

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

JACQUELINE FRANKLIN, ASHLEIGH  
PARK, LILLY SHEPARD, STACIE  
ALLEN, MICHAELA DEVINE,  
KARINA STRELKOVA and DANIELLE  
LAMAR, INDIVIDUALLY, AND ON  
BEHALF OF A CLASS OF  
SIMILARLY SITUATED  
INDIVIDUALS,

Appellants,

vs.

RUSSELL ROAD FOOD AND  
BEVERAGE, LLC,

Respondents.

Case No. 74332

District Court Case No. A-14-  
709372-C

Electronically Filed  
Sep 05 2018 10:53 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
Appeal from the Eighth Judicial  
District Court, Clark County,  
Nevada

---

**JOINT APPENDIX – VOLUME III**

---

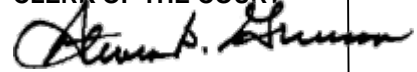
P. Andrew Sterling (NV Bar No. 13769)  
Michael J. Rusing (AZ Bar No. 6617 – *Admitted Pro Hac Vice*)  
RUSING LOPEZ & LIZARDI, P.L.L.C.  
6363 North Swan Road, Suite 151  
Tucson, Arizona 85718  
Telephone: (520) 792-4800  
Email: [asterling@rllaz.com](mailto:asterling@rllaz.com)  
[mrusing@rllaz.com](mailto:mrusing@rllaz.com)

Ryan M. Anderson (NV Bar No. 11040)  
Kimball Jones (NV Bar No. 12982)  
MORRIS ANDERSON  
716 S. Jones Blvd.  
Las Vegas, NV 89107  
Telephone: (702) 333-1111  
Email: [ryan@morrisandresonlaw.com](mailto:ryan@morrisandresonlaw.com)  
[kimball@bighornlaw.com](mailto:kimball@bighornlaw.com)

Attorneys for Appellants

<b>DOCUMENTS</b>		
<b>DESCRIPTION</b>	<b>VOLUME</b>	<b>PAGE</b>
Answer to Amended Complaint	I	8
Answer to Counterclaim	I	38
Appendix of Exhibits to Motion for Summary Judgment Pursuant to N.R.C.P. 56	IV-V	697
Appendix of Exhibits to Opposition to Motion for Summary Judgment on Employee Status	VI	1126
Defendant's Supplemental Brief in Opposition to Class Cert Motion	I	173
Defendant's Supplemental Brief in Support of Summary Judgment Against Allen and Moore	III	496
Motion for Class Certification	I	43
Motion for Summary Judgment on Counterclaims	II	234
Motion for Summary Judgment on Employee Status	III	558
Motion for Summary Judgment Pursuant to N.R.C.P. 56	IV	668
Motion to Dismiss Complaint	II	317
Motion to Strike New Evidence Raised in Reply	I	142
Motion to Strike Renewed Motion for Class Certification	V	1021
Notice of Appeal	XII	2523
Notice of Entry of and Findings of Fact and Conclusions of Law on MSJ on Counterclaims	XII	2380
Notice of Entry of and Findings of Fact and Conclusions of Law on Summary Judgment	XII	2507
Notice of Entry of and Order Denying Plaintiffs' Motion for Class Certification	II	270
Notice of Entry of and Order Granting Motion to Dismiss and Motion to Strike Renewed Motion for Class Certification	XII	2502
Opposition to Motion for Class Certification	I	60
Opposition to Motion for Summary Judgment on Counterclaims	II	276
Opposition to Motion for Summary Judgment on Employee Status	VI	1297
Opposition to Motion for Summary Judgment Pursuant to N.R.C.P. 56	VII-XI	1325
Opposition to Motion to Dismiss	III	546
Opposition to Motion to Strike	I	150
Opposition to Motion to Strike Renewed Motion for Class Certification	V	1089
Opposition to Renewed Motion for Class Certification	V	1037
Plaintiffs' Supplemental Brief in Opposition to Summary Judgment Against Moore and Allen	III	535
Plaintiffs' Supplemental Brief in Support of Class Cert Motion	I	158

Plaintiffs' Supplemental Reply Brief in Support of Class Cert Motion	I	210
Renewed Motion for Class Certification	III	419
Reply in Support of Motion for Class Certification	I	120
Reply in Support of Motion to Dismiss	V	1102
Reply in Support of Motion to Strike Renewed Motion for Class Certification	V	1121
Reply in Support of Renewed Motion for Class Certification	V	1078
Reply in Support of Summary Judgment on Counterclaims	II	305
Reply in Support of Summary Judgment on Employee Status	XII	2386
Reply in Support of Summary Judgment Pursuant to N.R.C.P. 56	XII	2444
Third Amended Complaint	I	1
<b>TRANSCRIPTS</b>		
<b>DESCRIPTION</b>	<b>VOLUME</b>	<b>PAGE</b>
Transcript - August 17, 2017	XII	2481
Transcript - July 11, 2017	XII	2353
Transcript - March 16, 2017	I	217



**MOTN**

RYAN M. ANDERSON, ESQ.

Nevada Bar No. 11040

LAUREN CALVERT, ESQ.

Nevada Bar No. 10534

**MORRIS ANDERSON**

716 S. Jones Blvd.

Las Vegas, Nevada 89107

Phone: (702) 333-1111

Email: [lauren@morrisandersonlaw.com](mailto:lauren@morrisandersonlaw.com)

P. ANDREW STERLING, ESQ.

Nevada Bar No. 13769

MICHAEL J. RUSING, ESQ.

Arizona Bar No. 6617 (*Admitted Pro Hac Vice*)

**RUSING LOPEZ & LIZARDI, PLLC**

6363 North Swan Road, Suite 151

Tucson, Arizona 85718

Phone: (520) 792-4800

Email: [asterling@rllaz.com](mailto:asterling@rllaz.com)

[mrusing@rllaz.com](mailto:mrusing@rllaz.com)

*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JACQUELINE FRANKLIN, ASHLEIGH  
PARK, LILY SHEPARD, STACIE ALLEN,  
MICHAELA DEVINE, SAMANTHA JONES,  
KARINA STRELKOVA, DANIELLE LAMAR  
individually, and on behalf of Class of similarly  
situated individuals,

Plaintiffs,

v.

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

Defendants.

CASE NO.: A-14-709372-C

DEPT. NO.: XXXI

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

1 Plaintiffs, individually and on behalf of all persons similarly situated, hereby move the  
2 Honorable Court for an Order Certifying this Action as a Class Action under NRCP 23(b)(3),  
3 designating Plaintiffs as the Class Representatives, and Appointing Plaintiffs' Attorneys of Record  
4 as Class Counsel.  
5

6 This Motion is based upon the following Memorandum of Points and Authorities and any  
7 oral argument this Court may wish to entertain at the hearing of this Motion.

8 DATED this 7th day of June, 2017.

9 **MORRIS ANDERSON**

10 By: /s/ Lauren Calvert

11 **RYAN M. ANDERSON, ESQ.**

12 Nevada Bar No.: 11040

13 **LAUREN CALVERT, ESQ.**

14 Nevada Bar No.: 10534

716 S. Jones Blvd.

Las Vegas, Nevada 89107

15 **P. ANDREW STERLING, ESQ.**

16 Nevada Bar No.: 13769

17 **MICHAEL J. RUSING, ESQ.**

AZ Bar No.: 6617 (*Admitted Pro Hac Vice*)

18 **RUSING LOPEZ & LIZARDI, PLLC**

6363 N. Swan Road, Ste. 151

19 Tucson, AZ 85718

20 *Attorneys for Plaintiffs*  
21  
22  
23  
24  
25  
26  
27  
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

YOU WILL PLEASE TAKE NOTICE that the foregoing **MOTION** will come on for  
hearing before the above entitled Court on the 11 day of JULY, 2017, at 9:00A  
   .m., or as soon thereafter as counsel can be heard.

**MORRIS ANDERSON**

By: /s/ Lauren Calvert  
**RYAN M. ANDERSON, ESQ.**  
 Nevada Bar No.: 11040  
**LAUREN CALVERT, ESQ.**  
 Nevada Bar No.: 10534  
 716 S. Jones Blvd.  
 Las Vegas, Nevada 89107

P. ANDREW STERLING, ESQ.  
 Nevada Bar No.: 13769  
 MICHAEL J. RUSING, ESQ.  
 AZ Bar No.: 6617 (*Admitted Pro Hac Vice*)  
**RUSING LOPEZ & LIZARDI, PLLC**  
 6363 N. Swan Road, Ste. 151  
 Tucson, AZ 85718

*Attorneys for Plaintiffs*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs previously moved this Honorable Court under NRCP 23(a) and 23(b)(3) to certify  
3 the following class: “All persons who have worked at the Club as dancers at any time on or after  
4 November 2, 2010 and going forward until the entry of judgment in this matter.” The Court in its  
5 April 6, 2017 order denying Plaintiffs’ class certification motion without prejudice recognized “the  
6 low threshold with regards to class certification” but nevertheless determined that “the potential  
7 class representatives’ own statements made as part of their individual depositions, in themselves, do  
8 not meet the standard for class representation at this juncture.” Order at 3:19-20. *See also id.* at 3:25-  
9 4:2 (concluding certain deposition testimony indicates Plaintiffs not “similarly situated to the very  
10 class they are seeking to represent.”).

11  
12 The Court in its Order presumably was referencing deposition testimony highlighted in  
13 Defendants’ Supplemental Brief opposing class certification. Defendants therein noted that Plaintiff  
14 Karina Strelkova testified to filing an income tax return for earnings from self-employment whereas  
15 Plaintiff Jacqueline Franklin testified that she never filed any income taxes. Def. Supp. Brief at 10:8-  
16 11:20. Defendants argued that this difference in tax filing impacts whether or not a particular dancer  
17 meets the requirements for independent contractor status set forth in NRS 608.0155(1)(a) (asking  
18 whether “the person possesses or has applied for an employer identification number or social  
19 security number or has filed an income tax return for a business or earnings from self-employment  
20 with the Internal Revenue Service in the previous year”). To address this concern (and to account  
21 for the different statute of limitations for each claim) Plaintiffs propose the following amended  
22 subclass definitions:  
23  
24

- 25  
26 • For Count One (Minimum Wage Amendment claim): All persons who possess a social  
27 security number who have worked at the Club as dancers at any time on or after  
28 November 2, 2012 and going forward until the entry of judgment in this matter.”

- 1
- 2
- 3
- 4
- 5
- For Count Two (Unjust Enrichment claim): All persons who possess a social security number who have worked at the Club as dancers at any time on or after November 2, 2010 and going forward until the entry of judgment in this matter.”

6 Plaintiffs Park, Lamar, Franklin, Shepard and Strelkova are members of both revised  
7 proposed subclasses and thus are similarly situated to the very class they are seeking to represent.  
8 *See* Declarations, attached as “**Ex. A-1 to A-4.**” Plaintiffs Moore and Allen are members of the  
9 revised proposed subclass for Count Two. *See* Declarations, attached as “**Ex. A-5 to A-6.**”  
10 Defendant’s motion for summary judgment on the claims of Moore and Allen is currently pending.  
11

12 This discrepancy with respect to tax filing status revealed in deposition testimony was the  
13 only defect precluding class certification identified by the Court in its order. Because the proposed  
14 amended class definitions and supporting declarations address this concern completely, Plaintiffs in  
15 the interests of efficiency hereby incorporate by reference the original class certification motion  
16 (“**Ex. B**”), reply (“**Ex. C**”), and supplemental brief (“**Ex. D**”).  
17

18 For the foregoing reasons, the Court should enter an order certifying under NRCP 23(a)  
19 and 23(b)(3) the classes defined herein, and designate Plaintiffs as class representatives and the  
20 undersigned as class counsel.

21 **CONCLUSION**

22 For the foregoing reasons, Plaintiffs respectfully request that this Court enter an order  
23 certifying under NRCP 23(b)(3) the class as defined herein in, and designating Plaintiffs as class  
24 representatives and the undersigned counsel as class counsel.  
25

26 ///

27 ///

28 ///



1 DATED this 7th day of June, 2017.

2 **MORRIS ANDERSON**

3 By: /s/ Lauren Calvert

4 **RYAN M. ANDERSON, ESQ.**

5 Nevada Bar No. 11040

6 **LAUREN CALVERT, ESQ.**

7 Nevada Bar No.: 10534

8 716 S. Jones Blvd.

9 Las Vegas, Nevada 89107

10 *Attorneys for Plaintiffs*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of  
3 **MORRIS ANDERSON**, and on the 7th day of June, 2017, I served the foregoing ***PLAINTIFFS'***  
4 ***RENEWED MOTION FOR CLASS CERTIFICATION*** as follows:

5 ☒ Electronic Service – By serving a copy thereof through the Court’s electronic  
6 service system; and/or

7 ☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage  
8 prepaid and addressed as listed below; and/or

9 ☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile  
10 number(s) shown below and in the confirmation sheet filed herewith. Consent to  
11 service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by  
12 facsimile transmission is made in writing and sent to the sender via facsimile within  
24 hours of receipt of this Certificate of Service.

12 Gregory J. Kamer, Esq.  
13 KAMER ZUCKER ABBOTT  
14 3000 W. Charleston Blvd., Suite 3  
Las Vegas, Nevada 89102

15 Jeffery A. Bendavid, Esq.  
16 MORAN BRANDON BENDAVID MORAN  
17 630 S. 4th Street  
Las Vegas, Nevada 89101

18 *Attorneys for Defendants*

19  
20 /s/ Erickson Finch  
21 An employee/agent of **MORRIS//ANDERSON**  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT “A”**

# **EXHIBIT “A-1”**

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1. I possess a social security number.
2. I have worked at the Club as a dancer many times after November 2, 2010.
3. I have worked at the Club as a dancer many times after November 2, 2012.

Dated this 19<sup>th</sup> day of May, 2017.

*Ashleigh Park*  
ASHLEIGH PARK

# **EXHIBIT “A-2”**

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1. I possess a social security number.
2. I have worked at the Club as a dancer many times after November 2, 2010.
3. I have worked at the Club as a dancer many times after November 2, 2012.

De 2

**DANIELLE LAMAR**

# **EXHIBIT “A-3”**



DECLARATION OF JACQUELINE FRANKLIN

I, JACQUELINE FRANKLIN, Plaintiff in Case No.: A-14-709372-C, currently before the Eighth Judicial District Court, declare as follows:

1. I possess a social security number.
2. I have worked at the Club as a dancer many times after November 2, 2010.
3. I have worked at the Club as a dancer many times after November 2, 2012.

Dated this 23 day of May, 2017.



**JACQUELINE FRANKLIN**

Page 1 of 1

# **EXHIBIT “A-4”**

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1. I possess a social security number.
2. I have worked at the Club as a dancer many times after November 2, 2012.

Dated this 31 day of May, 2017.

