, at
12 all times relevant to this action, was and is a resident of Clark County, Nevada.

13 12. Upon information and belief, Plaintiff/Counterdefendant, Dirubin Tamayo, at
14 all times relevant to this action, was and is a resident of Clark County, Nevada.

15 13. The true names and capacities whether individual, corporate, associate or
16 otherwise of Counterdefendants named herein as DOES I through XX, inclusive, and ROE
17 BUSINESS ENTITIES I through XX, inclusive, and each of them, are unknown to Russell
18 Road who therefore sues these Counterdefendants by such fictitious names. Russell Road is
19 informed, believes and thereon alleges that each of the Counterdefendants designated herein
20 as a DOE or ROE BUSINESS ENTITY are agents, employees, servants and representatives
21 of the named Counterdefendant or persons and entities answering in concert with the named
22 Counterdefendant with respect to the allegations herein pled, who are liable to Russell Road
23
24
25
26



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1 by reason thereof, and Russell Road prays leave to amend these Counterclaims to insert their
2 true names or identities with appropriate allegations when same become known.

3 14. At the time of Russell Road's Counterclaims, the individual
4 Plaintiff/Counterdefendants have alleged, but have not certified a class pursuant to N.R.C.P.

5
6 23. In the event that such an alleged class is certified pursuant to N.R.C.P. 23, Russell Road
7 reserves the right to amend its Counterclaims to include a Counterdefendant class.

8 **II. JURISDICTION AND VENUE**

9 15. Jurisdiction is properly before this Court as Counterdefendants, upon
10 information and belief, are residents of Clark County, Nevada, and the contracts and related
11 acts allegedly performed or required to be performed occurred and were to occur in Clark
12 County, Nevada.

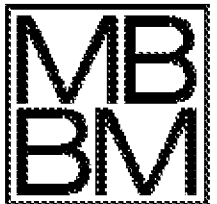
13
14 16. Venue is proper in this Court pursuant to NRS 13.010(1) in that this is the
15 Nevada County in which Counterdefendants contracted with Russell Road and were
16 required by such contract to perform certain obligations in Clark County, Nevada. Venue is
17 also proper pursuant to NRS 13.040, in that this is the Nevada County in which
18 Counterdefendants, upon information and belief, reside.

19 **GENERAL ALLEGATIONS**

20
21 17. The allegations of paragraphs 1 through 16 of these Counterclaims are
22 incorporated by reference herein with the same force and effect as set forth in full below.

23
24 18. Russell Road owns and operates the adult entertainment venue known as
25 Crazy Horse III ("Crazy Horse III").

26 19. Crazy Horse III is a venue for exotic dancers to perform exotic dances and
27 entertain customers who patronize Crazy Horse III.



28
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1 20. Exotic dancers who desire to perform at Crazy Horse III enter into individual
2 Entertainers Agreements (the "Entertainers Agreement") with Russell Road where pursuant
3 to the terms and conditions of the Entertainers Agreement each exotic dancer is granted the
4 privilege to perform at Crazy Horse III.

5
6 21. Pursuant to the terms and conditions of each Entertainers Agreement,
7 Counterdefendants agreed that each was not an employee of Russell Road and was not
8 entitled to receive by law or pursuant to the terms and conditions of the Entertainers
9 Agreement any of the benefits or privileges provided employees of Russell Road.

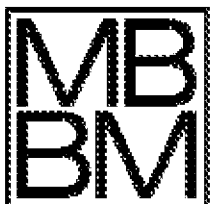
10
11 22. As consideration for the privilege to perform at Crazy Horse III, each exotic
12 dancer agreed to pay a fee for such privilege as provided in the Entertainers Agreement (the
13 "House Fee").

14 23. In return for the payment of the House Fee, each exotic dancer retained all
15 fees they generated and gratuities paid to them by patrons of Crazy Horse III for the
16 performance of individual dances.

17
18 24. The Entertainers Agreement also permitted each exotic dancer to redeem
19 "Dance Dollars" issued to the patrons of Crazy Horse III for a percentage fee based on the
20 face value of the Dance Dollars redeemed.

21 25. Counterdefendants each entered into an individual Entertainers Agreement
22 and agreed to be bound by the terms and conditions of the Entertainers Agreement,
23 including, but not limited to, the payment of a House Fee for the privilege of performing at
24 Crazy Horse III.

25
26 26. While performing at Crazy Horse III, Counterdefendants performed
27 individual dances for patrons in exchange for a minimum fee (the "Dance Fee").
28



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1 27. At all times, Counterdefendants collected and retained the "Dance Fee,"
2 along with any gratuity paid by each patron receiving an individual dance.

3 28. At all times, Counterdefendants also redeemed from Crazy Horse III and
4 retained the face value of the "Dance Dollars" provided to them by patrons less a percentage
5 redemption fee paid.
6

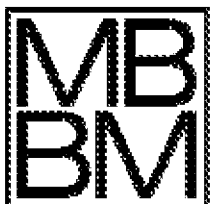
7 29. At no time while performing at Crazy Horse III has any Counterdefendant
8 refused to collect and retain the Dance Fees paid to them by patrons.

9 30. At all times while performing at Crazy Horse III has any Counterdefendant
10 refuse to redeem the face value of any Dance Dollars collected from Crazy Horse III less the
11 percentage redemption fee.
12

13 31. Upon information and belief, the amount of Dance Fees paid by patrons to
14 each Counterdefendant and the amount of Dance Dollars redeemed by each
15 Counterdefendant, exclusive of any gratuities paid by patrons, far exceeded the minimum
16 wage required under Nevada law.
17

18 32. At all times relevant to this matter, Russell Road complied with and
19 performed as required by every term and condition of each Entertainers Agreement entered
20 into by the Counterdefendants.

21 33. After retaining the full benefit of Russell's performance of the terms and
22 conditions of the Entertainers Agreement, including, but not limited to, the receipt and
23 retention of the Dance Fees and the redemption of the face value of the Dance Dollars issued
24 to patrons of Crazy Horse III, Counterdefendants now desire to repudiate the Entertainers
25 Agreement.
26



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1 34. Counterdefendants now demand that they be declared employees and be
2 returned the House Fees each paid to Russell Road for the privilege of performing at Crazy
3 Horse III while at the same time retaining the all of the monies retained or redeemed by each
4 Counterdefendant for the performance of their individual dances for patrons that they were
5 permitted to retain under the terms of their respective Entertainers Agreement.
6

7 **III. FIRST COUNTERCLAIM**
8 **(Breach of Contract-Offset)**

9 35. The allegations of paragraphs 1 through 34 of these Counterclaims are
10 incorporated by reference herein with the same force and effect as set forth in full below.