  
**KARINA STRELKOVA**

# **EXHIBIT “A-5”**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DECLARATION OF MICHAELA DIVINE**

I, MICHAELA DIVINE, Plaintiff in Case No.: A-14-709372-C, currently before the Eighth Judicial District Court, declare as follows:

1. I possess a social security number.
2. I have worked at the Club as a dancer many times after November 2, 2010.

Dated this 18 day of May, 2017.

  
\_\_\_\_\_  
**MICHAELA DIVINE**

# **EXHIBIT “A-6”**

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Judicial District Court, declare as follows:

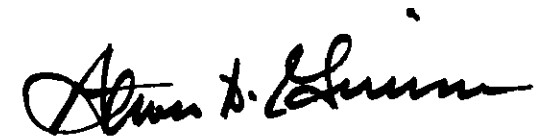
- 5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

8  
9

10

# **EXHIBIT “B”**





CLERK OF THE COURT

**MOTN**

Ryan M. Anderson, Esq.

Nevada Bar No.: 11040

Daniel R. Price, Esq.

Nevada Bar No.: 13564

**MORRIS//ANDERSON**

716 S. Jones Blvd.

Las Vegas, Nevada 89107

Phone: (702) 333-1111

Email: [daniel@morrisandersonlaw.com](mailto:daniel@morrisandersonlaw.com)

P. Andrew Sterling, Esq.

Nevada Bar No.: 13769

Michael J. Rusing, Esq.

Arizona Bar No.: 6617 (*Admitted Pro Hac Vice*)

**RUSING LOPEZ & LIZARDI, PLLC**

6363 North Swan Road, Suite 151

Tucson, Arizona 85718

Phone: (520) 792-4800

Email: [asterling@rllaz.com](mailto:asterling@rllaz.com)

[mrusing@rllaz.com](mailto:mrusing@rllaz.com)

*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JACQUELINE FRANKLIN, ASHLEIGH  
PARK, LILY SHEPARD, STACIE  
ALLEN, MICHAELA DIVINE,  
VERONICA VAN WOODSEN,  
SAMANTHA JONES, KARINA  
STRELKOVA, LASHONDA STEWART,  
DANIELLE LAMAR and DIRUBIN  
TAMAYO individually, and on behalf of  
Class of similarly situated individuals,

Plaintiffs,

v.

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

Defendants.

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

**PLAINTIFFS' MOTION FOR CLASS  
CERTIFICATION**

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

- 2
- 3
- 4
- 5

6  
7

8

Q

10

10

11

11

12

12

13

14

14

15

15  
16

16

16  
1717  
1818  
1918  
19

19

19  
20

20  
21

20

21

21  
2221  
2222  
2322  
23  
2423  
2423  
24

24

24

**NOTICE OF MOTION**

To: ALL PARTIES AND THEIR COUNSEL OF RECORD

YOU WILL PLEASE TAKE NOTICE that the foregoing **MOTION** will come on for hearing before the above entitled Court on the 31 day of May, 2016, at 9 : 00 A.m., or as soon thereafter as counsel can be heard.

DATED this 26th day of April, 2016.

**MORRIS//ANDERSON**

By: /s/ Daniel R. Price

RYAN M. ANDERSON, ESQ.

Nevada Bar No.: 11040

DANIEL R. PRICE, ESQ.

Nevada Bar No.: 13564

716 S. Jones Blvd.

Las Vegas, Nevada 89107

P. Andrew Sterling, Esq.

Nevada Bar No.: 13769

Michael J. Rusing, Esq.

Arizona Bar No.: 6617 (*Admitted Pro Hac Vice*)

**RUSING LOPEZ & LIZARDI, PLLC**

6363 North Swan Road, Suite 151

Tucson, Arizona 85718

*Attorneys for Plaintiff*

## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

This is a proposed class action by exotic dancers against the owners of Crazy Horse III Gentlemen's Club (the "Club"), a Las Vegas strip club, for failure to pay a minimum hourly wage as required by Nevada's constitution (Count 1) and for unjust enrichment (Count 2). The original complaint was filed on November 4, 2014. The operative Third Amended Complaint ("3AC") was filed on October 2, 2015. The applicable statute of limitations is two years for the minimum wage claim and four years for the unjust enrichment claim. *See* NRS 608.260 and 11.190(2)(c). Plaintiffs propose the following class:

**All persons who work or have worked at the Club as dancers at any time on or after November 2, 2010 and going forward until the entry of judgment in this action.**

This case, which is similar to many employee misclassification cases that have been certified as class actions across the country (including many by exotic dancers against the clubs in which they work), is particularly suited for certification under NRCP 23(b)(3) because (1) questions of law or fact common to the members of the class predominate over any questions affecting only individual members, (2) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, and (3) a class action would not prejudice Defendants' rights in any way. *See Deal v. 999 Lakeshore Association*, 94 Nev. 301, 306, 579 P.2d 775, 778-79 (1978) ("[T]he determination to use the class action is a discretionary function wherein the district court must pragmatically determine whether it is better to proceed as a single action, or many individual actions in order to redress a single fundamental wrong.").

### **II. FACTUAL BACKGROUND<sup>1</sup>**

---

<sup>1</sup> "In analyzing whether it should certify a class, the court should generally accept the allegations of the complaint as true. An extensive evidentiary showing is not required." *Meyer v. District Court*, 110 Nev. 1357, 1364, 885 P.2d 622, 626 (1994) (citations omitted).

1 Defendants are the owners and operators of the Club (3AC at ¶¶3-5). Plaintiffs worked as  
2 dancers at Defendants' strip club at various times during the class period (*id.* at ¶8). At no time  
3 were dancers paid any wages by Defendants (*id.* at ¶29). To the contrary, Defendants charged their  
4 dancers a fee to perform at the club, required dancers to make regular payments to management  
5 staff, the disc jockey, and other employees, and assessed fines against the dancers purportedly in  
6 order to enforce various club rules (*id.* at ¶¶30-33). This system has enabled Defendants to benefit  
7 for years from labor that not only is free, but that pays to work. It is a lucrative business model, but  
8 it is illegal and exploitative. The law is clear: exotic dancers are a club's employees and are  
9 entitled to all constitutional and statutory rights flowing therefrom, including a minimum wage.  
10 *See Terry v. Sapphire Gentlemen's Club*, 130 Nev. Adv. Op. 87, 336 P.3d 951, 954 (2014), *reh'g*  
11 *denied* (Jan. 22, 2015) (holding exotic dancers are club's employees as a matter of law and noting  
12 this decision "is in accord with the great weight of authority" across the country).

### 13 **III. ARGUMENT**

#### 14 **A. Rule 23 is Favored and Liberally Construed for Claims of This Nature**

15 The Nevada Supreme Court has noted the valuable function of class actions, and Nevada's  
16 strong public policy in favor of them. *See Picardi v. Eighth Judicial Dist. Court of State, ex rel.*  
17 *Cnty. of Clark*, 251 P.3d 723, 727 (Nev. 2011) ("class actions serve a valuable function in  
18 Nevada's judicial system by increasing efficiency because the courts do not have to use their  
19 limited resources deciding a litany of cases that stem from a single incident and present similar  
20 issues.").

21 A class action is particularly appropriate in cases, like this one, that seek to enforce  
22 employment laws. *Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D. 443, 451 (E.D. Cal. 2013)  
23 (noting "public policy supports using class actions to enforce statutes that focus on the workplace).  
24 *See also St. Marie v. Eastern RR Assn.*, 72 F.R.D. 443, 449 (S.D.N.Y. 1976) ("[T]he risks entailed  
in suing one's employer are such that the few hardy souls who come forward should be permitted

1 to speak for others when the vocal ones are otherwise fully qualified”). As such, wage and  
2 employee misclassification actions against employers regularly are certified as class actions. *See*  
3 *Ramirez v. Riverbay Corp.*, 39 F.Supp.3d 354, 364 (S.D.N.Y.2014) (collecting cases).

4 Courts in Nevada and across the country routinely have certified class actions under Rule  
5 23(b)(3) in employment misclassification cases by dancers against strip clubs. *See* Order Granting  
6 Motion to Re-certify Class in *Terry v. Sapphire Gentlemen’s Club*, Case No. A602800 (attached as  
7 **Exhibit 1**). *See also* *Espinoza v. Galardi S. Enterprises, Inc.*, 2016 WL 127586, (S.D. Fla. Jan. 11,  
8 2016), *Flynn v. N.Y. Dolls Gentlemen's Club*, 2014 WL 4980380 (S.D.N.Y. Oct. 6, 2014); *In re*  
9 *Penthouse Exec. Club Comp. Litig.*, 2014 WL 185628 (S.D.N.Y. Jan. 14, 2014); *Ruffin v. Entm't of*  
10 *the E. Panhandle*, 2012 WL 5472165 (N.D. W. Va. Nov. 9, 2012); *Trauth v. Spearmint Rhino Cos.*  
11 *Worldwide, Inc.*, 2012 WL 4755682 (C.D. Cal. Oct. 5, 2012); *Hart v. Rick's Cabaret Int'l Inc.*,  
12 2010 WL 5297221 (S.D.N.Y. Dec. 20, 2010). As the court noted in the *Espinoza* case,  
13 “Defendants have not cited to any decision with different results — denying the Rule 23 class  
14 certification motion. And the Court has not been able to uncover one either. To be sure, the above  
15 cases are not binding on this Court. But they are persuasive authority.” *Espinoza*, 2016 WL  
16 127586, at \*3.

17 **B. The Rule 23(a) Prerequisites Of Numerosity, Commonality, Typicality And**  
18 **Adequacy Are Met**

19 **1. Numerosity**

20 Rule 23(a)(1) requires that the class be so numerous that joinder of all class members is  
21 impracticable. The numerosity requirement is a “generally low hurdle,” and “a plaintiff need not  
22 show the precise number of members in the class.” *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256,  
23 1267 (11th Cir. 2009). “A putative class of forty or more generally will be found ‘numerous.’”  
24 *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 847, 124 P.3d 530, 537 (2005). *See also*  
*Newberg* § 3:12 (“As a general guideline . . . a class that encompasses fewer than 20 members will

1 likely not be certified absent other indications of impracticability of joinder, while a class of 40 or  
2 more members raises a presumption of impracticability of joinder based on numbers alone.”).

3 Crazy Horse III, one of the biggest Las Vegas strip clubs, is open 24 hours a day, seven  
4 days a week. See <http://crazyhorse3.com/faq/> (last visited April 20, 2016). Plaintiffs, based on their  
5 personal experiences, conservatively estimate that scores if not hundreds of dancers work at the  
6 Club in any given week, and that hundreds if not thousands of dancers have worked there during  
7 the class period. This estimate is confirmed on the Club’s website. See  
8 <https://crazyhorse3.lyticket.com/crazy-deals/> (claiming Club offers “[h]undreds of the sexiest  
9 dancers in Las Vegas”) (last visited April 20, 2016).

10 The class size alone justifies class certification, but additional factors relating to the  
11 impracticability of joinder also support certification. See *Hernandez v. Alexander*, 152 F.R.D. 192,  
12 194 (D. Nev. 1993) (“factors relevant to the joinder impracticability issue include judicial  
13 economy arising from avoidance of a multiplicity of actions, geographic dispersment of class  
14 members, size of individual claims, financial resources of class members [and] the ability of  
15 claimants to institute individual suits.”) (*quoting* Newberg on Class Actions § 3.06). Here,  
16 considerations of judicial economy favor class certification because the key issue of liability is  
17 common to all class members. The court also may take judicial notice of the fact that class  
18 members may be reluctant individually to sue their putative employer. See *Horn v. Associated*  
19 *Wholesale Grocers*, 555 F.2d 270 (10th Cir. 1977) (joinder impracticable, in part, because  
20 employees were apprehensive about loss of jobs, welfare of their families, and of offending  
21 employer as result of taking stand against it). See also *Newberg on Class Actions* § 3:12 (noting  
22 fear of retaliation in employment cases is an additional factor supporting class certification “as  
23 such a fear might deter potential plaintiffs from suing individually, making a representative action  
24 especially pertinent.”) (collecting cases).

## 2. Commonality and Typicality

The claims of each individual class member need not be identical, but a class action must present “questions of law or fact common to the class,” NRCP 23(a)(2), and the class representative’s claims or defenses must be “typical of the claims or defenses of the class” NRCP 23(a)(3). As courts have noted, these requirements “tend to merge” because “[b]oth serve as guideposts for determining whether ... the named plaintiff’s claim and the class claims are so inter-related that the interests of the class members will be fairly and adequately protected in their absence.” *General Telephone Co. v. Falcon*, 457 U.S. 147, 157 n. 13 (1982). “This requirement is liberally construed; the question is whether there is a ‘unifying thread’ among the claims alleged by members of the class.” *Hart v. Rick’s Cabaret Int’l Inc.*, 2010 WL 5297221, at \*6 (S.D.N.Y. Dec. 20, 2010) (certifying FRCP 23(b)(3) class of dancers in wage claim against club).

Where, as here, “a general corporate policy is the focus of litigation, class status for those adversely affected by the policy is appropriate.” *Meyer v. Eighth Judicial Dist. Court*, 110 Nev. 1357, 1364, 885 P.2d 622, 626 (1994) (concluding that landlord’s allegedly illegal pattern of keeping tenants who were late in paying rent out of their apartments satisfied commonality and typicality requirement for class certification). *See also Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 848-49, 124 P.3d 530, 538-39 (2005) (class certification appropriate where “each class member’s claim arises from the same course of events and each class member makes similar legal arguments to prove the defendant’s liability.”).

Courts routinely have held that commonality and typicality are satisfied in employer-employee wage disputes. *See, e.g., Ramirez v. Riverbay Corp.*, 39 F.Supp.3d 354, 364 (S.D.N.Y.2014) (noting courts routinely find commonality and typicality “where employees claim that they were denied minimum wage or overtime compensation as a result of a corporate employment policy.”) (collecting cases); *Garcia v. E.J. Amusements of New Hampshire, Inc.*, 98 F. Supp. 3d 277, 286 (D. Mass. 2015) (finding commonality and typicality where employees alleged



1 per se illegal wage policies that violated the rights of all class members); *Villalpando v. Exel*  
2 *Direct Inc.*, 303 F.R.D. 588, 606-07 (N.D. Cal. 2014) (finding commonality and typicality where  
3 putative class members allege denial of denied wage and hour laws on basis that they were  
4 misclassified as independent contractors);

5 Here, the commonality and typicality requirements clearly are met. Plaintiffs do not seek  
6 recovery on the basis of individualized treatment; rather, they allege they, like all members of the  
7 proposed class, were victims of the same common course of conduct and “single fundamental  
8 wrong.” *Deal*, 94 Nev. at 306, 579 P.2d at 778-79. The dancers’ claims hinge upon a common  
9 question of law, *i.e.*, whether a strip club is the employer of its dancers. The answer to this legal  
10 question will be determined with reference to common questions of fact, *i.e.*, “the totality of the  
11 circumstances of the working relationship’s economic reality.” *Terry*, 130 Nev. Adv. Op. 87, 336  
12 P.3d at 960 (reviewing undisputed facts relating to dancers’ work to determine that strip club is the  
13 employer of its dancers as a matter of law).