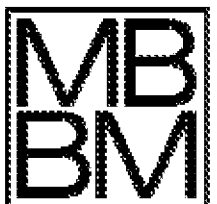
11 36. Russell Road entered into an individual and separate Entertainers Agreement
12 with each Counterdefendant wherein each Counterdefendant acknowledged and agreed to
13 bound by the terms and conditions of their respective Entertainers Agreement.
14

15 37. Pursuant to the terms and conditions of each Entertainers Agreement,
16 Counterdefendants agreed to pay Russell Road an individual House Fee for the privilege of
17 performing as an exotic dancer at the Crazy Horse III Gentlemen's Club owned and
18 operated by Russell Road.

19 38. In exchange for the payment of the House Fee and pursuant to the terms and
20 conditions of the Entertainers Agreement, Russell Road agreed that each Counterdefendant
21 would retain the Dance Fees and gratuities paid to them by patrons of Crazy Horse III for
22 the performance of individual exotic dances.
23

24 39. Such Dance Fees otherwise would be income owed to Russell Road.

25 40. In exchange for the payment of the House Fee and pursuant to the terms and
26 conditions of the Entertainers Agreement, each Counterdefendant could redeem the "Dance
27
28



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1 Dollars” issued to the patrons of Crazy Horse III for a percentage fee based on the face value
2 of the Dance Dollars redeemed.

3 41. The redemption of Dance Dollars issued to patrons otherwise also would be
4 income owed to Russell Road.

5 42. Pursuant to the terms and conditions of the Entertainers Agreement,
6 Counterdefendants paid the House Fee to Russell Road and retained the Dance Fees paid by
7 patrons of Crazy Horse III as well as retained the face value of the Dance Dollars redeemed
8 by each Counterdefendant less the required redemption fee.

9 43. At all times, Russell Road complied with and performed as required by the
10 terms and conditions of each Entertainers Agreement entered into with Counterdefendants.

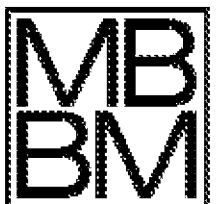
11 44. At all times, Counterdefendants retained all Dance Fees paid to them by
12 patrons of Crazy Horse III and retained the face value of the Dance Dollars redeemed less
13 the agreed upon redemption fee.

14 45. Counterdefendants never refused to collect, accept, or retain any Dance Fees
15 paid to them by patrons of Crazy Horse III.

16 46. Counterdefendants never refused to accept the redemption value of the Dance
17 Dollars redeemed by each Counterdefendant.

18 47. Counterdefendants now seek to repudiate their respective Entertainers
19 Agreement and have each declared an employee of Russell Road under Nevada law entitled
20 to receive minimum wage for work allegedly performed for Russell Road.

21 48. Further, Counterdefendants demand the return of all House Fees paid to
22 Russell Road pursuant to the terms and conditions of the Entertainers Agreement while
23 retaining the Dance Fees and face value of Dance Dollars redeemed.



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1 49. By claiming employee status, Counterdefendants have breached the terms
2 and conditions of their respective Entertainers Agreement.

3 50. Counterdefendants also have breached the terms and conditions of their
4 respective Entertainers Agreement by refusing to return the Dance Fees paid
5 Counterdefendants by patrons of Crazy Horse III and retained by Counterdefendants since
6 Counterdefendants now seek to be deemed employees of Russell Road.

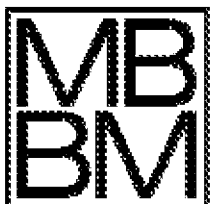
7 51. Counterdefendants also have breached the terms and conditions of their
8 respective Entertainers Agreement by refusing to return the cash value of the Dance Dollars
9 each redeemed from Russell Road.
10

11 52. In the event that Counterdefendants are deemed employees of Russell Road
12 entitled to the payment of Nevada's minimum wage, and/or entitled to receive the return of
13 the House Fees paid to Russell Road, the monies each retained pursuant to the terms and
14 conditions of the Entertainers Agreement should be offset against such amounts awarded
15 Counterdefendants.
16

17 53. In addition, Russell Road is entitled to receive any amount in excess of
18 Counterdefendants' claims.
19

20 54. As a result of Counterdefendants' breach of the Entertainers Agreement,
21 Russell Road was damaged in excess of \$10,000.

22 55. It has also become necessary for Russell Road to retain the services of an
23 attorney to assert these Counterclaims, and Russell Road is therefore entitled to reasonable
24 attorney's fees and the costs of this suit.
25
26



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1 **IV. SECOND COUNTERCLAIM**
2 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

3 56. The allegations of paragraphs 1 through 55 of these Counterclaims are
4 incorporated by reference herein with the same force and effect as set forth in full below.
5

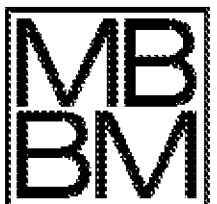
6 57. Russell Road entered into an individual and separate Entertainers Agreement
7 with each Counterdefendant wherein each Counterdefendant acknowledged and agreed to
8 bound by the terms and conditions of their respective Entertainers Agreement.

9 58. Consequently, Counterdefendants had a duty, under the implied covenant of
10 good faith and fair dealing, to comply, at all times and in good faith, with each terms and
11 condition of their respective Entertainers Agreement.
12

13 59. Counterdefendants have breached the implied covenant of good faith and fair
14 dealing by accepting and retaining the benefits of their respective Entertainers Agreement
15 while seeking to repudiate each Entertainers Agreement and have each declared an
16 employee of Russell Road contrary to the express terms and conditions of
17 Counterdefendants' respective Entertainers Agreement.
18

19 60. As a result of Counterdefendants' breach of Implied Covenant of Good Faith
20 and Fair Dealing present in each of Counterdefendants' respective Entertainers Agreement,
21 Russell Road was damaged in excess of \$10,000.

22 61. It has also become necessary for Russell Road to retain the services of an
23 attorney to assert these Counterclaims, and Russell Road is therefore entitled to reasonable
24 attorney's fees and the costs of this suit.
25
26



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1 **V. THIRD COUNTERCLAIM**
2 **(Conversion)**

3 62. The allegations of paragraphs 1 through 61 of these Counterclaims are
4 incorporated by reference herein with the same force and effect as set forth in full below.

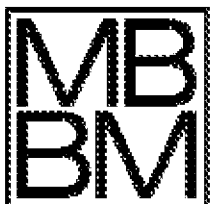
5 63. Russell Road entered into an individual and separate Entertainers Agreement
6 with each Counterdefendant wherein each Counterdefendant acknowledged and agreed to
7 bound by the terms and conditions of their respective Entertainers Agreement.
8

9 64. Pursuant to the terms and conditions of each Entertainers Agreement,
10 Counterdefendants acknowledged and agreed that each was not an employee or agent of
11 Russell Road and was not entitled to receive any benefits or privileges owed employees.

12 65. In reliance of Counterdefendants' acknowledgement that each was not an
13 employee of Russell Road and pursuant to the terms and conditions of each Entertainers
14 Agreement, Counterdefendants were permitted to collect, accept, and retain Dance fees from
15 patrons of Crazy Horse III that otherwise would be lawful income of Russell Road.
16

17 66. In reliance of Counterdefendants' acknowledgement that each was not an
18 employee of Russell Road and pursuant to the terms and conditions of each Entertainers
19 Agreement, Counterdefendants also were permitted to collect, accept, and redeem Dance
20 Dollars, which the cash value otherwise was lawful income of Russell Road.
21

22 67. In the event that Counterdefendants are deemed employees of Russell Road,
23 Counterdefendants are not entitled to the retention of such Dance Fees or the cash value of
24 any redeemed Dance Dollars as such Dance Fees and redeemed Dance Dollars are the
25 exclusive personal property of Russell Road and not of its employees.
26



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1 68. As such, Counterdefendants have intentionally and wrongfully exercised
2 dominion over Russell Road's personal property by retaining and continuing to retain such
3 Dance Fees and the cash value of any redeemed Dance Dollars.

4 69. Counterdefendants' intentional and wrongful dominion was in denial of, or
5 inconsistent with, Russell Road's rightful title and rights to the Dance Fees and the cash
6 value of the redeemed Dance Dollars.

7 70. Therefore, Counterdefendants have intentionally and wrongfully converted
8 Russell Road's personal property.

9 71. As a result of Counterdefendants' Conversion of Russell Road's personal
10 property, Russell Road was damaged in excess of \$10,000.

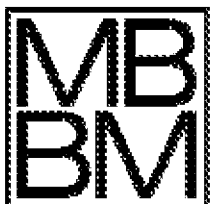
11 72. It has also become necessary for Russell Road to retain the services of an
12 attorney to assert these Counterclaims, and Russell Road is therefore entitled to reasonable
13 attorney's fees and the costs of this suit.

14
15
16 **VI. FOURTH COUNTERCLAIM**
17 **(Unjust Enrichment)**

18 73. The allegations of paragraphs 1 through 72 of these Counterclaims are
19 incorporated by reference herein with the same force and effect as set forth in full below.

20 74. Russell Road entered into an individual and separate Entertainers Agreement
21 with each Counterdefendant wherein each Counterdefendant acknowledged and agreed to
22 bound by the terms and conditions of their respective Entertainers Agreement.

23 75. Pursuant to the terms and conditions of each Entertainers Agreement,
24 Counterdefendants acknowledged and agreed that each was not an employee or agent of
25 Russell Road and was not entitled to receive any benefits or privileges owed employees.
26
27
28



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1 76. In reliance of Counterdefendants' acknowledgement that each was not an
2 employee of Russell Road and pursuant to the terms and conditions of each Entertainers
3 Agreement, Counterdefendants were permitted to collect, accept, and retain Dance fees from
4 patrons of Crazy Horse III that otherwise would be lawful income of Russell Road.
5

6 77. In reliance of Counterdefendants' acknowledgement that each was not an
7 employee of Russell Road and pursuant to the terms and conditions of each Entertainers
8 Agreement, Counterdefendants also were permitted to collect, accept, and redeem Dance
9 Dollars, which the cash value otherwise was lawful income of Russell Road.
10

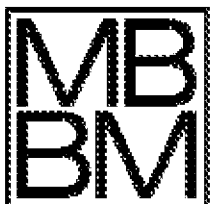
11 78. In the event that Counterdefendants are deemed employees of Russell Road,
12 Counterdefendants are not entitled to the retention of such Dance Fees or the cash value of
13 any redeemed Dance Dollars.

14 79. As such, Counterdefendants have been unjustly enriched to Russell Road's
15 detriment by collecting, accepting, and retaining Dance Fees paid to each Counterdefendant
16 that Counterdefendants, as employees of Russell Road, were not entitled to retain.
17

18 80. Counterdefendants also have been unjustly enriched to Russell Road's
19 detriment by retaining the cash value of Dance Dollars each redeemed from Russell Road, as
20 employees of Russell Road, were not entitled to retain.

21 81. Fundamental principles of justice, equity, and good conscience preclude
22 Counterdefendants preclude Counterdefendants from retaining Dance Fees and redeemed
23 Dance Dollars.
24

25 82. As a result of Counterdefendants' Unjust Enrichment, Russell Road was
26 damaged in excess of \$10,000, or is entitled to an award in equity for Dance Fees and
27 redeemed Dance Dollars unjustly retained by Counterdefendants in excess of \$10,000.
28



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1 83. It has also become necessary for Russell Road to retain the services of an
2 attorney to assert these Counterclaims, and Russell Road is therefore entitled to reasonable
3 attorney's fees and the costs of this suit.
4

5 **VII. FIFTH COUNTERCLAIM**
6 **(Declaratory Judgment)**

7 84. The allegations of paragraphs 1 through 83 of these Counterclaims are
8 incorporated by reference herein with the same force and effect as set forth in full below.

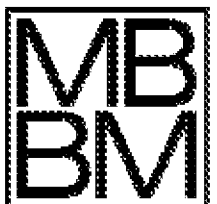
9 85. Russell Road entered into an individual and separate Entertainers Agreement
10 with each Counterdefendant wherein each Counterdefendant acknowledged and agreed to
11 bound by the terms and conditions of their respective Entertainers Agreement.

12 86. Pursuant to the terms and conditions of each Entertainers Agreement,
13 Counterdefendants agreed that each was not an employee of Russell Road and was not
14 entitled to receive by law or pursuant to the terms and conditions of the Entertainers
15 Agreement any of the benefits or privileges provided employees of Russell Road.
16

17 87. Counterdefendants have now sought to repudiate the terms and conditions of
18 their respective Entertainers Agreement and obtain a judicial determination that
19 Counterdefendants were employees of Russell Road entitled to the benefits and privileges
20 afforded such employees.
21

22 88. A justiciable controversy therefore has arisen between Counterdefendants
23 and Russell Road regarding the validity and enforceability of Counterdefendants'
24 Entertainers Agreement.

25 89. Russell Road is entitled pursuant to NRS 30.040(1) to a Declaratory
26 Judgment determining that each Entertainers Agreement with Counterdefendants is valid
27 and enforceable and each Counterdefendant was not an employee of Russell Road.
28



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90. It has also become necessary for Russell Road to retain the services of an attorney to assert these Counterclaims, and Russell Road is therefore entitled to reasonable attorney's fees and the costs of this suit.