### 14 3. Adequacy of Representation

15 NRCP 23(a)(4) requires that “the representative parties will fairly and adequately protect  
16 the interests of the class.” Courts ask two questions when reviewing this requirement: First, do the  
17 proposed class representative and class counsel “have any conflicts of interest with other class  
18 members?” *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003). Second, will the proposed  
19 class representative and class counsel “prosecute the action vigorously on behalf of the class?” *Id.*  
20 The adequacy requirement is satisfied where, as here, nothing in record “indicat[es] that Plaintiffs  
21 or their counsel have a conflict of interest with the putative class members” and where “the record  
22 reveals that Plaintiffs and their counsel have prosecuted this action vigorously on behalf of the  
23 class.” *Tijero v. Aaron Bros., Inc.*, 301 F.R.D. 314, 322 (N.D. Cal. 2013).

24 With respect to the first question, there is no suggestion that any conflict of interest may  
exist. The named plaintiffs, all former dancers at the club, unquestionably are capable of fairly and

1 adequately representing a class consisting of both former and current employees of the Defendants  
2 because “both former and current employees are equally interested in obtaining compensation for  
3 the assertedly unlawful practices set forth in the complaint.” *Glass v. UBS Fin. Servs., Inc.*, 331 F.  
4 App’x 452, 455 (9th Cir. 2009).

5 With respect to the second question, each Plaintiff understands what is at stake in this  
6 lawsuit and is willing and able to perform their duties as class representatives. Plaintiffs’ attorneys  
7 have extensive experience in employment, class action, and complex business litigation. As  
8 demonstrated by their handling of the case thus far, most notably in briefing, arguing, and  
9 defeating a motion to dismiss the complaint, Plaintiffs’ counsel is competent to undertake this  
10 litigation and vigorously will continue to pursue the action on behalf of the class. *See Johnson v.*  
11 *Shreveport Garment Co.*, 422 F. Supp. 526, 535 (W.D. La. 1976), *aff’d*, 577 F.2d 1132 (5th Cir.  
12 1978) (“Counsel need not come to court with a résumé and character references with which to  
13 prove his effectiveness; rather, his or her conduct in pretrial matters, discovery and the trial itself  
14 will be evidence of his or her capability adequately to represent the class.”).

### 15 **C. Certification is Appropriate Under NRCP 23(b)(3)**

16 Class certification is appropriate under NRCP 23(b)(3) if (a) common questions of law or  
17 fact predominate over any questions affecting only individual members, and (b) a class action is  
18 superior to other available methods for the fair and efficient adjudication of the controversy.  
19 NRCP 23(b)(3).

20 Courts routinely certify class actions by current and former employees against their  
21 employer seeking to recover wages under NRCP 23(b)(3) (or its federal analog), including in  
22 cases, like this one, involving allegations of employee misclassification. *See, e.g., Villalpando v.*  
23 *Exel Direct Inc.*, 303 F.R.D. 588, 608 (N.D. Cal. 2014) (certifying class under FRCP 23(b)(3)  
24 because threshold question regarding employee status susceptible to common proof, the case  
involves common policies and practices by putative employer, and because individual issues (*e.g.*,

1 damages) not so significant as to outweigh benefits of class treatment). *See also Leyva v. Medline*  
2 *Indus. Inc.*, 716 F.3d 510, 513 (9th Cir. 2013) (district court abused discretion in denying class  
3 certification under FRCP 23(b)(3) in putative class action by current and former employees against  
4 employer seeking to recover wages).

5 **1. Predominance requirement is met**

6 Liability in this case (*i.e.*, the lawfulness of Defendants' policy of not treating its dancers as  
7 employees) is an issue common to the class. As other courts previously have found, where the  
8 "liability issue is common to the class, common questions are held to predominate over individual  
9 ones." *Ruffin v. Entm't of the E. Panhandle*, 2012 WL 5472165, at \*10 (N.D.W. Va. Nov. 9, 2012)  
10 (certifying class under FRCP 23(b)(3) where common liability question whether defendant strip  
11 club legally misclassified its dancers as independent contractors). Indeed, one court even declared  
12 that the common liability issue of whether class members "were supposed to be paid the minimum  
13 wage as a matter of law and were not" is "about the most perfect question[] for class treatment."  
14 *Iglesias-Mendoza v. La Belle Farm, Inc.*, 239 F.R.D. 363, 373 (S.D.N.Y.2007). *See also Williams-*  
15 *Green v. J. Alexander's Restaurants, Inc.*, 277 F.R.D. 374, 383 (N.D. Ill. 2011) (certifying FRCP  
16 23(b)(3) class of waiters in class action against employer for tip pool violations where "controlling  
17 substantive issue" was propriety of employer's policy); *Ansoumana v. Gristede's Operating Corp.*,  
18 201 F.R.D. 81, 89 (S.D.N.Y. 2001) (finding predominance where central issues were whether  
19 plaintiffs were employees as matter of law and consequences of resolution of that issue in relation  
20 to minimum wage).

21 The fact that each dancers' damages will need to be calculated on an individual basis is of  
22 no moment. "The amount of damages is invariably an individual question and does not defeat class  
23 action treatment." *Blackie v. Barrack*, 524 F.2d 891, 905 (9th Cir.1975). *See also Brinker Rest.*  
24 *Corp. v. Superior Court*, 139 Cal.Rptr.3d 315, 273 P.3d 513, 546 (2012) ("In almost every class  
action, factual determinations of damages to individual class members must be made. Still we

1 know of no case where this has prevented a court from aiding the class to obtain its just  
2 restitution.”).

## 3                   **2. Superiority requirement also is met**

4           The other requirement of NRCP 23(b)(3) is that a class action must be superior to other  
5 available methods for fair and efficient adjudication of the controversy. Rule 23(b)(3) provides  
6 several criteria for the court to use when considering this question: (A) the interest of members of  
7 the class in individually controlling the prosecution or defense of separate actions; (B) the extent  
8 and nature of any litigation concerning the controversy already commenced by or against members  
9 of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the  
10 particular forum; and (D) the difficulties likely to be encountered in the management of a class  
11 action. See NRCP 23(b)(3)(A)-(D).

12           As described in Section C.1, above, common questions of law and fact predominate over  
13 any other questions and can be resolved for all members of the class in a single adjudication.  
14 “When common questions present a significant aspect of the case and they can be resolved for all  
15 members of the class in a single adjudication, there is clear justification for handling the dispute on  
16 a representative rather than on an individual basis.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,  
17 1022 (9th Cir.1998) (internal quotation omitted).

18           A class action also is superior to piecemeal individual litigation because: (1) each member  
19 of the class pursuing a claim individually would burden the judiciary and run afoul of Rule 23’s  
20 focus on efficiency and judicial economy. See *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d  
21 935, 946 (9th Cir.2009) (“The overarching focus remains whether trial by class representation  
22 would further the goals of efficiency and judicial economy.”); (2) a class action concentrates the  
23 litigation in this forum where the Defendants’ places of business is located and where a large  
24 number of putative class members presumably reside; (3) upon information and belief there is no  
other litigation concerning the controversy already commenced by members of the class; (4) many

1 potential plaintiffs are current employees of Defendants and thus may be apprehensive about  
2 pursuing individual claims; (5) and there are no difficulties likely to be encountered in the  
3 management of a class action; and (6) “If plaintiffs cannot proceed as a class, some—perhaps  
4 most—will be unable to proceed as individuals because of the disparity between their litigation  
5 costs and what they hope to recover.” *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v.*  
6 *Las Vegas Sands, Inc.*, 244 F.3d 1152, 1163 (9th Cir.2001) (class certification under FRCP  
7 23(b)(3) appropriate for class of former employees of hotel casino in claim for back wages).

#### 8 **IV. CONCLUSION**

9 For the foregoing reasons, Plaintiffs respectfully request that this Court enter an order  
10 certifying under NRCP 23(b)(3) the class as defined herein in, and designating Plaintiffs as class  
11 representatives and the undersigned counsel as class counsel.

12 DATED this 26th day of April, 2016.

13 **MORRIS//ANDERSON**

14 By: /s/ Daniel R. Price

15 RYAN M. ANDERSON, ESQ.

16 Nevada Bar No.: 11040

17 DANIEL R. PRICE, ESQ.

18 Nevada Bar No.: 13564

19 716 S. Jones Blvd.

20 Las Vegas, Nevada 89107

21 P. Andrew Sterling, Esq.

22 Nevada Bar No.: 13769

23 Michael J. Rusing, Esq.

24 Arizona Bar No.: 6617 (*Admitted Pro Hac Vice*)

**RUSING LOPEZ & LIZARDI, PLLC**

6363 North Swan Road, Suite 151

Tucson, Arizona 85718

*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of **MORRIS//ANDERSON**, and on the \_\_\_ day of April, 2016, I served the foregoing **PLAINTIFFS'** **MOTION FOR CLASS CERTIFICATION** as follows:

☒ Electronic Service – By serving a copy thereof through the Court’s electronic service system

☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or

☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below and in the confirmation sheet filed herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of Service; and/or

Gregory J. Kamer, Esq.  
KAMER ZUCKER ABBOTT  
3000 W. Charleston Blvd., Suite 3  
Las Vegas, Nevada 89102

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

*Attorneys for Defendants*

/s/ Erickson Finch  
An employee/agent of **MORRIS//ANDERSON**

# EXHIBIT 1

1 **ORDR**

2 Thomas F. Christensen (NV Bar No. 2326)

3 Ryan M. Anderson (NV Bar No. 11040)

4 CHRISTENSEN LAW

5 1000 S. Valley View

6 Las Vegas, NV 89107

7 Telephone: (702) 870-1000

8 Facsimile: (702) 870-6152

9 Attorneys for Plaintiffs ZURI-KINSHASA

MARIA TERRY, individually, MARLENE NUNO,

individually, MICHELE COSPER, individually, SELINA

DENISE PELAEZ individually, JESSICA ANNE MORGAN

individually and on behalf of Class of similarly situated  
individuals

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 ZURI-KINSHASA MARIA TERRY,

individually, MARLENE NUNO, individually

MICHELE COSPER, individually SELINA

DENISE PELAEZ, individually, JESSICA

ANNE MORGAN, individually and all on

behalf of Class of similarly situated individuals,

Plaintiffs,

v.

SAPPHIRE/SAPPHIRE GENTLEMAN'S

CLUB, a business organization form unknown;

SHAC, LLC, an active Nevada Domestic

Limited-Liability Company dba SAPPHIRE and

SAPPHIRE GENTLEMEN'S CLUB; and

DOES 1 through 100, inclusive,

Defendants.

CASE NO.: A602800

DEPT.: I

**Order Granting Motion To Re-certify  
Class**

23 The motion of plaintiffs, class representatives, Zuri-Kinshasa Maria Terry, Marlene  
24 Nuno, Michelle Cosper, Selena Denise Pelaez, and Jessica Morgan for an order re-  
25 certifying them as class representatives, and this case as a class action, came regularly  
26 before this court on December 13, 2010. The Court, considering the moving and reply  
27  
28




1 papers of the plaintiffs, and the opposing papers of the defendants, and good cause  
2 appearing therefore,

3 The COURT ORDERS that Plaintiffs' Motion to Re-certify this case as a class  
4 action pursuant to NRCP 23(b)(3) is hereby GRANTED.  
5

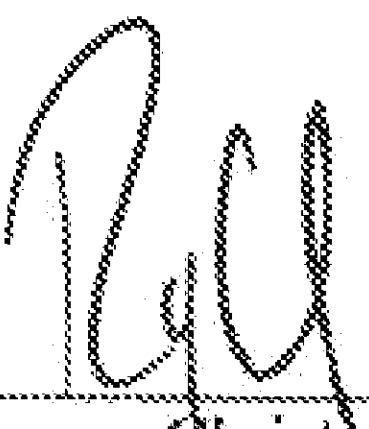
6 IT IS SO ORDERED.

7 Dated: January 24, 2011  
8

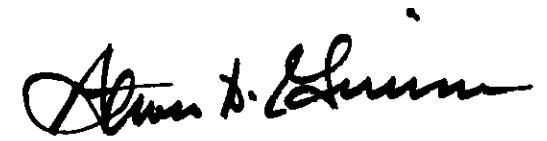
9  
10   
11 Judge Kenneth C. Cory

12 Submitted By:

13 CHRISTENSEN LAW OFFICES, LLC  
14

15   
16 Thomas Christensen, Esq.  
17 Nevada Bar No. 2326  
18 Ryan M. Anderson, Esq.  
19 Nevada Bar No. 11040  
20 1000 S Valley View Blvd.  
21 Las Vegas, NV 89107  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT “C”

  
CLERK OF THE COURT

**RPLY**

RYAN M. ANDERSON (NV Bar No. 11040)

LAUREN CALVERT (NV Bar No. 10534)

**MORRIS // ANDERSON**

716 S. Jones Blvd

Las Vegas, Nevada 89107

Phone: (702) 333-1111

Fax: (702) 507-0092

[ryan@morrisandersonlaw.com](mailto:ryan@morrisandersonlaw.com)

[lauren@morrisandersonlaw.com](mailto:lauren@morrisandersonlaw.com)

P. Andrew Sterling (NV Bar 13769)

Michael J. Rusing (AZ Bar 6617) *Admitted Pro Hac Vice*

**RUSING LOPEZ & LIZARDI, PLLC**

6363 North Swan Road, Suite 151

Tucson, Arizona 85718

Phone: (520) 792-4800

Fax: (520) 529-4262

[asterling@rilaz.com](mailto:asterling@rilaz.com)

[mrusing@rliz.com](mailto:mrusing@rliz.com)

*Attorneys for Plaintiffs*

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

JACQUELINE FRANKLIN *et al.*,

Plaintiffs,

vs.

RUSSELL ROAD FOOD AND  
BEVERAGE, LLC., *et al.*,

Defendants.

CASE NO. A-14-709372-C

DEPT. XXI

**PLAINTIFFS' REPLY IN SUPPORT OF  
MOTION FOR CLASS CERTIFICATION**

Plaintiffs, individually and on behalf of all persons similarly situated, hereby submit their  
Reply in Support of their Motion for Class Certification.

///

///

///

///

This Reply is based upon the following Memorandum of Points and Authorities and any oral argument this Court may wish to entertain at the hearing of this Motion.

DATED this 5th day of December, 2016.

**MORRIS//ANDERSON**

By: /s/ Lauren Calvert  
 Ryan M. Anderson (NV Bar No. 11040)  
 Lauren Clavert (NV Bar No. 10534)  
 716 S. Jones Blvd.  
 Las Vegas, NV 89107

**RUSING LOPEZ & LIZARDI, PLLC**  
P. Andrew Sterling (NV Bar No. 13769)  
Michael J. Rusing (AZ Bar No. 6617)  
6363 N. Swan Road, Ste. 151  
Tucson, AZ 85718

*Attorneys for Plaintiffs*

1           **I.       INTRODUCTION**

2           Defendant Russell Road Food and Beverage, LLC (the Club) opposes class certification on  
3 two grounds: (1) it asserts there is not enough “actual evidence” to support certification (Oppo. at  
4 p.3); and (2) it claims a recent amendment to NRS Chapter 608 (codified in relevant part at NRS  
5 608.0155), if applied in this case, would somehow render it “impossible for any common questions  
6 of fact or law to exist because the determination of whether each Plaintiff or potential Plaintiff is or  
7 is not an independent contractor requires a unique factual determination that could be comprised of  
8 facts wholly different from any other Plaintiff” (Oppo. at p. 25).<sup>1</sup>

9           The first argument fails to appreciate that a complaint typically furnishes all the evidence  
10 required to evaluate class certification and, in any event, has been entirely deflated by subsequent  
11 disclosures and admissions (for example, the Club has since confirmed the putative class contains  
12 over 4500 dancers going back two years, likely double that number for the four year unjust  
13 enrichment claim). The second argument is a nonstarter because even if the new test for  
14 independent contractor status in NRS 608.0155 applied to this case (it doesn’t), this test, like the  
15 economic realities test, easily can be assessed on a class-wide basis where, as here, the Club admits  
16 it treated all dancers the same.

17           Regardless of the test to be applied to determine their legal status, the Club’s dancers either  
18 are all its employees or none of them are, and this issue most certainly can and should be decided  
19 on a class basis. Indeed, as many other courts have held, this particular common liability issue  
20 presents “about the most perfect question[] for class treatment.” *Iglesias-Mendoza v. La Belle*  
21 *Farm, Inc.*, 239 F.R.D. 363, 373 (S.D.NY.2007). That is why no court ever has refused to certify a  
22 class under NRCP 23(b)(3) or its federal analog in employment misclassification cases by dancers  
23 against the strip club in which they work. *See Espinoza*, 2016 WL 127586 at \*3 (noting in granting  
24 dancers’ class certification motion that “Defendants have not cited to any decision with different  
results - denying the Rule 23 class certification motion. And the Court has not been able to uncover

---

<sup>1</sup> The Club also challenges the proposed class definition. *See* Oppo. at pp. 9-10. That is not grounds for denying class certification; at most it would require the class definition to be refined or for the Court to certify one or more subclasses.

one either.”).

## II. REPLY

### A. There is no requirement under NRCP 23 to “attach evidence” to a class certification motion

NRCP 23 specifically instructs that a court is to address the issue of class certification “as soon as practicable after the commencement of an action brought as a class action.” NRCP 23(c)(1). The Club’s repeated insistence that this issue cannot be decided without more “actual evidence” fails to recognize that class certification in this case is warranted under NRCP 23 based on the uncontroverted factual allegations in the complaint. *See Meyer*, 110 Nev. at 1364, 885 P.2d at 626 (citations omitted) (“[i]n analyzing whether it should certify a class, the court should generally accept the allegations of the complaint as true. An extensive evidentiary showing is not required.”). *See also* Newberg on Class Actions § 24:74 (4th ed.) (“the complaint itself should usually afford the court a sufficient basis on which to make a [class certification] determination, thereby rendering an evidentiary hearing unnecessary.”).

The Club entirely overstates the purported “sea change regarding the evidentiary burden required for certifying a class.” *Oppo*. at p. 7 (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). The U.S. Supreme Court in *Dukes* noted that “sometimes it may be necessary for the court to probe behind the pleadings before coming to rest on the certification question.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (emphasis added). In *Dukes*, for example, the court was not convinced, based on the pleadings (or, it turns out, on copious amounts of additional evidence), that a nationwide class of 1.5 million employees who wanted to sue “about literally millions of [allegedly discriminatory] employment decisions at once” could demonstrate that there was “some glue holding the alleged *reasons* for all those decisions together.” *Id.* at 352. Similarly, the Nevada Supreme Court in *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 124 P.3d 530 (2005) determined it was necessary to “probe behind the pleadings” in construction defect class actions. The defendant in *Beazer Homes* constructed and sold about 200 single-family residences in Las Vegas in the 1990s. *Beazer Homes*, 121 Nev. at 843, 124 P.3d at 535. Three owners of these

1 homes, individually and as proposed class representatives, filed a complaint against the contractor  
2 alleging various constructional defects to their homes. *Id.* The Supreme Court held that the trial  
3 court erred in granting class certification because (unlike the misclassification claim at issue here),  
4 liability in single-family residence constructional defect cases depends on “variables particular to  
5 ‘unique’ parcels of land” and “these uniqueness factors weigh heavily in favor of requiring  
independent litigation of the liability to each parcel and its owner.” *Id.* at 855, 124 P.3d at 543.

6 This is not a nationwide sex-discrimination case. It is not a construction defect case  
7 involving hundreds of uniquely-constructed houses. It is an employee misclassification case at a  
8 single club which, as the complaint alleges and the Club admits, has applied a uniform set of  
9 policies and procedures to all dancers at all relevant times. *See* Compl. at ¶¶29-33; Depo. Trans. of  
10 Club Manager at 19:7-11 (attached as **Ex. 1**) (“Q. Is it fair to say during the relevant time period  
11 that the club treat all the dancers equally and applies the policies that it has equally to all the  
12 dancers? A. Yes.”); *id.* at 16:24-17:7 (stating the Club at all relevant times has required dancers to  
13 pay a house fee each time they worked). This “actual evidence” is all that is needed to distinguish  
14 *Dukes* and *Beazer Homes* and to establish that this case belongs with all the other employment  
15 misclassification cases that courts without exception have certified under NRCP 23 or its federal  
16 analog.<sup>2</sup> This case, like all the other dancer class actions cited in Plaintiffs’ motion and awkwardly  
ignored by the Club, is not a “more evidence” case.

17 **B. NRS 608.0155 does not and cannot apply to constitutional claims. Even if it did or**  
18 **could, it would not alter the class certification analysis**

---

19 <sup>2</sup> It is also useful though not necessary to have “actual evidence” of the putative class size.  
20 *See Zeidman v. J. Ray McDermott & Co., Inc.*, 651 F.2d 1030, 1038 (5th Cir. 1981) (noting  
21 numerosity can be established either by “some evidence **or reasonable estimate** of the  
22 number of purported class members.”) (emphasis added) (construing parallel federal rule).  
23 Plaintiffs, based on their personal experience dancing in the club, reasonably estimated that  
24 “hundreds if not thousands of dancers worked there during the class period” (Mot. at p. 7).  
It turns out the dancers’ estimate was pretty spot on. The Club subsequently confirmed that  
it employed (or leased space to) over 4,500 individuals between November 2012 and  
August 2016. *See* first and last page of Entertainer List (attached as **Ex. 2**).

1                   **1.       NRS 608.0155 by its plain terms applies only to claims under NRS Chapter**  
2                   **608, not to Minimum Wage Amendment claims**

3                   The Nevada Supreme Court in *Terry v. Sapphire Gentlemen's Club*, 130 Nev. Adv. Op. 87,  
4                   336 P.3d 951 (2014), *reh'g denied* (Jan. 22, 2015) considered an employment misclassification  
5                   class action by dancers alleging violations of NRS Chapter 608. The dancers in that case made no  
6                   claim under the Minimum Wage Amendment, which creates an independent constitutional cause of  
7                   action for Nevada employees entirely separate from any statutory cause of action under Chapter  
8                   608. *See* Nev. Const. Art. 15, sec. 16(B) ("An employee claiming violation of this section may  
9                   bring an action against his or her employer in the courts of this State to enforce the provisions of  
10                  this section and shall be entitled to all remedies available under the law or in equity appropriate to  
11                  remedy any violation of this section.").

12                The Supreme Court in *Terry* held that NRS 608.010 (the wage statute's definition of  
13                "employee") was co-extensive with the term as used in the Fair Labor Standards Act (FLSA), the  
14                parallel federal wage law. *Id.* at 953. NRS 608.0155 leaves intact the Supreme Court's adoption of  
15                the economic realities test but adds a "conclusive presumption" of independent contractor status for  
16                claims arising under Chapter 608 if certain criteria are met. *See* NRS 608.0155(1). But the first six  
17                words of NRS 608.0155 (entirely ignored by the Club) unambiguously states that this new test for  
18                independent contractor status applies only "[f]or the purposes of this chapter [*i.e.*, Chapter 608]."  
19                NRS 608.0155(1) (emphasis added). In other words, NRS 608.0155 clearly indicates that its  
20                independent contractor test does not apply "for the purposes of Minimum Wage Amendment  
21                claims." *See State v. Catanio*, 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004) (We must attribute  
22                the plain meaning to a statute that is not ambiguous."). If the Nevada legislature wanted the test to  
23                apply to constitutional claims it easily could have said so, but did not.

24                   **2.       Even if NRS 608.0155 could be construed to apply to Minimum Wage**  
                  **Amendment claims, the Nevada Supreme Court already has determined**  
                  **that such a statute would be preempted**

                  The Minimum Wage Amendment was proposed by initiative petition and overwhelmingly  
approved and ratified by Nevada voters in 2004 and again in 2006. *See* Nev. Const. art. 15, § 16. It  
guarantees a mandatory minimum wage to all employees, broadly defined in the Amendment as



1 “any person who is employed by an employer as defined herein but does not include an employee  
2 who is under eighteen (18) years of age, employed by a nonprofit organization for after school or  
3 summer employment or as a trainee for a period not longer than ninety (90) days.” Nev. Const. art.  
4 15, § 16(C).

5 The only Nevada Supreme Court case that has directly considered the breadth of the  
6 Minimum Wage Amendment’s definition of employee is *Thomas v. Nevada Yellow Cab Corp.*, 130  
7 Nev. Adv. Op. 52, 327 P.3d 518 (2014), *reh’g denied* (Sept. 24, 2014). The question presented in  
8 *Thomas* was whether Minimum Wage Amendment’s definition of employee preempted an  
9 exception for taxicab drivers provided in Nevada’s minimum wage statute, NRS 608.250(2)(e). *Id.*  
10 at 520. In answering that question in the affirmative, the Supreme Court held that: (a) the definition  
11 of employee in the Amendment must be determined with reference to intent of the voting public,  
12 not the legislature, (b) “[t]he Minimum Wage Amendment expressly and broadly defines employee,  
13 exempting only certain groups”, (c) the voters intended that “all employees not exempted by the  
14 Amendment . . . must be paid the minimum wage set out in the Amendment”, and (d) any statute  
15 that purports to interfere with the Amendment’s broad definition of employee is “irreconcilably  
16 repugnant” to the Amendment and therefore preempted. *Id.* at 521. *See also Terry*, 336 P.3d at 955  
(noting the Amendment reflects “this state’s voters’ wish that more, not fewer, persons would  
receive minimum wage protections [than were protected by NRS Chapter 608 prior to SB224].”).<sup>3</sup>

17 The Supreme Court in *Thomas* affirmed in striking down a conflicting statute that Nevada’s  
18 judicial branch is up to the job of effectively interpreting and enforcing constitutional rights, and  
19 specifically foreclosed any attempt by the legislature to interfere with the Amendment’s broad  
20 scope. *See Thomas*, 327 P.3d at 522 (“[T]he principle of constitutional supremacy prevents the  
21 Nevada Legislature from creating exceptions to the rights and privileges protected by Nevada’s  
22 Constitution.”). The Nevada legislature did not claim in enacting SB224 that it was interpreting the

---

23 <sup>3</sup> This Court also noted in its June 25, 2015 order granting in part and denying in part the  
24 Club’s motion to dismiss that the Minimum Wage Amendment “expanded the minimum  
wage protections to more Nevadans.” Order at p.20.

1 voters' intent in enacting the Minimum Wage Amendment. The Club has cited no legislative  
2 history considering or even mentioning the Minimum Wage Amendment and its independent  
3 definition of employee. To the contrary, as the Club notes, the legislature enacted SB224 in  
4 response to the Supreme Court's decision in *Terry*, which was a Chapter 608 case not a Minimum  
5 Wage Amendment case. *See* Oppo. at p. 11. The statutory language thus appropriately indicates that  
6 the new statutory test for independent contractor status set forth in NRS 608.0155 applies only "for  
7 the purposes of" Chapter 608. As the Nevada Supreme Court has held, specific statutory  
8 exemptions from the Minimum Wage Amendment's broad definition of employee are preempted. A  
9 statutory test that, if applied, would accomplish the same result also would be preempted. Even if  
10 NRS 608.0155 could potentially be construed to limit the scope of the Minimum Wage Amendment  
11 (it cannot) and even if any legislative history suggested that was the legislature's intent (it does  
12 not), such an interpretation would be foreclosed by "the canon of constitutional avoidance, which  
13 states that every reasonable construction must be resorted to, in order to save a statute from  
14 unconstitutionality." *Evans v. State*, 2014 WL 1270606, at \*2 (Nev. Mar. 26, 2014) (quotation  
15 omitted).

14 **3. Even if NRS 608.0155 applied in this case, its test easily can be assessed on a**  
15 **class-wide basis**

16 To be presumptively labeled an independent contractor for purposes of NRS Chapter 608, a  
17 person must satisfy three or more of five criteria enumerated in NRS 608.0155(1)(c). The Club's  
18 suggestion that this inquiry cannot be performed on a class-wide basis is unconvincing.

19 Most obviously, of course, courts have no problem applying the economic realities test on a  
20 class-wide basis. That test, which requires a "review of the totality of the circumstances of the  
21 working relationship's economic reality" *Terry*, 336 P.3d at 960, is much broader and nuanced than  
22 NRS 608.0155.

23 A closer look at NRS 608.0155(1)(c) reveals nothing so unusual to support the Club's  
24 insistence that it creates a per se bar to class treatment of employee misclassification claims against  
a single putative employer that has admitted it treats all putative employees the same.

The first criterion considers whether "[1] the person has control and discretion over the

1 means and manner of the performance of any work and [2] the result of the work, rather than the  
2 means or manner by which the work is performed, is the primary element bargained for by the  
3 principal in the contract.” NRS 608.0155(1)(c)(1). The first part of this criterion (control and  
4 discretion) is very similar to the control factor in the economic realities test, which was considered  
5 by the Nevada Supreme Court on a class-wide basis with no problems. *See Terry*, 336 P.3d at 958  
6 (considering degree of club’s control of manner of dancers’ performances on class-wide basis). The  
7 second part (primary element bargained for) frankly seems impossible to apply. How can a court  
8 attempt to discern the “primary intent” of a contracting party? Presumably, however, the Club (and  
9 anyone else trying to avoid employer status) will swear the “result of the work” was paramount in  
10 its mind when it contracted with all putative employees. This element too thus will or will not be  
11 met on a class-wide basis.

12 The second criterion considers whether “the person has control over the time the work is  
13 performed.” *Id.* at (1)(c)(2). This criterion does not apply where, as here, “the work contracted for is  
14 entertainment.” *Id.*

15 The third criterion considers whether the dancers are “required to work exclusively for one  
16 principal.” The dancers concede this is not the case, but again this is because the Club had a  
17 common policy on this matter that can be assessed on a class-wide basis.