WHEREFORE, Russell Road prays for the following:

1. For Declaratory Judgment pursuant to NRS 30.040(1), declaring or determining the Entertainers Agreement entered into with each Counterdefendant is valid and enforceable;

2. For actual damages in excess of Ten Thousand Dollars (\$10,000) to be determined at trial;

3. For reasonable attorney's fees and costs of suit; and

4. For any other such relief as this Court deems just and proper.

DATED this 19th day of October 2015.

KAMER ZUCKER ABBOTT

/s/ Gregory J. Kamer, Esq.

GREGORY J. KAMER, ESQ.

Nevada Bar No. 0270

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/s/ Jeffery A. Bendavid, Esq.

JEFFERY A. BENDAVID, ESQ.

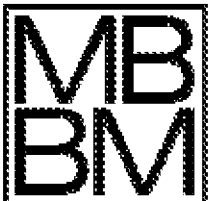
Nevada Bar No. 6220

630 South 4th Street

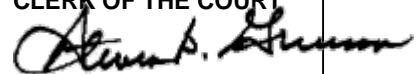
Las Vegas, Nevada 89101

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Attorneys for Defendant



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1 **NEO**

2 **JEFFERY A. BENDAVID, ESQ.**

3 Nevada Bar No. 6220

4 **STEPHANIE J. SMITH, ESQ.**

5 Nevada Bar No. 11280

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11 Nevada Bar No. 0270

12 **KAITLIN H. ZIEGLER, ESQ.**

13 Nevada Bar No. 013625

14 **KAMER ZUCKER ABBOTT**

15 3000 W. Charleston Blvd., #3

16 Las Vegas, Nevada 89102

17 (702) 259-8640

18 *Attorneys for Defendant/Counterclaimant*

19 **DISTRICT COURT**
20 **CLARK COUNTY, NEVADA**

21 JACQUELINE FRANKLIN, ASHLEIGH
22 PARK, LILY SHEPARD, STACIE
23 ALLEN, MICHAELA DIVINE,
24 VERONICA VAN WOODSEN,
25 SAMANTHA JONES, KARINA
26 STRELKOVA, LASHONDA,
27 STEWART, DANIELLE LAMAR, and
28 DIRUBIN TAMAYO, individually, and
on behalf of a class of similarly
situated individuals,

Plaintiffs,

vs.

RUSSELL ROAD FOOD AND
BEVERAGE, LLC, a Nevada limited
Liability company (d/b/a CRAZY DOE
CLUB OWNER, I-X, ROE EMPLOYER,
I-X,

Defendants.

Case No.: A-14-709372-C

Dept. No.: 31

NOTICE OF ENTRY OF ORDER

AND RELATED COUNTERCLAIMS



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1 **NOTICE OF ENTRY OF ORDER**

2 Please take notice that an ORDER GRANTING DEFENDANT'S MOTION TO
3 DISMISS PLAINTIFFS ASHLEIGH PARK, DANIELLE LAMAR, LILY SHEPARD,
4 KARINA STRELKOVA, STACIE ALLEN, AND MICHAELA DEVINE AKA MOORE
5 THIRD AMENDED COMPLAINT PURSUANT TO N.R.C.P. 12(b)(1) AND N.R.C.P.
6 12(h)(3); ORDER GRANTING DEFENDANT'S MOTION TO STRIKE PLAINTIFFS'
7 RENEWED MOTION FOR CLASS CERTIFICATION; ORDER DENYING
8 PLAINTIFFS' RENEWED MOTION FOR CLASS CERTIFICATION was entered in the
9 above entitled case by the Honorable Joanna S. Kishner on the 23rd day of August, 2017.
10

11 A TRUE AND CORRECT COPY of the Order is attached hereto.

12 DATED this 25th day of August, 2017.

13
14 **MORAN BRANDON BENDAVID MORAN**

15
16 /s/ Jeffery A. Bendavid

17 **JEFFERY A. BENDAVID, ESQ.**

18 Nevada Bar No. 6220

19 **STEPHANIE J. SMITH, ESQ.**

20 630 South 4th Street

21 Las Vegas, Nevada 89101

22
23 **KAMER ZUCKER ABBOTT**

24 /s/ Gregory J. Kamer

25 **GREGORY J. KAMER, ESQ.**

26 Nevada Bar No. 0270

27 **KAITLIN H. ZIEGLER, ESQ.**

28 Nevada Bar No. 013625

3000 W. Charleston Blvd., #3

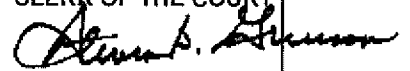
Las Vegas, Nevada 89102

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19 **DISTRICT COURT**
20 **CLARK COUNTY, NEVADA**

21 JACQUELINE FRANKLIN,
22 ASHLEIGH PARK, LILY SHEPARD,
23 STACIE ALLEN, MICHAELA DIVINE,
24 VERONICA VAN WOODSEN,
25 SAMANTHA JONES, KARINA
26 STRELKOVA, LASHONDA,
27 STEWART, DANIELLE LAMAR, and
28 DIRUBIN TAMAYO, individually, and
on behalf of a class of similarly
situated individuals,

Plaintiffs,

vs.

RUSSELL ROAD FOOD AND
BEVERAGE, LLC, a Nevada limited
Liability company (d/b/a CRAZY DOE
CLUB OWNER, I-X, ROE
EMPLOYER, I-X,

Defendants.

AND RELATED COUNTERCLAIMS

Case No.: A-14-709372-C

Dept. No.: 31

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS PLAINTIFFS
ASHLEIGH PARK, DANIELLE
LAMAR, LILY SHEPARD, KARINA
STRELKOVA, STACIE ALLEN, AND
MICHAELA DEVINE AKA MOORE
THIRD AMENDED COMPLAINT
PURSUANT TO N.R.C.P. 12(b)(1) AND
N.R.C.P. 12(h)(3)**

**ORDER GRANTING DEFENDANT'S
MOTION TO STRIKE PLAINTIFFS'
RENEWED MOTION FOR CLASS
CERTIFICATION**

**ORDER DENYING PLAINTIFFS'
RENEWED MOTION FOR CLASS
CERTIFICATION**



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1 Plaintiffs, JACQUELINE FRANKLIN, ASHLEIGH PARK, LILY SHEPARD,
2 STACIE ALLEN, MICHAELA DEVINE, KARINA STREKLOVA, AND DANIELLE
3 LAMAR'S, individually and on behalf of all persons similarly situated (the "Plaintiffs")
4 RENEWED MOTION FOR CLASS CERTIFICATION, with LAUREN CALVERT, ESQ.
5 of MORRIS//ANDERSON, appearing on behalf of Plaintiffs, and Defendant, RUSSELL
6 ROAD FOOD AND BEVERAGE LLC'S ("Defendant") MOTION TO DISMISS
7 PLAINTIFFS' THIRD AMENDED COMPLAINT PURSUANT TO N.R.C.P. 12(b)(1)
8 AND N.R.C.P. 12(h)(3) and Defendant's MOTION TO STRIKE PLAINTIFFS'
9 RENEWED MOTION FOR CLASS CERTIFICATION, with JEFFERY A. BENDAVID,
10 ESQ. and STEPHANIE J. SMITH, ESQ. of MORAN BRANDON BENDAVID MORAN,
11 appearing for Defendant, came on for hearing and on July 11, 2017, in Department 31 of the
12 above-titled Court, with the Honorable Senior Judge Nancy M. Saitta presiding. The Court
13 having considered the pleadings, papers, and supplements thereto and filed herein, the
14 arguments of counsel, and good cause appearing finds and orders as follows:

15
16
17 **THE COURT FINDS** that Defendant's Motion to Dismiss Plaintiffs' Third
18 Amended Complaint pursuant to N.R.C.P. 12(b)(1) AND N.R.C.P. 12(h)(3), is GRANTED
19 as to Plaintiffs, Ashleigh Park, Danielle Lamar, Lily Shepard, Karina Strelkova, Stacie
20 Allen, and Michaela Devine aka Moore, based on the arguments set forth in Defendant's
21 Motion to Dismiss. Defendant's Motion to Dismiss Plaintiffs' Third Amended Complaint
22 pursuant to N.R.C.P. 12(b)(1) AND N.R.C.P. 12(h)(3), is Denied with respect to Plaintiff,
23 Jacqueline Franklin, only.
24
25
26
27
28



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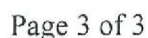
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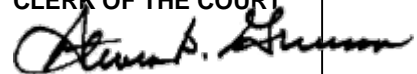
THE COURT FURTHER FINDS that Plaintiffs' Renewed Motion for Class Certification is DENIED, on the bases set forth in Defendant's Opposition to Plaintiffs' Renewed Motion for Class Certification.

HONORABLE JOANNA S. KISHNER
DISTRICT COURT JUDGE, DEPT. XXXI

MORRIS//ANDERSON

Attorneys for Plaintiffs





1 **NOE**

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

15 JACQUELINE FRANKLIN, ASHLEIGH
16 PARK, LILY SHEPARD, STACIE
17 ALLEN, MICHAELA DIVINE,
18 VERONICA VAN WOODSEN,
19 SAMANTHA JONES, KARINA
20 STRELKOVA, LASHONDA,
21 STEWART, DANIELLE LAMAR, and
22 DIRUBIN TAMAYO, individually, and
23 on behalf of a class of similarly
24 situated individuals,

25 Plaintiffs,

26 vs.

27 RUSSELL ROAD FOOD AND
28 BEVERAGE, LLC, a Nevada limited
Liability company (d/b/a CRAZY DOE
CLUB OWNER, I-X, ROE EMPLOYER,
I-X,

Defendants.

AND RELATED COUNTERCLAIMS

Case No.: A-14-709372-C

Dept. No.: 31

**NOTICE OF ENTRY OF
FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT and
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**



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1 Please take notice that the FINDINGS OF FACT AND CONCLUSIONS OF LAW
2 ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT and PLAINTIFF'S
3 MOTION FOR SUMMARY JUDGMENT was entered in the above entitled case by the
4 Honorable Joanna S. Kishner on the 3rd day of October, 2017.
5

6 A TRUE AND CORRECT COPY of the Order is attached hereto.

7 DATED this 12th day of October, 2017.

8 **MORAN BRANDON BENDAVID MORAN**

9
10 /s/ Jeffery A. Bendavid

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14
15 **KAMER ZUCKER ABBOTT**

16
17 /s/ Gregory J. Kamer

GREGORY J. KAMER, ESQ.

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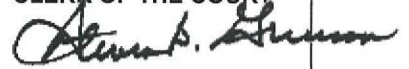
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18 *Attorneys for Defendant/Counterclaimant*

19 **DISTRICT COURT**
20 **CLARK COUNTY, NEVADA**

21 JACQUELINE FRANKLIN,
22 ASHLEIGH PARK, LILY SHEPARD,
23 STACIE ALLEN, MICHAELA DIVINE,
24 VERONICA VAN WOODSEN,
25 SAMANTHA JONES, KARINA
26 STRELKOVA, LASHONDA,
27 STEWART, DANIELLE LAMAR, and
28 DIRUBIN TAMAYO, individually, and
on behalf of a class of similarly
situated individuals,

Plaintiffs,

vs.

RUSSELL ROAD FOOD AND
BEVERAGE, LLC, a Nevada limited
Liability company (d/b/a CRAZY DOE
CLUB OWNER, I-X, ROE
EMPLOYER, I-X,

Defendants.

AND RELATED COUNTERCLAIMS

Case No.: A-14-709372-C

Dept. No.: 31

**[PROPOSED] FINDINGS OF FACT
AND CONCLUSIONS OF LAW ON
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

AND

**PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration



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1 Plaintiff, JACQUELINE FRANKLIN'S Motion for Summary Judgment on
2 Employee Status with LAUREN CALVERT, ESQ. of MORRIS//ANDERSON, appearing
3 on behalf of Plaintiff, and Defendant, RUSSELL ROAD FOOD AND BEVERAGE LLC
4 d/b/a CRAZY HORSE GENTLEMEN'S CLUB ("Defendant" and/or "Crazy Horse III")
5 Motion for Summary Judgment pursuant to NRCP 56, with JEFFERY A. BENDAVID,
6 ESQ. and STEPHANIE J. SMITH, ESQ. of MORAN BRANDON BENDAVID MORAN,
7 appearing for Defendant, having both come on for hearing and on August 17, 2017, at 9:30
8 a.m. in Department 31 of the above-titled Court, with the Honorable Judge Joanna Kishner
9 presiding.
10
11

12 PROCEDURAL HISTORY

13 The Parties' Motions for Summary Judgment were both filed on June 19, 2017, at
14 which time there were five remaining named Plaintiffs who still had a claim for allegedly
15 unpaid wages and unjust enrichment, and two remaining named Plaintiffs that had only,
16 unjust enrichment claims. The Parties filed their respective Oppositions, also addressing the
17 five remaining Plaintiffs. Subsequently, on July 11, 2017, Defendant's Motion to Dismiss all
18 Plaintiffs pursuant to lack of subject matter jurisdiction came on for hearing and was granted
19 with respect to all Plaintiffs, except for Jacqueline Franklin. Accordingly, the Reply Briefs
20 of the Parties dealt specifically with Jacqueline Franklin. At the time for hearing on the
21 Parties' respective motions for summary judgment, the Court determined it was considering
22 each Party's motion with respect to the employment status of Jacqueline Franklin.
23
24

25 As such, the Court having considered the pleadings, papers, and supplements thereto,
26 and the arguments of counsel, and good cause appearing makes the following findings of
27 fact and conclusions of law, and orders as follows:
28



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1 FINDINGS OF FACT

2 1. Plaintiff Franklin ("Plaintiff" and/or "Plaintiff Franklin") was an exotic
3 dancer/performer who performed at Defendant's venue.