18 The fourth criterion considers whether “[t]he person is free to hire employees to assist with  
19 the work.” Either they could or they couldn’t. Again, another class-wide issue capable of class-wide  
20 resolution.

21 The fifth and final criterion considers whether the “person contributes a substantial  
22 investment of capital in the business of the person.” This subsection specifically instructs the court  
23 to make a class-wide assessment. *See* NRS 608.0155(1)(c)(5) (degree of capital investment to be  
24 determined on basis of “equipment commonly used and the expenses commonly incurred in the  
trade or profession in which the person engages.”). This capital investment inquiry also is applied  
on a class-wide basis in the economic realities test. *See Terry*, 336 P.3d at 959 (considering

dancers' investment in equipment or materials and concluding, on class-wide basis, that performers' capital investment is *de minimis*).

**C. Though the proposed class definition is proper, the court could create subclasses under NRCP 23(c)(4)**

There are two claims in this lawsuit: a legal claim for unpaid wages under the Minimum Wage Amendment (count one) and an equitable claim for unjust enrichment (count two). The wage claim seeks payment of the minimum wage for all hours worked. Compl. ¶43. The unjust enrichment claim seeks restitution of fees and fines the Club extracted from the dancers as a condition of employment. *Id.* at ¶46. The statute of limitations is two years from the filing of the original complaint for count one (*i.e.*, going back to November 2, 2012) and four years for count two (*i.e.*, going back to November 2, 2010). *See* NRS 608.260 and 11.190(2)(c). The temporal scope of the proposed class properly extends back to November 2, 2010 to account for the unjust enrichment claim.

Unlike most wage claims, this case is unusual in that not only did dancers not receive any wages for performing at Defendant's strip club - they also were required to pay a "house fee" to the Club every time they showed up to work. *See* Ex. 1 at 16:24-17:7. The Club thus has benefitted for years (and continues unjustly to benefit) from labor that not only is free, but that pays to work. Mere payment of wages for each hour worked will not make the dancers whole. Plaintiffs aver with respect to Count One that damages for unpaid wages must account for the negative balance created by the extraction of fees and fines. If, for example, the Club required a dancer to pay \$100 to work a six-hour shift and paid no wages for that work, then the dancer's wage damages for that six hour period should be \$100 + (prevailing minimum hourly wage x 6). Alternatively, however, if the wage damages are limited to just the prevailing minimum hourly wage then the Minimum Wage Amendment would not provide a full and adequate legal remedy and the dancers would look to the unjust enrichment claim to recover the fees and fines they paid to the Club. *See* 6/25/15 Order (noting "unjust enrichment is appropriately pled as an alternative equitable basis for relief in addition to the claims for legal relief set forth in the other Counts."). *See also Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. Adv. Op. 35, 283 P.3d 250, 257 (2012) ("Unjust enrichment

1 exists when the plaintiff confers a benefit on the defendant, the defendant appreciates such benefit,  
2 and there is acceptance and retention by the defendant of such benefit under circumstances such that  
3 it would be inequitable for him to retain the benefit without payment of the value thereof.”)  
4 (quotations and citations omitted).

5 The Nevada Supreme Court noted in *Terry* that courts across the country “almost without  
6 exception [have] found an employment relationship and required nightclubs to pay their dancers a  
7 minimum wage.” *Terry*, 336 P.3d at 960 (citation and quotation omitted). Despite this known legal  
8 backdrop, the Club will not be held to account for payment of back wages beyond November 2,  
9 2012 because of the two year statute of limitations. But the dancers’ unjust enrichment claim  
maintains independent validity as an equitable claim extending back an additional two years.

10 The class certification motion proposes the following class: “All persons who work or have  
11 worked at the Club as dancers at any time on or after November 2, 2010 and going forward until the  
12 entry of judgment in this action.” Mot. at p. 4. All class members have a wage claim against the  
13 Club extending back to November 2, 2012 (count one). All class members also have an unjust  
14 enrichment claim against the Club extending back to November 2, 2010 (count two). If all fees and  
15 fines are accounted for in calculating back wages under count one, then the unjust enrichment claim  
will be limited to November 2, 2010 to November 1, 2012.

16 With this understanding, the Court may determine under NRCP 23(c)(4) to certify the two  
17 following subclasses:

18 Count One: “All persons who work or have worked at the Club as dancers at any time on or  
19 after November 2, 2012 and going forward until the entry of judgment in this action.”

20 Count Two: “All persons who work or have worked at the Club as dancers at any time on or  
21 after November 2, 2010 and going forward until the entry of judgment in this action.”

### 22 **III. CONCLUSION**

23 This case is not without precedent. Whether by design or happenstance, many strip clubs in  
24 Nevada and across the country have refused to treat their dancers as employees and many courts  
have adjudicated dancers’ misclassification claims. *See Terry*, 336 P.3d at 954 (holding club’s

1 dancers are employees and noting that “[i]n so holding, this court is in accord with the great weight  
2 of authority, which has almost without exception found an employment relationship and required  
3 nightclubs to pay their dancers a minimum wage.”). It is to those cases this Court should look in  
4 determining whether this action is appropriate for class treatment. Plaintiffs’ class certification  
5 motion should be granted because, as every other court that has considered the precise issue now  
6 before this Court has held, the common liability issue presented here, *i.e.*, whether the Club’s  
7 dancers were supposed to be paid the minimum wage as a matter of law and were not is “about the  
8 most perfect question[] for class treatment.” *Iglesias-Mendoza v. La Belle Farm, Inc.*, 239 F.R.D.  
363, 373 (S.D.N.Y. 2007).

9 DATED this 5th day of December, 2016.

10 **MORRIS//ANDERSON**

11 By: /s/ Lauren Calvert  
12 Ryan M. Anderson (NV Bar No. 11040)  
13 Lauren Clavert (NV Bar No. 10534)  
716 S. Jones Blvd.  
Las Vegas, NV 89107

14 **RUSING LOPEZ & LIZARDI, PLLC**  
15 P. Andrew Sterling (NV Bar No. 13769)  
16 Michael J. Rusing (AZ Bar No. 6617)  
6363 N. Swan Road, Ste. 151  
Tucson, AZ 85718

17 *Attorneys for Plaintiffs*  
18  
19  
20  
21  
22  
23  
24

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of  
**MORRIS//ANDERSON**, and on the 5th day of December, 2016, I served the foregoing  
***PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR CLASS CERTIFICATION*** as follows:

☒ Electronic Service – By serving a copy thereof through the Court's electronic service system; and/or

☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or

☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below and in the confirmation sheet filed herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of Service.

Gregory J. Kamer, Esq.  
KAMER ZUCKER ABBOTT  
3000 W. Charleston Blvd., Suite 3  
Las Vegas, Nevada 89102

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

*Attorneys for Defendants*

/s/ Erickson Finch  
An employee/agent of **MORRIS//ANDERSON**

DISTRICT COURT  
CLARK COUNTY, NEVADA

JACQUELINE FRANKLIN,  
ASHLEIGH PARK, LILY  
SHEPARD, STACIE ALLEN,  
MICHAELA DIVINE, VERONICA  
VAN WOODSEN, SAMANTHA JONES  
KARINA STRELKOVA, LASHONDA  
STEWART, DANIELLE LAMAR and  
DIRUBIN TAMAYO  
individually, and on behalf  
of Class of similarly  
situated individuals,

Plaintiffs,

vs.

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

Defendants.

CASE NO. A-14-709372-C  
DEPT. NO. XXXI

VIDEOTAPED DEPOSITION OF KEITH RAGANO

WEDNESDAY, OCTOBER 5, 2016

1:00 P.M.

AT 6130 ELTON AVENUE

LAS VEGAS, NEVADA

REPORTED BY: MICHELLE R. FERREYRA, CCR No. 876



1 goes back another two years to November of 2010. And  
2 that's a legal issue. But just to let you know,  
3 we've -- we've agreed off the record -- and I will just  
4 state it for the record -- that today we're going to  
5 look at is how the club works today, going back to  
6 November of 2012. Is that okay?

7 A. Yes.

8 Q. And, again, the -- the key -- the most  
9 important thing from your point of view is to help me  
10 understand if -- if things have changed during that  
11 time or if they stayed the same with respect to  
12 whatever we're looking at. Okay?

13 A. (Witness nods.)

14 Q. Okay. So in an effort to streamline this  
15 and -- and kind of make good use of our time, I think  
16 we can -- we can safely say that during that time  
17 period, Russell Road has never treated its dancers as  
18 employees; is that correct?

19 A. Yes.

20 Q. And so, therefore, they would have never have  
21 been issued -- no W-2s would have ever been issued to a  
22 dancer for her services; right?

23 A. Correct.

24 Q. Also during that time period, November 2012  
25 through the -- the present, is it true that dancers had

1     paid a house fee each time they wished to work at the  
2     club?

3             MR. DAVIS:  Objection.  Form and foundation as  
4     to each individual named plaintiff.

5             You can answer if you know.

6             THE WITNESS:  Yes.  They pay a house fee or a  
7     lease fee to use the building that night.

8     BY MR. STERLING:

9             Q.  Do you call it a house fee or a lease fee or  
10     either?

11            A.  House fee.

12            Q.  House fee?  Okay.

13            And that's -- that house fee policy has been  
14     in place since at least the 2012 period that we are  
15     talking about?

16            A.  Yes.

17            Q.  When was the club -- was it founded in 2009;  
18     is that right -- or set up?

19            A.  The actual Crazy Horse?

20            Q.  Yeah.  The -- the -- the club as it exists  
21     today, do you know when it was set up or when it --

22            A.  I don't know the exact date.

23            Q.  Okay.

24            Well, so you -- you were hired on November 5th  
25     of 2008.  Was that --

1 Q. During the relevant time period, is  
2 there -- was there any other way for dancers to make  
3 money at the club?

4 A. No.

5 Q. Now, we'll talk in a minute about the policies  
6 in more detail that the club has with respect to the  
7 dancers. But is it fair to say during the relevant  
8 time period that the club treats all the dancers  
9 equally and applies the policies that it has equally to  
10 all the dancers; is that a fair statement?

11 A. Yes.

12 Q. Let's -- let's talk a little bit about  
13 the -- the company itself and the business side of it  
14 before we get into the -- the -- the actual -- you  
15 know, the day-to-day operations. So I think we said  
16 already the -- the corporate entity is Russell Road  
17 Food and Beverage, LLC; right?

18 A. Yes.

19 Q. And the club's name is -- is Crazy Horse III?

20 A. Yes.

21 Q. And that's out at 3525 West Russell Road?

22 A. Yes.

23 Q. And is the -- is there another corporate  
24 office separate from that location for Russell Road,  
25 the entity, that you know of?

1 **LTWT**  
2 **GREGORY J. KAMER, ESQ.**  
3 Nevada Bar No. 0270  
4 **KAMER ZUCKER ABBOTT**  
5 3000 W. Charleston Blvd., #3  
6 Las Vegas, Nevada 89102  
7 (702) 259-8640

8 **JEFFERY A. BENDAVID, ESQ.**  
9 Nevada Bar No. 6220  
10 **MORAN BRANDON BENDAVID MORAN**  
11 630 South 4<sup>th</sup> Street  
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**

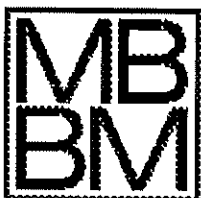
17 JACQUELINE FRANKLIN, ASHLEIGH )  
18 PARK, LILY SHEPARD, STACIE ALLEN, ) Case No.: A-14-709372-C  
19 MICHAELA DIVINE, VERONICA VAN )  
20 WOODSEN, SAMANTHA JONES, ) Dept. No.: 31  
21 KARINA STRELKOVA, LASHONDA, )  
22 STEWART, DANIELLE LAMAR, and )  
23 DIRUBIN TAMAYO, individually, )  
24 and on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

26 Plaintiffs/ Counter Defendants, )  
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/Counter Claimant. )

**DEFENDANT/ COUNTER CLAIMANT, RUSSELL ROAD FOOD AND**  
**BEVERAGE, LLC'S THIRD SUPPLEMENT TO ITS LIST OF DOCUMENTS AND**  
**WITNESSES PURSUANT TO NRCP. 16.1**



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-8588

1           19.     Entertainer Michaela Moore's Profile, Charge Summary and Dance Dollar  
2     Report, attached hereto and bated stamped RR0601 through RR0605;

3           20.     Defendant/ Counter Claimant is not in possession of any documents  
4     pertaining to Dirubin Tamayo aka Diurbin Tamayo Perez. Defendant/ Counter Claimant  
5     has performed an extensive search of available records and has not found any records  
6     demonstrating that Plaintiff, Dirubin Tamayo aka Diurbin Tamayo Perez performed at  
7     Defendant's Crazy Horse III club at any time after November 4, 2012.

8           21.     List of Entertainers who performed at Crazy Horse III Gentlemen's  
9     Club from November 4, 2012 to present (disclosed in electronic format on disk  
10    provided and Bated Stamped as RR0606);

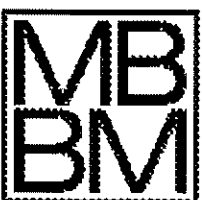
11           22.     Any and all documents provided by Plaintiff/ Counter Defendants' in  
12    their Initial Disclosures to their List of Documents and Witnesses pursuant to NRCP  
13    16.1 and all supplements thereto;

14           23.     Defendant/ Counter Claimant objects as to authentication and  
15    foundation of all documents listed or presented by Plaintiff/ Counter Defendant;

16           24.     Defendant/Counter Claimant reserves the right to supplement this list at  
17    a later date.

18                   **DEFENDANT/COUNTER CLAIMANT LIST OF WITNESSES**

19           1.     Plaintiff/Counter Defendant, JACQUELINE FRANKLIN, c/o RYAN  
20    ANDERSON, ESQ. of MORRIS ANDERSON, 716 S. Jones, Las Vegas, Nevada 89107.  
21    Plaintiff /Counter Defendant is expected to testify as to the facts and circumstances  
22    surrounding the incident alleged in Plaintiffs' Third Amended Complaint on file herein;



MORAN BRANDON  
AND DAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-8588

1 testify as to the facts and circumstances surrounding the incident alleged in Plaintiffs' Third  
2 Amended Complaint on file herein;

3 13. Plaintiff/Counter Defendant, MICHAELA MOORE, c/o RYAN  
4 ANDERSON, ESQ. of MORRIS ANDERSON, 716 S. Jones, Las Vegas, Nevada 89107.  
5 Plaintiff/Counter Defendant is expected to testify as to the facts and circumstances  
6 surrounding the incident alleged in Plaintiffs' Third Amended Complaint on file herein;  
7

8 14. All witnesses listed in Plaintiff/Counter Defendants' Initial Disclosures to  
9 their List of Documents and Witnesses pursuant to 16.1;

10 15. Defendant/Counter Claimant also reserve the right to call any rebuttal  
11 witnesses as a result of any exhibits or witnesses listed or presented by Plaintiff/  
12 Counter Defendant; and  
13

14 16. Defendant/Counter Claimant reserves the right to supplement this List  
15 of Witnesses at a later date.