4 2. Plaintiff Jacqueline Franklin possesses a social security number.

5 3. Plaintiff Franklin possessed a valid Nevada State business license during the time
6 she performed at Crazy Horse III, and had a Sheriff's card during the time she performed at
7 Crazy Horse III.
8

9 4. Plaintiff Franklin understood that having a Sheriff's card and Nevada State Business
10 License was a legal requirement for exotic dancers in Clark County, Nevada.
11

12 5. Plaintiff Franklin conceded that Defendant did not specifically instruct Plaintiff
13 Franklin on how to dance, or what style of dance she could perform, aside from the confines
14 of legal requirements, which Plaintiff was aware of, and agreed upon guidelines regarding
15 removing clothing since she was performing in an adult topless venue, as an exotic dancer.
16 Plaintiff Franklin further testified that she did whatever was comfortable for her while she
17 was performing on stage.
18

19 6. Plaintiff Franklin could perform lap dances how she wanted as long as her dancing
20 followed any legal requirements.

21 7. Plaintiff Franklin could choose her outfits and look, including any signature
22 accessories, as long as it also comported with legal requirements for exotic dancers, and
23 Plaintiff knew these requirements from performing as an exotic dancer at other venues.
24 Plaintiff Franklin testified that she already had many outfits from dancing at other venues
25 previously, and nobody at Crazy Horse III ever asked her or told her she should change
26 outfits. Plaintiff Franklin was in complete control of what she chose to wear at all times.
27
28



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1 8. Plaintiff Franklin was never required to wear any special costumes or accessories by
2 Defendant, and chose all of her own outfits and accessories, and chose her own stage name.

3 9. Plaintiff Franklin could consume alcohol while performing at Crazy Horse III, if she
4 chose to do so, or entirely refrain from drinking, which she did.

5 10. Defendant did not require Plaintiff Franklin to perform a certain number of lap
6 dances, or a quota of dances, and there was no minimum amount of VIP time she had to sell
7 to patrons. In fact, she could choose to never enter into the VIP areas and perform only floor
8 lap dances, or only perform for guests willing to purchase VIP time, such a choice was
9 entirely up to her.
10

11 11. A dancer could choose to pay a fee to remain off stage. Plaintiff Franklin had
12 complete control over whether she chose to pay a fee to avoid dancing on the stage. Plaintiff
13 Franklin also chose whether she performed at Crazy Horse III during times when there was a
14 higher, lower, or no house fee at all to utilize the club.
15

16 12. Plaintiff Franklin could choose to approach any number of patrons she chose while at
17 Crazy Horse III, and could decide how long she wanted to talk to a patron, if at all. In fact,
18 Plaintiff Franklin could choose to never talk to, or perform for, any patron while in
19 Defendant's venue, at her sole discretion.
20

21 13. Plaintiff Franklin never reported any amount of money she earned to anyone at
22 Crazy Horse III, and had no quota of money she had to earn set by Crazy Horse III.

23 14. Crazy Horse III did not keep track of cash payments from patrons to Plaintiff
24 Franklin.
25

26 15. Defendant did not require Plaintiff Franklin to sell bottles of alcohol to patrons aside
27
28



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1 from Crazy Horse III having certain VIP room beverage minimums, which patrons paid to
2 utilize VIP rooms.

3 16. Plaintiff Franklin completely controlled her own schedule and performances, and she
4 could choose whether or not she performed at Crazy Horse III on any given day, week,
5 month, or year, and was never required to perform any minimum or maximum number of
6 days, certain days or hours, or any specific time of day at Crazy Horse III. Plaintiff Franklin
7 had complete control of her schedule, and could modify it at any time, including when she
8 was at Defendant's venue. In fact, Plaintiff Franklin could choose to perform zero days, one
9 day or every day in a week or month.
10

11 17. Plaintiff Franklin could choose when to start performing at any time of day she
12 chose, per her agreement with Defendant, and did go in to perform at a wide variety of times
13 ranging between 7:45 p.m. and 1:06 a.m.
14

15 18. Plaintiff Franklin could choose to stay for any number of hours she desired, and
16 would stay for a varying amount of hours ranging from 1.07 hours to 12.33 hours, on the
17 days she chose to perform.
18

19 19. Plaintiff Franklin could leave Crazy Horse III whenever she chose to stop
20 performing, and despite her testimony that she was required to stay on Crazy Horse III's
21 premises a minimum of five (5) hours. She in fact performed for less than five hours
22 approximately eighteen (18) different times.
23

24 20. Plaintiff Franklin did not pay any fees or fines to leave prior to performing for any
25 length of time, and was never assessed any fines by Defendant.

26 21. Plaintiff Franklin did not have to pay out any mandatory tips to any of Defendant's
27 agents or employees.
28



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1 22. Plaintiff Jacqueline Franklin had a regular customer at one point in time, and would
2 choose to attend promotional events to save on paying house fees.

3 23. Plaintiff Franklin had no exclusivity to perform at Defendant's venue, and was
4 free to perform at any other venue, or engage in any kind of business relationship she chose,
5 whenever she chose to do so.
6

7 24. Plaintiff Franklin could take breaks whenever she chose, and did not have to report
8 or otherwise keep track of when she was taking a break or the length of those breaks, or
9 when she was finished with a break. Her breaks could be an hour or multiple hours if she
10 chose.
11

12 25. Plaintiff Franklin could use or cell phone or hang out in the dressing room area of the
13 Club for as long or as frequently as she wanted, should she choose to do so, unless she chose
14 not to pay the fee to forego dancing on stage.

15 26. Plaintiff Franklin was free to hire employees to assist her business of being
16 an exotic dancer, such as a hair stylist, dancing instructor, makeup artist, etc., and, although
17 she did not do so, whether or not she chose to do so was all within her discretion.
18

19 27. Plaintiff Franklin provided her own supplies, such as outfits and cosmetics, and it
20 was not necessary that she purchase all new outfits and supplies specifically for performing
21 at Defendant's venue.

22 28. Plaintiff Franklin negotiated directly with patrons of Crazy Horse III for payment for
23 lap dances, and/or for dancing in the VIP area of Crazy Horse III and would collect any cash
24 payments directly from customers.
25

26 29. Patrons who came in to Crazy Horse III had the option to purchase "dance dollars"
27
28



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1 from Defendant, which could be used to pay for dances from exotic dancers in Defendant's
2 club, including Plaintiff Franklin. However, any dancer, including Plaintiff Franklin could
3 refuse to be paid in "dance dollars."

4 30. Plaintiff Franklin made substantial and numerous capital investments prior to
5 performing at Crazy Horse III, including breast augmentation, facial injections, and veneers
6 on her teeth in order to enhance her appearance for exotic dancing. She also made capital
7 investments in outfits, cosmetics, hair, shoes, and accessories.
8

9 31. Plaintiff Franklin, as an exotic dancer, could have written off business expenses,
10 including but not necessarily limited to, house fees, clothing, accessories, hair, makeup,
11 nails, shoes, pouches for money, and food and alcohol, and vehicle mileage, although she
12 did not do so, since she testified that she did not file any tax returns
13

14 CONCLUSIONS OF LAW

15 1. NRS 608.0155 is applicable and appropriate to utilize in analyzing whether Plaintiff
16 Franklin was a presumptive independent contractor while she performed at Defendant's
17 venue.
18

19 2. The Court concluded that the Parties' respective motions for summary judgment
20 would be applicable to the only remaining Plaintiff, Jacqueline Franklin, as all other
21 Plaintiffs have been dismissed.

22 3. The Court concluded based on the Parties' respective motions for summary
23 judgment, that whether Plaintiff Franklin was or was not an employee of Defendant is an
24 issue of law, appropriate for determination by the Court.
25

26 4. There is no presumption, provided by statute or otherwise, that Plaintiff Franklin was
27 an employee.
28



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1 5. The purpose of NRS 608.0155, as expressed by the Nevada legislature has been to
2 create a retroactive definition of an independent contractor, whereas NRS 608 lacked such a
3 definition. Under NRS 608.0155, persons are "conclusively presumed to be an independent
4 contractor" if they meet certain criteria listed therein.

5
6 6. A party may not "create" a genuine issue of material fact simply by making general
7 allegations and conclusions. See *Wood v. Safeway*, 121 Nev. 724, 731, 121 P.3d 1026, 1030
8 (2005). Rather the Nevada Supreme Court declared, "[t]he nonmoving party must, by
9 affidavit or otherwise, set forth facts demonstrating the existence of a genuine issue for trial
10 or have summary judgment entered against him. The nonmoving party is not entitled to
11 build a case on the gossamer threads of whimsy, speculation, and conjecture." *Id.* at 732.
12 Accordingly, Plaintiff Franklin failed to set forth any triable genuine issues of material fact
13 to preclude summary judgment in favor of Defendant, as a matter of law
14

15 7. NRS 608.0155(1)(a) provides that a person must possess a social security number. It
16 is an undisputed material fact that Plaintiff Franklin has admitted to having, and possessed, a
17 social security number, and thereby met the criterion set forth in NRS 608.0155(1)(a), as a
18 matter of law.
19

20 8. NRS 608.0155(1)(b) requires presumptive independent contractors to hold "any
21 necessary state business registration or local business license and to maintain any necessary
22 occupational license, insurance or bonding..." It is an undisputed material fact that Plaintiff
23 Franklin, per her agreement with Defendant, and per her own understanding, was required to
24 abide by all applicable laws of the State of Nevada and County of Clark, and in fact did so
25 by having a Nevada State Business License and Sheriff's card, which she testified were
26



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1 necessary for all exotic dancers performing at gentlemen's clubs in Clark County, Nevada,
2 thereby satisfying the criterion set forth in NRS 608.0155(1)(b).

3 9. NRS 608.0155(1)(c), requires a person to satisfy three of the five following
4 criteria:

5 (1) Notwithstanding the exercise of any control necessary to comply with any
6 statutory, regulatory or contractual obligations, the person has control and
7 discretion over the means and manner of the performance of any work and the
8 result of the work, rather than the means or manner by which the work is
9 performed, is the primary element bargained for by the principal in the contract.

10 (2) Except for an agreement with the principal relating to the completion
11 schedule, range of work hours or, if the work contracted for is entertainment, the
12 time such entertainment is to be presented, the person has control over the time
13 the work is performed.

14 (3) The person is not required to work exclusively for one principal unless:

15 (I) A law, regulation or ordinance prohibits the person from providing
16 services to more than one principal; or

17 (II) The person has entered into a written contract to provide services to
18 only one principal for a limited period.

19 (4) The person is free to hire employees to assist with the work.

20 (5) The person contributes a substantial investment of capital in the business of
21 the person, including, without limitation, the:

22 (I) Purchase or lease of ordinary tools, material and equipment regardless
23 of source;

24 (II) Obtaining of a license or other permission from the principal to access
25 any work space of the principal to perform the work for which the
26 person was engaged; and

27 (III) Lease of any work space from the principal required to perform the
28 work for which the person was engaged.

Based on the foregoing Findings of Fact, the Court concludes that Plaintiff Franklin
satisfied at least three (3) of the five (5) remaining criteria as set forth in NRS
608.0155(c)(1-5), thereby presumptively making her an independent contractor.

10. Based on the foregoing Findings of Fact, and the testimony of Plaintiff Franklin the
Court concludes that Plaintiff Franklin in fact satisfied all five of the criteria set forth in
NRS 608.0155(c)(1-5).

11. NRS 608.0155(1)(c)(1) provides, in pertinent part, that, "[N]otwithstanding the



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1 exercise of any control necessary to comply with any control necessary to comply with any
2 statutory, regulatory or contractual obligations, the person has control and discretion over
3 the means and manner of the performance of any work and the result of the work, rather
4 than the means or manner by which the work is performed...”

5
6 12. Plaintiff Franklin’s own testimony concludes her being an independent contractor.
7 The Court found testimony that Plaintiff Franklin had to follow some guidelines, not to be a
8 material fact which would preclude summary judgment. For example, could have paid a fee
9 to avoid dancing on stage entirely thereby avoiding taking her clothes off pursuant to certain
10 guidelines, akin to other independent contractors agreeing to provide certain services but not
11 others or having to do things in a certain order, and as such, this type of discretion lies in
12 favor of her being an independent contractor, in accordance with NRS 608.0155(1)(c)(1).
13

14 13. Additionally, it is an undisputed material fact that Plaintiff Franklin had complete
15 control and discretion over the means and manner of the performance of her work and the
16 result of her work, as the undisputed material facts and Findings of Fact, are that Defendant
17 did not instruct her on how to dance, Plaintiff Franklin could perform as many lap dances as
18 she wanted or perform none if she chose, Plaintiff Franklin had the option of paying a fee to
19 avoid performing on stage, Plaintiff Franklin could approach any number of patrons she
20 chose and talk to them for as long as she chose. Additionally, it is undisputed material fact
21 that Defendant did not keep track of cash payments to Plaintiff Franklin, did not require
22 Plaintiff Franklin to tip any of its employees or agents, and did not otherwise require
23 Plaintiff Franklin to sell alcohol or VIP time, or require Plaintiff Franklin to otherwise
24 market it. It is an undisputed material fact that Plaintiff Jacqueline Franklin had a regular
25 customer at one point in time, and would choose to attend promotional events to save on
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28