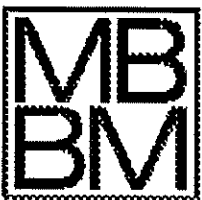
16 DATED this 9<sup>th</sup> day of August 2016.

17  
18 **KAMER ZUCKER ABBOTT**

19 /s/ Gregory J. Kamer, Esq.  
20 **GREGORY J. KAMER, ESQ.**  
21 Nevada Bar No. 0270  
22 3000 W. Charleston Blvd., #3  
23 Las Vegas, Nevada 89102  
24 (702) 259-8640

25 **MORAN BRANDON BENDAVID MORAN**

26 /s/ Jeffery A. Bendavid, Esq.  
27 **JEFFERY A. BENDAVID, ESQ.**  
28 Nevada Bar No. 6220  
630 South 4th Street  
Las Vegas, Nevada 89101  
(702) 384-8424  
*Attorneys for Defendant*



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-8588

## Entertainers November 4, 2012 - August 4, 2016

	First	Last	Stage Name	Status	Ent. ID	Exp. Position	Last Performed
1	REDACTED		Merlot	Inactive	5061163	10/17/2019 Female	6/5/15 3:24 AM
2			Aspen	Inactive	6052030	01/22/2016 Female	12/10/15 8:45 PM
3			Mariana	Inactive	3066710	06/19/2017 Female	11/21/12 2:26 PM
4			Nia	Active	2854775	10/07/2020 Female	8/3/16 2:18 PM
5			Miyokou	Inactive	3070678	03/16/2020 Female	5/14/16 7:57 PM
6			needs name	Inactive	6010977	09/25/2013 Female	6/26/13 10:08 PM
7			Josey	Inactive	6047059	07/15/2020 Female	5/7/16 7:54 PM
8			Logan	Inactive	5993124	09/11/2019 Female	10/8/15 4:40 AM
9			Gucci	Inactive	3020685	07/27/2015 Female	12/3/14 12:05 AM
10			?	Inactive	2663467	03/23/2020 Female	10/9/15 9:03 PM
11			Stoli	Inactive	2529441	05/18/2017 Female	3/22/13 3:18 AM
12			Jayleen	Inactive	6012090	07/19/2018 Female	
13			Athena	Inactive	6061588	04/18/2021 Female	4/20/16 12:07 AM
14			Fallon	Active	6052984	11/16/2020 Female	8/4/16 1:17 AM
15			Yohana	Active	6065771	05/30/2021 Female	7/23/16 12:39 AM
16			Vixen	Inactive	2820847	05/28/2018 Female	11/16/13 7:54 PM
17			Miss Jaija	Inactive	3073366	11/16/2017 Female	
18			Chelsea	Inactive	6040162	03/05/2020 Female	3/6/16 4:25 PM
19			Zen	Inactive	3065445	09/21/2017 Female	9/12/14 7:56 PM
20			Aleida	Inactive	5729945	04/17/2019 Female	11/4/14 6:07 PM
21			Syra	Inactive	6059417	06/10/2016 Female	
22			Alessandra	Inactive	6025018	06/02/2019 Female	6/3/14 10:24 PM
23			Rilley	Inactive	6039732	02/24/2020 Female	2/25/15 7:20 PM
24			Alejandra	Inactive	6025847	05/02/2019 Female	6/27/15 12:42 AM
25			Lex	Inactive	6036341	12/15/2019 Female	12/4/15 11:32 PM
26			Malty	Inactive	6035564	11/25/2019 Female	12/5/14 8:27 PM
27			Giselle	Active	6035595	12/31/2020 Female	
28			Loki	Inactive	2613124	10/20/2016 Female	3/3/16 10:19 PM
29			Desire	Inactive	1879227	08/20/2015 Female	6/4/15 1:23 AM
30			Xena	Inactive	6053193	11/19/2020 Female	3/18/16 10:22 PM
31			?	Inactive	3081467	04/09/2018 Female	
32			Finesse	Inactive	6009786	08/07/2019 Female	12/6/15 4:40 AM
33			Lora	Active	2579072	03/22/2021 Female	8/3/16 11:20 PM
34			Karma	Active	1746206	10/12/2016 Female	7/30/16 12:04 AM
35			Soraya	Inactive	3060067	09/16/2018 Female	1/30/16 4:02 AM
36			NEEDS TO CH	Inactive	3065177	05/16/2017 Female	10/1/13 5:24 AM
37			Staffanie E	Inactive	6019125	12/27/2018 Female	
38			Mona	Inactive	6044459	05/21/2020 Female	4/2/16 1:30 AM
39			Sally	Inactive	6011433	09/10/2018 Female	8/19/15 9:16 PM
40			Kana	Active	3040083	01/13/2020 Female	7/31/16 11:12 PM
41			Mercy	Inactive	6013520	08/21/2018 Female	5/14/16 12:11 AM
42			Natasha	Inactive	6045732	06/17/2020 Female	6/18/15 10:02 AM
43			Talia	Active	6050212	06/16/2020 Female	7/23/16 11:25 PM
44			Princess	Inactive	6055660	01/07/2021 Female	2/4/16 1:54 PM
45			GiGi	Inactive	6019343	01/02/2020 Female	5/10/15 3:26 AM
46			Emma	Inactive	1807852	06/25/2015 Female	1/17/14 1:44 PM
47			Nicole	Inactive	6019390	04/03/2014 Female	1/19/14 12:04 AM
48			Desie	Inactive	6019392	04/03/2014 Female	1/4/14 3:57 PM
49			Mercy	Inactive	6012920	08/08/2018 Female	8/11/13 12:45 AM
50			Gemini	Inactive	2756253	12/06/2018 Female	10/23/15 4:58 AM
51			Samera	Inactive	6027514	06/05/2019 Female	6/6/14 9:16 PM
52			Telia	Inactive	6034688	11/06/2019 Female	5/17/15 1:16 PM

	First	Last	Stage Name	Status	Ent. ID	Exp. Position	Last Performed
4537	REDACTED		Jenny	Inactive	6045938	09/22/2015 Female	
4538			Mai	Active	6053569	11/25/2020 Female	8/3/16 11:33 PM
4539			Glitter	Inactive	3032871	06/12/2014 Female	4/18/14 7:31 PM
4540			??	Inactive	8261826	02/11/2021 Female	
4541			Aspen	Active	6061579	04/18/2021 Female	8/1/16 9:54 PM
4542			Cherry-Ann	Inactive	6012392	07/26/2018 Female	7/29/13 2:35 AM
4543			Ella	Inactive	2890519	06/05/2018 Female	10/11/13 1:53 PM
4544			Layla-Rose	Inactive	3080347	03/22/2018 Female	9/23/13 3:33 AM
4545			Santana	Active	3060462	03/28/2021 Female	
4546			Tori Taylor	Inactive	6035937	12/05/2019 Female	1/26/15 11:56 PM
4547			Royalty	Inactive	2764120	11/12/2019 Female	2/11/15 11:30 PM
4548			Biz	Inactive	3041440	12/11/2018 Female	10/25/15 6:34 PM
4549			?	Inactive	1765340	09/12/2018 Female	
4550			Eureka	Inactive	6042704	04/20/2020 Female	7/10/15 9:04 PM
4551			Yuki	Inactive	6033783	10/17/2019 Female	10/17/14 11:29 PM
4552			Kimbella	Inactive	5997837	07/02/2014 Female	4/4/14 12:27 AM
4553			Naoki	Inactive	3062338	03/12/2017 Female	7/1/14 2:57 PM
4554			Maricela	Inactive	6030840	08/18/2019 Female	9/12/14 10:34 PM
4555			Cleveland	Inactive	3062793	06/09/2019 Female	2/28/16 2:37 AM
4556			Be-Be	Inactive	2854376	06/24/2019 Female	12/1/14 11:54 PM
4557			Lia	Active	6065683	09/29/2016 Female	6/29/16 11:59 PM
4558			Rain	Inactive	2676268	04/28/2016 Female	
4559			Nixie	Inactive	6037959	01/22/2020 Female	1/24/15 9:56 PM
4560			Adriana	Inactive	6034123	10/23/2019 Female	10/24/14 4:00 AM
4561			Nikki	Inactive	6038371	04/29/2015 Female	2/6/15 12:59 PM
4562			Aiyana	Inactive	6038814	02/06/2020 Female	7/16/15 7:56 PM
4563			Talia	Inactive	3079133	03/05/2018 Female	
4564			Zara	Inactive	3022408	09/05/2018 Female	9/6/13 11:51 PM
4565			Meela	Inactive	6049224	08/27/2020 Female	3/20/16 2:10 PM
4566			Elveria	Active	8100911	10/12/2020 Female	6/18/16 9:14 PM
4567			Aspen	Inactive	6015456	10/03/2018 Female	10/6/13 1:22 AM
4568			Bree	Inactive	6059432	03/10/2021 Female	3/20/16 11:22 AM
4569			Imogene	Inactive	3064927	05/10/2017 Female	2/9/13 8:40 PM
4570			Lilly	Inactive	3010653	01/08/2018 Female	6/15/13 8:52 PM
4571			Georgia	Inactive	6033182	10/06/2019 Female	10/12/14 9:26 PM
4572			Monique	Inactive	6017894	11/22/2018 Female	4/23/16 1:34 PM
4573			Meg	Active	6052192	10/27/2020 Female	6/7/16 11:31 PM
4574			Champagne	Inactive	1285957	07/23/2014 Female	6/13/14 12:13 AM
4575			Madden	Active	3076365	01/22/2018 Female	7/23/16 11:58 PM
4576			Meleena	Inactive	6048206	08/06/2020 Female	4/26/16 11:40 PM
4577			India	Inactive	3062948	05/08/2018 Female	8/19/13 4:33 PM



# **EXHIBIT “D”**

  
CLERK OF THE COURT

**SB**  
RYAN M. ANDERSON, ESQ.  
Nevada Bar No.: 11040  
LAUREN CALVERT, ESQ.  
Nevada Bar No.: 10534  
**MORRIS//ANDERSON**  
716 S. Jones Blvd.  
Las Vegas, Nevada 89107  
Phone: (702) 333-1111  
Email: [lauren@morrisandersonlaw.com](mailto:lauren@morrisandersonlaw.com)

P. ANDREW STERLING, ESQ.  
Nevada Bar No.: 13769  
MICHAEL J. RUSING, ESQ.  
Arizona Bar No.: 6617 (*Admitted Pro Hac Vice*)  
**RUSING LOPEZ & LIZARDI, PLLC**  
6363 North Swan Road, Suite 151  
Tucson, Arizona 85718  
Phone: (520) 792-4800  
Email: [asterling@rllaz.com](mailto:asterling@rllaz.com)

*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JACQUELINE FRANKLIN, ASHLEIGH PARK,  
LILY SHEPARD, STACIE ALLEN, MICHAELA  
DIVINE, VERONICA VAN WOODSEN,  
SAMANTHA JONES, KARINA STRELKOVA,  
LASHONDA STEWART, DANIELLE LAMAR  
and DIRUBIN TAMAYO individually, and on  
behalf of Class of similarly situated individuals,

Plaintiffs,

v.

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

Defendants.

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

**PLAINTIFFS' SUPPLEMENTAL**  
**BRIEF IN SUPPORT OF CLASS**  
**CERTIFICATION MOTION**

///

**PLAINTIFFS' SUPPLEMENTAL BRIEF IN SUPPORT OF CLASS CERTIFICATION**  
**MOTION**

Plaintiffs, pursuant to this Court's order dated January 17, 2017, hereby submit this supplemental memorandum regarding the impact, if any, of a recent amendment to Nevada's wage statute (codified at NRS 608.0155) on their pending motion for class certification.

DATED this 31st day of January, 2017.

**MORRIS//ANDERSON**

By: /s/ Lauren Calvert

**RYAN M. ANDERSON, ESQ.**

Nevada Bar No.: 11040

**LAUREN CALVERT, ESQ.**

Nevada Bar No.: 10534

716 S. Jones Blvd.

Las Vegas, Nevada 89107

P. ANDREW STERLING, ESQ.

Nevada Bar No.: 13769

MICHAEL J. RUSING, ESQ.

Arizona Bar No.: 6617 (*Admitted Pro Hac Vice*)

**RUSING LOPEZ & LIZARDI, PLLC**

6363 North Swan Road, Suite 151

Tucson, Arizona 85718

Phone: (520) 792-4800

Email: [asterling@rllaz.com](mailto:asterling@rllaz.com)

*Attorneys for Plaintiffs*

## **INTRODUCTION**

This is a proposed class action by exotic dancers against the owners of Crazy Horse III Gentlemen's Club (the "Club"), a Las Vegas strip club. Count One of the extant Third Amended Complaint ("3AC") is a claim under the Minimum Wage Amendment to Nevada's Constitution (Art. XV. sec. 16) to recover the prevailing minimum wage for each hour worked. 3AC at ¶43. Count Two (unjust enrichment) seeks to recover various fees and fines that were improperly imposed on Plaintiffs by the Club as a condition of employment. *Id.* at ¶48. The complaint does not allege any claim under Nevada's wage statute, NRS Chapter 608. Plaintiffs have moved to certify a class of putative employees for both counts under NRCP 23(a) and 23(b)(3). The Court requested this supplemental briefing to address whether NRS 608.0155 (a recent amendment to Nevada's wage statute) has any impact on the class certification analysis.

## **SHORT ANSWER**

NRS 608.0155, which adds a "conclusive presumption" of independent contractor status for claims arising under Chapter 608 if certain criteria are met, does not alter the fact that both counts in Plaintiffs' complaint should be certified under NRCP 23(a) and 23(b)(3).

With respect to Plaintiffs' Minimum Wage Amendment claim, the Club's suggestion that NRS 608.0155's new test for independent contractor status acts as a de facto "class action killer" and prevents class treatment of Plaintiffs' constitutional wage claim is unconvincing. *See Cert. Oppo.* at 24 (arguing NRS 608.0155 test "requires an independent and individual analysis of each Plaintiff"). In fact, NRS 608.0155 only applies to statutory wage claims, not to constitutional wage claims. Even if NRS 608.0155 could be construed to apply to constitutional wage claims it would be preempted. Even if it did apply to constitutional wage claims and was not preempted, NRS 608.0155 does not purport to apply where, as here, the putative principal denies that the putative contractors perform any work for it and admits it has paid the putative contractors no money. Finally, even if the test were to be applied, the test criteria easily can be assessed on a class-wide basis where, as here, all putative

1 class members had the same job and were subject to the same policies and working conditions. The  
2 law in this regard comports with common sense. Regardless of the legal test or tests to be applied, at  
3 the end of the day the Club’s dancers are either all its employees or none of them are. That question  
4 can and should be decided on a class-wide basis. *See Iglesias–Mendoza v. La Belle Farm, Inc.*, 239  
5 F.R.D. 363, 373 (S.D.N.Y.2007) (noting the common liability issue of whether class members “were  
6 supposed to be paid the minimum wage as a matter of law and were not” is “about the most perfect  
7 question[] for class treatment.”); *see also Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir.  
8 1998) (“When common questions present a significant aspect of the case and they can be resolved for  
9 all members of the class in a single adjudication, there is clear justification for handling the dispute on  
10 a representative rather than on an individual basis.”).