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1 paying house fees. Plaintiff Franklin could also take breaks whenever she chose for however
2 long she chose to do so, and did not report those breaks to anyone. Furthermore, Defendant
3 did not fine Plaintiff Franklin, Plaintiff Franklin was free to refuse to be paid in "dance
4 dollars", and Plaintiff Franklin could choose her outfits and accessories, as well as her stage
5 name. As such, Plaintiff Franklin satisfies the criterion set forth in NRS 608.0155(1)(c)(1).
6

7 14. NRS 608.0155(1)(c)(2) provides that, "[E]xcept for an agreement with the principal
8 relating to the completion schedule, range of work hours or, if the work contracted for is
9 entertainment, the time such entertainment is to be presented, the person has control over
10 the time the work is performed."
11

12 15. It is an undisputed material fact that Plaintiff could choose whether or not she
13 performed at Crazy Horse III on any given day or week, and/or at any given time, and could
14 and did choose a wide variety of days, weeks, hours and times to perform and/or cease
15 performing on any given day, and Plaintiff Franklin had complete control, at all times, to
16 modify her own schedule, as she saw fit, and thereby, satisfies the criterion set forth by NRS
17 608.0155(1)(c)(2), as a matter of law.
18

19 16. NRS 608.0155(1)(c)(3) provides in pertinent part, "[T]he person is not required to
20 work exclusively for one principal unless..." Here, it is an undisputed material fact that
21 Plaintiff Franklin was not required to perform exclusively at Defendant's venue, as there
22 was a non-exclusivity clause in the Agreement she had with Defendant, and she testified to
23 that she was not required to perform exclusively at Defendant's venue, therefore she
24 satisfies the criterion set forth by NRS 608.0155(1)(c)(3), as a matter of law.
25

26 17. The fact that Plaintiff Franklin's testimony indicated that she individually chose to
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28



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1 usually perform only at Crazy Horse III gentlemen's club is not a factor in determining
2 whether she satisfies the criterion set forth by NRS 608.0155(1)(c)(3), as she testified that it
3 was her choice.

4 18. NRS 608.0155(1)(c)(4), provides that, "[T]he person is free to hire employees to
5 assist with the work." Based on the undisputed material facts, and Plaintiff Franklin's own
6 testimony, she was free to hire employees to assist her business of being an exotic dancer,
7 such as a hair stylist, dancing instructor, makeup artist, etc., although she did not do so, and
8 whether or not she chose to do so was entirely within her discretion. Therefore, Plaintiff
9 meets the criterion set forth by NRS 608.0155(1)(c)(4), as a matter of law.
10

11 19. Whether or not Plaintiff Franklin actually chose to hire any employees to assist her
12 business is not a factor in assessing whether she satisfies NRS 608.0155(1)(c)(4).
13

14 20. NRS 608.0155(1)(c)(5), requires a person to contribute a "substantial investment of
15 capital in the business of the person..." including the "[P]urchase or lease of ordinary tools,
16 material and equipment regardless of source" and "[L]ease of any work space from the
17 principal required to perform the work for which the person was engaged."
18

19 21. It is an undisputed material fact that Plaintiff Franklin had made a substantial
20 investment of capital in being an exotic dancer, based on her own testimony regarding
21 paying for veneers, facial injections, and breast implants, along with other items such as,
22 outfits and cosmetics, and business fees, prior to performing at Defendant's venue, along
23 with paying house fees at Defendant's venue, and therefore Plaintiff satisfies the criterion
24 set forth in NRS 608.0155(1)(c)(5), as a matter of law.
25

26 22. The fact that Plaintiff Franklin's investment of capital in her body as part of the
27
28



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1 “tools of the trade” for exotic dancing, including breast augmentation and veneers, was
2 made prior to her performing at Defendant’s venue was not a factor in determining whether
3 she met the criterion set forth in NRS 608.0155(1)(c)(5). Plaintiff Franklin clearly
4 substantially invested in being an exotic dancer, and there is no statutory requirement that an
5 independent contractor must invest substantial capital prior to commencing any business
6 with each new principal.
7

8 23. Plaintiff Franklin’s substantial investment of capital to aid in her effectiveness at
9 earning money as an exotic dancer, and continue as an exotic dancer, if she chooses to do so,
10 further satisfies NRS 608.0155(1)(c)(5), as a matter of law.
11

12 24. There is no genuine issue of material fact that Plaintiff Franklin satisfied all of the
13 requisite criteria delineated under NRS 608.0155 to be presumed an independent contractor,
14 and as a matter of law, the Court concludes that Plaintiff Franklin is an independent
15 contractor.
16

17 25. Since Plaintiff is, as a matter of law, an independent contractor, she cannot assert a
18 claim for unpaid wages pursuant to NEV. CONST., Art. XV § 16 (A), as it only applies to
19 wage requirements on “employers” and “employees.”
20

21 26. Based on Plaintiff Franklin’s status as an independent contractor, her
22 claim for Unjust Enrichment fails, as a matter of law, as it was premised on her being an
23 employee.
24

25 27. Plaintiff Franklin failed to set forth or raise any genuine issues of material fact
26 which would preclude granting summary judgment in favor of Defendant, as a matter of
27 law.
28

28 28. Based on the above Findings of Fact, no material issues of fact remain in dispute



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1 due to the statutory construction and the pleadings, and therefore summary judgment in
2 favor of Defendant is appropriate, as a matter of law.

3 29. Based upon the Court's Findings of Fact, and analysis of those facts in light of NRS
4 608.0155, Plaintiff's Motion for Summary Judgment on Employee Status, must be denied,
5 as a matter of law.
6

7 **IT IS THEREFORE HEREBY ORDERED** that Defendant's Motion for Summary
8 Judgment is GRANTED in its entirety.

9 **IT IS THEREFORE FURTHER ORDERED** that Plaintiff's Motion for Summary
10 Judgment on Employee Status is DENIED with Prejudice.
11

12 DATED this 19 day of September, 2017.
13

14  JOANNA S. KISHNER
15 HONORABLE JOANNA S. KISHNER
16 DISTRICT COURT JUDGE, DEPT. XXXI

17 Respectfully Submitted by:
18 **MORAN BRANDON BENDAVID MORAN**

Approved as to form:
MORRIS//ANDERSON

19
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