11  
12  
13 No provision of NRS Chapter 608 could have any conceivable impact on Plaintiffs’ unjust  
14 enrichment claim. “Where state common law includes an unjust enrichment action like Nevada’s,  
15 courts have usually granted class certification.” *Sobel v. Hertz Corp.*, 291 F.R.D. 525, 543 (D. Nev.  
16 2013) (collecting cases). *See also Keilholtz v. Lennox Hearth Products Inc.*, 268 F.R.D. 330, 341  
17 (N.D. Cal. 2010) (certifying Rule 23(b)(3) class for unjust enrichment claim because whether  
18 defendant was unjustly enriched is “[c]ommon to all class members and provable on a class-wide  
19 basis”).

## 20 21 ANALYSIS

### 22 **I. THE CONSTITUTIONAL AND STATUTORY FRAMEWORK**

#### 23 **A. The Minimum Wage Amendment**

24  
25 The Minimum Wage Amendment was proposed by initiative petition and overwhelmingly  
26 approved and ratified by Nevada voters in 2004 and 2006. *See Nev. Const. art. 15, § 16.* It guarantees  
27 a mandatory minimum wage to all employees, who are defined in the Amendment as “any person  
28 who is employed by an employer as defined herein but does not include [1] an employee who is under  
eighteen (18) years of age, [2] employed by a nonprofit organization for after school or summer

1 employment or [3] as a trainee for a period not longer than ninety (90) days.” *Id.* at sec. 16(C). The  
2 Amendment incorporates the definition of employee used by the federal Fair Labor Standards Act  
3 (“FLSA”) (29 USC §§ 201-219). *See* 29 U.S.C. § 203(e)(1) (“the term ‘employee’ means any  
4 individual employed by an employer.”). The Amendment expressly creates a private cause of action  
5 separate and distinct from any pre-existing statutory cause of action. *See id.* at sec. 16(B) (“An  
6 employee claiming violation of this section may bring an action against his or her employer in the  
7 courts of this State to enforce the provisions of this section and shall be entitled to all remedies  
8 available under the law or in equity appropriate to remedy any violation of this section...”); *see also*  
9 *Terry v. Sapphire Gentlemen's Club*, 130 Nev. Adv. Op. 87, 336 P.3d 951, 955 (2014) (noting  
10 Minimum Wage Amendment claim is separate and distinct from a claim under NRS Chapter 608).  
11  
12

### 13 **B. NRS Chapter 608**

14 An employee’s right to a minimum wage in Nevada is guaranteed by the federal FLSA and by  
15 the Nevada Constitution. The Nevada legislature in NRS Chapter 608 also has enacted some laws  
16 regarding the minimum wage and provided a private cause of action in NRS 608.260 and 608.140.  
17 This statutory scheme is effectively obsolete, however, because it is less generous to employees than  
18 the guarantees provided by the FLSA and the Nevada Constitution. *See Perry v. Terrible Herbst, Inc.*,  
19 132 Nev. Adv. Op. 75, 383 P.3d 257, 260 (2016) (noting the Minimum Wage Amendment “affords a  
20 broader array of remedies than the back-pay claim NRS 608.260 allows.”); *see also Terry*, 336 P.3d at  
21 956 (noting “a broader or more comprehensive coverage of employees [than that provided in the  
22 FLSA’s definitions] would be difficult to frame.”), *quoting United States v. Rosenwasser*, 323 U.S.  
23 360, 362 (1945).  
24  
25

26 The Nevada Supreme Court addressed the substantive scope of the Chapter 608’s minimum  
27 wage provisions in *Terry v. Sapphire Gentlemen’s Club*, which was an employment misclassification  
28 class action by dancers alleging violations of NRS Chapter 608. *Terry*, 336 P.3d at 953. The dancers  
in that case made no claim under the Minimum Wage Amendment. *Id.* at 955. The Supreme Court

1 held that NRS 608.010 (the wage law’s definition of “employee”) incorporated the FLSA’s broad  
2 definition of employee. *See Terry*, 336 P.3d at 953 (holding that, because “the statutes in question do  
3 not signal any intent to deviate from that course, and that for practical reasons the two schemes should  
4 be harmonious in terms of which workers are entitled to protection, we herein adopt the Fair Labor  
5 Standards Act’s ‘economic realities’ test for employment in the minimum wage context.”).

7 NRS 608.0155, which was enacted after the decision in *Terry*, leaves intact the Supreme  
8 Court’s adoption of the economic realities test to define “employee” under NRS 608.010 but adds a  
9 “conclusive presumption” of independent contractor status for the purposes of Chapter 608 if certain  
10 criteria are met. *See* NRS 608.0155(1). However, the fact that “a person is not conclusively presumed  
11 to be an independent contractor” under this new test “does not automatically create a presumption that  
12 the person is an employee.” NRS 608.0155(2). In other words, if a person is not an independent  
13 contractor under NRS 608.0155, then employment status for the purposes of Chapter 608 would be  
14 determined under NRS 608.010’s economic realities test.

## 16 **II. IMPACT OF NRS 608.0155 ON RULE 23(a) ANALYSIS**

17 NRS 608.0155 has no impact on NRCP 23(a)’s threshold analysis. A new legislative test for  
18 independent contractor status clearly has no impact on whether the class size is sufficiently numerous  
19 (it is) or whether the representative parties will fairly and adequately protect the interests of the class  
20 (they will). Nor could this independent contractor test have any impact on the commonality and  
21 typicality prerequisites. Commonality and typicality are satisfied because the Club’s uniform  
22 corporate policy is the focus of this litigation and because each count presents a single common  
23 question of law - Count One asks whether dancers are the club’s employees under Nevada law; Count  
24 Two asks whether the Club has been unjustly enriched by retaining fees and fines extracted from the  
25 dancers as a condition of employment. *See Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837,  
26 848-49, 124 P.3d 530, 538-39 (2005) (holding commonality and typicality met where “each class  
27 member’s claim arises from the same course of events and each class member makes similar legal  
28

arguments to prove the defendant's liability."); *Meyer v. Eighth Judicial Dist. Court*, 110 Nev. 1357, 1364, 885 P.2d 622, 626 (1994) (commonality and typicality met where general corporate policy is focus of litigation); *Villalpando v. Exel Direct Inc.*, 303 F.R.D. 588, 606 (N.D.Cal. 2014) (commonality and typicality met where complaint alleges putative employer implemented systematic misclassification policy).

### III. IMPACT OF NRS 608.0155 ON RULE 23(b)(3) ANALYSIS

#### A. Count One (Minimum Wage Amendment Claim)

##### 1. Predominance of common questions of law and fact

The predominance prong "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Beazer Homes*, 121 Nev. at 850, 124 P.3d at 540. "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." *Hanlon*, 150 F.3d at 1022). Conversely, predominance is not met where "individual stakes are high and disparities among class members great." *Shuette*, 121 Nev. at 851, 124 P.3d at 540. "A 'single, central issue' as to the defendant's conduct vis a vis class members can satisfy the predominance requirement even when other elements of the claim require individualized proof." *Payne v. Goodyear Tire & Rubber Co.*, 216 F.R.D. 21, 27 (D. Mass. 2003) (quoting *In re Prudential Ins. Co. of Am. Sales Practices*, 148 F.3d 283, 314 (3d Cir.1998)).

NRS 608.0155 does not impact the predominance analysis under NRCP 23(b)(3) with respect to Plaintiffs' Minimum Wage Amendment claim for the following reasons:

##### a. *Regardless of whether NRS 608.0155 applies, common questions predominate over individual ones because the central liability issue is common to the class*

Liability in this case (*i.e.*, the lawfulness of Defendants' policy of not treating its dancers as employees) is the central legal issue common to the class. As other courts previously have found, where the "liability issue is common to the class, common questions are held to predominate over individual ones." *Ruffin v. Entm't of the E. Panhandle*, 2012 WL 5472165, at \*10 (N.D.W. Va.



1 Nov. 9, 2012) (certifying class under FRCP 23(b)(3) where common liability question whether  
2 defendant strip club legally misclassified its dancers as independent contractors). Indeed, one court  
3 even declared that the common liability issue of whether class members “were supposed to be paid  
4 the minimum wage as a matter of law and were not” is “about the most perfect question[] for class  
5 treatment.” *Iglesias–Mendoza v. La Belle Farm, Inc.*, 239 F.R.D. 363, 373 (S.D.N.Y.2007); see  
6 also *Williams-Green v. J. Alexander's Restaurants, Inc.*, 277 F.R.D. 374, 383 (N.D. Ill. 2011)  
7 (certifying FRCP 23(b)(3) class of waiters in class action against employer for tip pool violations  
8 where “controlling substantive issue” was propriety of employer’s policy); *Ansoumana v.*  
9 *Gristede's Operating Corp.*, 201 F.R.D. 81, 89 (S.D.N.Y. 2001) (finding predominance where  
10 central issues were whether plaintiffs were employees as matter of law and consequences of  
11 resolution of that issue in relation to minimum wage). Even if NRS 608.0155 applied to Plaintiffs’  
12 constitutional wage claim (it does not) this would merely add another layer of legal analysis. It  
13 would not change the fundamental nature of the claim or the fact that the common liability issue  
14 predominates over any individual issues.

15  
16 ***b. NRS 608.0155 by its plain language applies only to claims brought under NRS***  
17 ***Chapter 608; it does not purport to apply to Minimum Wage Amendment claims***

18 The first six words of NRS 608.0155 clearly indicate that its test for independent contractor  
19 status applies only “**for the purposes of this chapter** [i.e., Chapter 608].” NRS 608.0155(1)  
20 (emphasis added). In other words, NRS 608.0155 unambiguously indicates that its independent  
21 contractor test does not apply for the purposes of Minimum Wage Amendment claims. If the Nevada  
22 legislature wanted to ignore the principle of constitutional supremacy and attempt to apply the test to  
23 limit the scope of the Minimum Wage Amendment it easily could have said so, but did not.

24  
25 The Club in its brief opposing class certification attached as an exhibit the minutes of a Senate  
26 Committee on Commerce, Labor, and Energy hearing on the bill (SB 224) that contained what would  
27 become NRS 608.0155. *See* Class Cert. Oppo. at Ex. A. These minutes are irrelevant. Courts “must  
28 attribute the plain meaning to a statute that is not ambiguous.” “*State v. Catanio*, 120 Nev. 1030,

1 1033, 102 P.3d 588, 590 (2004). *See also State v. Lucero*, 127 Nev. Adv. Op. 7, 249 P.3d 1226, 1228  
2 (2011) (“The starting point for determining legislative intent is the statute’s plain meaning; when a  
3 statute is clear on its face, a court cannot go beyond the statute in determining legislative intent.”)  
4 (quotation omitted). As an historical footnote, however, it bears noting that one industry lobbyist  
5 clearly stated to the Committee at the outset of the hearing that “[t]he purpose of S.B. 224 is to define  
6 independent contractors consistently **as found throughout Nevada Revised Statutes.**” Class Cert.  
7 Oppo. Ex. A at p.4 (emphasis added). The lobbyist did not suggest that the purpose of the bill was to  
8 legislatively restrict the constitutional right to a minimum wage. Indeed, the minutes contain no  
9 mention of the concept of constitutional supremacy and no discussion regarding whether a legislature  
10 can restrict key constitutional provisions enacted by voter initiative or abrogate Supreme Court  
11 interpretations of those provisions. *Cf. Thomas*, 327 P.3d at 522 (“The principle of constitutional  
12 supremacy prevents the Nevada Legislature from creating exceptions to the rights and privileges  
13 protected by Nevada’s Constitution.”).

16 *c. Even if NRS 608.0155 could be construed to apply to Minimum Wage Amendment*  
17 *claims, the Nevada Supreme Court already has determined that such a statute*  
18 *would be preempted*

19 The Nevada Supreme Court addressed the substantive scope of the Minimum Wage  
20 Amendment in *Thomas v. Nevada Yellow Cab Corp.*, 130 Nev. Adv. Op. 52, 327 P.3d 518 (2014),  
21 *reh’g denied* (Sept. 24, 2014). The question presented in *Thomas* was whether the Amendment’s  
22 broad definition of employee preempted a pre-existing legislative exception for taxicab drivers. *Id.* at  
23 520. In answering that question in the affirmative, the Supreme Court held that: (a) “[t]he Minimum  
24 Wage Amendment expressly and broadly defines employee, exempting only certain groups,” (b) it  
25 expressly provides that “all employees not exempted by the Amendment . . . must be paid the  
26 minimum wage set out in the Amendment”, and (c) any statute that purports to interfere with the  
27 Amendment’s broad definition of employee is “irreconcilably repugnant” to the Amendment and  
28 therefore preempted. *Id.* at 521 (noting “[t]he Amendment’s broad definition of employee and very

1 specific exemptions necessarily and directly conflict with the legislative exception for taxicab  
2 drivers.”).

3       The Nevada Supreme Court has not expressly held that voters intended the Minimum Wage  
4 Amendment’s definition of employee to be co-extensive with the identical FLSA definition but  
5 strongly has indicated as much in both *Thomas* and *Terry*. The Court in *Terry* noted that the  
6 Amendment reflects “this state’s voters’ wish that more, not fewer, persons would receive minimum  
7 wage protections.”). *Terry*, 336 P.3d at 955. The Court here was comparing the Amendment to the  
8 statutory definition of employee in Chapter 608 which the Court held was co-extensive with the  
9 FLSA definition except for six exemptions enumerated in NRS 608.250(2). As the Court indicated in  
10 *Thomas*, these six legislative exemptions are preempted by the Minimum Wage Amendment. The  
11 clear inference is that the scope of the Amendment is co-extensive with the FLSA except for the three  
12 exceptions enumerated in the Amendment. *Thomas* 327 P.3d at 520 (“the text of the Minimum Wage  
13 Amendment, by clearly setting out some exceptions to the minimum wage law and not others,  
14 supplants the exceptions listed in NRS 608.250(2)”).

15       The Supreme Court in *Thomas* emphatically declared that Nevada’s voters intended the  
16 Minimum Wage Amendment to broadly protect all workers and appropriately indicated that its scope  
17 is co-extensive with the FLSA subject to the three exceptions enumerated in the Amendment. *Thomas*  
18 expressly forecloses any past or future attempt by the legislature to constrict the broad definition of  
19 employee enshrined by Nevada’s voters in the Minimum Wage Amendment. **Specific statutory**  
20 **exceptions from the Amendment’s broad scope are preempted; so too are statutory tests that, if**  
21 **applied, would accomplish the same result.**

22       *d.       NRS 608.0155 does not purport to apply in situations where the putative principal*  
23 *denies that the putative contractors perform any work for it and admits it has paid*  
24 *the putative contractors no money*

25       Even if this were a case under Chapter 608 and not the Minimum Wage Amendment, the  
26 independent contractor test in NRS 608.0155 still would not apply. The text of NRS 608.0155 makes  
27  
28

1 clear it only applies where there is a contract between the putative employer/principal and the putative  
2 employee/contractor for the latter to perform work for the former. Indeed, four of the five test criteria  
3 enumerated in NRS 608.0155(1)(c) make absolutely no sense unless there is an underlying contract to  
4 perform work. *See* NRS 608.0155(1)(c)(1) (asking whether “the result of the work, rather than the  
5 means or manner by which the work is performed, is the primary element bargained for by the  
6 principal in the contract”); *id.* at (c)(2) (asking whether the putative contractor has “control over the  
7 time the work is performed”); *id.* at (c)(3) (asking whether putative contractor “is required to work  
8 exclusively for one principal”); *id.* at (c)(4) (asking whether putative contractor “is free to hire  
9 employees to assist with the work”). The test presumably was meant to apply, for example, if a  
10 package delivery company hired, classified and paid its delivery drivers as independent contractors  
11 and the drivers claimed they were in fact employees. *See e.g., Alexander v. FedEx Ground Package*  
12 *Sys., Inc.*, 765 F.3d 981, 985 (9th Cir. 2014) (considering whether FedEx drivers, who were  
13 “compensated [by FedEx] according to a somewhat complex formula that includes per day and per-  
14 stop components” were employees or independent contractors). This is the understanding the business  
15 lobbyists for the Amendment presented to Senate Committee. *See* Class Cert Oppo. Ex. A at 7-8  
16 (lobbyist explaining that the independent contractor test in NRS 608.0155 would apply to determine  
17 the status of an individual where the individual “signs an agreement to provide services to a  
18 company” but there is a “dispute [as to] whether that person is or is not an employee.”). The  
19 independent contractor test in NRS 608.0155 cannot coherently be applied where, as here, the  
20 putative employer/principal denies that the putative employees/contractors performed any work for it  
21 and admits it paid them no money.

22  
23  
24  
25  
26 *e. The test criteria in NRS 608.0155 can be assessed on a class-wide basis*

27 To be presumptively labeled an independent contractor for purposes of NRS Chapter 608, a  
28 person must satisfy three or more of five criteria enumerated in NRS 608.0155(1)(c). Assuming, for  
the sake of argument, that NRS 608.0155 applied to constitutional wage claims and was not

1 preempted, and further assuming that the Club had contracted with (and paid) its dancers to perform  
2 work at the club as independent contractors, the criteria in NRS 608.0155 easily could be assessed on  
3 a class-wide basis.

4 Most obviously, of course, courts have no problem applying the economic realities test on a  
5 class-wide basis. That test, which requires a “review of the totality of the circumstances of the  
6 working relationship's economic reality,” *Terry*, 336 P.3d at 960, is much broader and nuanced than  
7 the criteria enumerated in NRS 608.0155. No element of the test in NRS 608.0155 is so unusual as to  
8 support the Club’s insistence that it creates a per se bar to class treatment of employee  
9 misclassification claims against a single putative employer that has admitted it treats all putative  
10 employees the same.<sup>1</sup>

11  
12 The first criterion considers whether “[1] the person has control and discretion over the means  
13 and manner of the performance of any work and [2] the result of the work, rather than the means or  
14 manner by which the work is performed, is the primary element bargained for by the principal in the  
15 contract.” NRS 608.0155(1)(c)(1). The first part of this criterion (control and discretion) is very  
16 similar to the control factor in the economic realities test, which was considered by the Nevada  
17 Supreme Court on a class-wide basis with no problems. *See Terry*, 336 P.3d at 958 (considering  
18 degree of club's control of manner of dancers' performances on class-wide basis). The second part  
19 (primary element bargained for) frankly seems impossible to apply. How can a court meaningfully  
20 attempt to discern the “primary intent” of a contracting party? Presumably, however, the Club (and  
21 anyone else trying to avoid employer status) will swear the “result of the work” was paramount in its  
22 mind when it contracted with all putative employees. This element too thus will or will not be met on  
23 a class-wide basis.

24  
25  
26  
27  
28 <sup>1</sup> The Club has admitted “during the relevant time period that the club treats all dancers  
equally and applies the policies that it has equally to all the dancers.” *See Class Cert.*  
Reply, Ex. A at p. 19.

1       The second criterion considers whether “the person has control over the time the work is  
2 performed.” *Id.* at (1)(c)(2). Since the Club treated all putative employees the same, this criterion also  
3 can be addressed on a class-wide basis (although this criterion does not apply where, as here, “the  
4 work contracted for is entertainment”). *Id.*

5  
6       The third criterion considers whether the dancers are “required to work exclusively for one  
7 principal.” The dancers concede this is not the case, but again this is because the Club had a common  
8 policy on this matter that can be assessed on a class-wide basis.

9       The fourth criterion considers whether “[t]he person is free to hire employees to assist with the  
10 work.” Either they could or they couldn’t. Again, another class-wide issue capable of class-wide  
11 resolution.

12  
13       The fifth and final criterion considers whether the “person contributes a substantial investment  
14 of capital in the business of the person.” This subsection specifically instructs the court to make a  
15 general class-wide assessment regarding whether dancers make a “substantial investment of capital”  
16 in their purported “dancing business.” *See* NRS 608.0155(1)(c)(5)(degree of capital investment to be  
17 determined on basis of “equipment commonly used and the expenses commonly incurred in the trade  
18 or profession in which the person engages.”). This capital investment inquiry also is applied on a  
19 class-wide basis in the economic realities test. *See Terry*, 336 P.3d at 959 (considering dancers’  
20 investment in equipment or materials and concluding, on class-wide basis, that performers’ capital  
21 investment is *de minimis*).

## 22 23       **2. Superiority of Minimum Wage Amendment Class Action**

24       NRS 608.0155 would have no effect on the superiority analysis with respect to Count One.  
25  
26       Regardless of any statutory test for independent contractor status (which, in any event, could easily be  
27 assessed on a class-wide basis), a class action wage claim is superior to piecemeal individual litigation  
28 because it concentrates the litigation in this forum where the Club is located and where a large  
number of putative class members presumably reside, there is no other litigation concerning the

1 controversy already commenced by members of the class, and the alternative would involve class  
2 members “filing hundreds of individual lawsuits that could involve duplicating discovery and costs  
3 that exceed the extent of the proposed class members’ individual injuries.” *Wolin v. Jaguar Land*  
4 *Rover North America, LLC*, 617 F.3d 1168, 1176 (9th Cir.2010). Class actions routinely are found  
5 superior to piecemeal individual litigation in employee misclassification cases. *See, e.g., Dilts v.*  
6 *Penske Logistics, LLC*, 267 F.R.D. 625 (S.D. Cal. 2010).

8 **B. Count Two (Unjust Enrichment)**

9 NRS 608.0155 only applies to minimum wage claims under Chapter 608. It has no impact on  
10 the predominance or superiority analysis under NRCP 23(b)(3) for Plaintiffs’ common law claim for  
11 unjust enrichment. Certification of a Rule 23(b)(3) class for the unjust enrichment claim is appropriate  
12 because whether Defendant was unjustly enriched is “[c]ommon to all class members and provable on  
13 a class-wide basis.” *Keilholtz v. Lennox Hearth Products Inc.*, 268 F.R.D. 330, 341 (N.D. Cal. 2010)  
14 (applying parallel rule).

16 **CONCLUSION**

17 NRS 608.0155 has no impact on any aspect of this case, including the class certification  
18 analysis. The Court should certify a class of dancers under NRCP 23(b)(3), certify subclasses for each  
19 count under NRCP 23(c)(4), and designate Plaintiffs as class representatives and the undersigned  
20 counsel as class counsel.

22 DATED this 31st day of January, 2017.

23 **MORRIS//ANDERSON**

24  
25 By: /s/ Lauren Calvert  
26 **RYAN M. ANDERSON, ESQ.**  
27 Nevada Bar No.: 11040  
28 **LAUREN CALVERT, ESQ.**  
Nevada Bar No.: 10534  
716 S. Jones Blvd.  
Las Vegas, Nevada 89107  
*Attorneys for Plaintiffs*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of **MORRIS//ANDERSON**, and on the 31st day of January, 2017, I served the foregoing ***PLAINTIFFS’ SUPPLEMENTAL BRIEF IN SUPPORT OF CLASS CERTIFICATION*** ***MOTION*** as follows:

- ☒ Electronic Service – By serving a copy thereof through the Court’s electronic service system; and/or
- ☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or
- ☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below and in the confirmation sheet filed herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of Service.

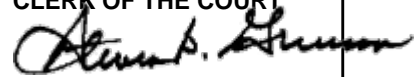
Gregory J. Kamer, Esq.  
KAMER ZUCKER ABBOTT  
3000 W. Charleston Blvd., Suite 3  
Las Vegas, Nevada 89102

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

*Attorneys for Defendants*

/s/ Erickson Finch  
An employee/agent of **MORRIS//ANDERSON**





1 **SUPP**

2 **GREGORY J. KAMER, ESQ.**

3 Nevada Bar No. 0270

4 **KAITLIN H. ZIEGLER, ESQ.**

5 Nevada Bar No. 013625

6 **KAMER ZUCKER ABBOTT**

3000 W. Charleston Blvd., #3

Las Vegas, Nevada 89102

(702) 259-8640

7 **JEFFERY A. BENDAVID, ESQ.**

8 Nevada Bar No. 6220

9 **STEPHANIE J. SMITH, ESQ.**

Nevada Bar No. 11280

**MORAN BRANDON BENDAVID MORAN**

630 South 4<sup>th</sup> Street

Las Vegas, Nevada 89101

(702) 384-8424

*Attorneys for Russell Road Food and Beverage, LLC*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JACQUELINE FRANKLIN, ASHLEIGH  
PARK, LILY SHEPARD, STACIE ALLEN,  
MICHAELA DIVINE, SAMANTHA JONES,  
KARINA STRELKOVA, and DANIELLE  
LAMAR, 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 HORSE III GENTLEMEN'S  
CLUB), SN INVESTMENT PROPERTIES,  
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.

Case No.: A-14-709372-C

Dept. No.: 31

**DEFENDANT, RUSSELL ROAD FOOD  
AND BEVERAGE, LLC'S  
SUPPLEMENTAL BRIEF IN  
SUPPORT OF GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT AGAINST  
PLAINTIFFS, STACIE ALLEN AND  
MICHAELA MOORE**

**Date: June 1, 2017**

**Time: 9:00 a.m.**

**AND RELATED COUNTERCLAIMS**



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 **DEFENDANT, RUSSELL ROAD FOOD AND BEVERAGE, LLC'S SUPPLEMENTAL**  
2 **BRIEF IN SUPPORT OF GRANTING DEFENDANT'S MOTION FOR SUMMARY**  
3 **JUDGMENT AGAINST PLAINTIFFS, STACIE ALLEN AND MICHAELA MOORE**

4 COMES NOW, Defendant, RUSSELL ROAD FOOD AND BEVERAGE, LLC, a Nevada  
5 limited liability, dba CRAZY HORSE III GENTLEMEN'S CLUB, (the "Defendant" or  
6 "Russell Road"), by and through its attorney of record, GREGORY J. KAMER, ESQ., and  
7 KAITLIN H. ZIEGLER, ESQ., of KAMER ZUCKER ABBOTT, and JEFFERY A.  
8 BENDAVID, ESQ., and STEPHANIE J. SMITH, ESQ., of MORAN BRANDON  
9 BENDAVID MORAN, and hereby submits its Supplemental Brief in Support of Granting  
10 Defendant's Motion for Summary Judgment Against Plaintiffs, STACIE ALLEN and  
11 MICHAELA MOORE (the "Plaintiffs").  
12

13  
14 DATED this 15<sup>th</sup> day of June, 2017.

15 **MORAN BRANDON BENDAVID MORAN**

16 /s/ Jeffery A. Bendavid,

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

18 Nevada Bar No. 6220

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

20 Nevada Bar No. 11280

21 630 South 4<sup>th</sup> Street

22 Las Vegas, Nevada 89101

23 (702) 384-8424

24 **KAMER ZUCKER ABBOTT**

25 /s/ Gregory J. Kamer

26 **GREGORY J. KAMER, ESQ.**

27 Nevada Bar No. 0270

28 **KAITLIN H. ZIEGLER, ESQ.**

Nevada Bar No. 013625

3000 W. Charleston Blvd., #3

Las Vegas, Nevada 89102

(702) 259-8640

*Attorneys for Defendant*



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 After a hearing on Plaintiffs' Motion for Summary Judgment on Defendant's  
4 Counterclaims and Defendant's Motion for Summary Judgment Against Plaintiffs, Michaela  
5 Moore and Stacie Allen held on June 1, 2017, this honorable Court ordered Plaintiffs and  
6 Defendant to submit supplemental briefs regarding the sole issue of whether the Court held  
7 jurisdiction over Plaintiffs' in light of the fact that Plaintiffs were barred by the applicable two  
8 (2) year statute of limitation from recovering on their first claim for relief for an alleged  
9 violation of Nevada's Minimum Wage Amendment (the "MWA").  
10

11 As explained below, this Court should grant Russell Road's Motion for Summary  
12 Judgment Against Plaintiffs since:  
13

14 1. Plaintiffs' Third Amended Complaint fails to assert any allegation of any amount of  
15 damages and further fails to allege that Plaintiffs are entitled to damages in an amount in  
16 excess of \$10,000 as required N.R.C.P. 8(a)(2) and applicable Nevada law;

17 2. It appears to a legal certainty that Plaintiffs' Second Claim for Relief is for less than  
18 the required jurisdictional amount since Plaintiffs have failed to allege a sufficient amount of  
19 damages on the face of their Complaint;

20 3. Plaintiffs cannot recover any amount on their second claim for relief asserting a  
21 claim in equity for Unjust Enrichment since Plaintiffs' first claim for relief provided an  
22 adequate remedy at law; and

23 4. It appears to a legal certainty that the possible amount that Plaintiffs' could recover  
24 under their Second Claim for Relief is for less than the required jurisdictional amount.

25 **II. LEGAL STANDARD**

26 The Nevada Constitution provides that district courts do not have original jurisdiction  
27 over actions that fall within the original jurisdiction of the justices' courts. *See Nev. Const.*  
28 *art. 6, § 6.* NRS 4.370(1) confers original jurisdiction upon justices' courts over civil actions



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 for damages or fines, if such damages or fines, without interest, do not exceed \$10,000<sup>1</sup>. *See*  
2 *also, Royal Insurance v. Eagle Valley Construction, Inc.*, 110 Nev. 119, 120, 867 P.2d 1146,  
3 1147 (1994) (attorneys' fees and costs and interest are not included when calculating the  
4 amount in controversy for the purpose of establishing jurisdiction).  
5

6 N.R.C.P. 12(h)(3) provides that "whenever it appears by suggestion of the parties or  
7 otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the  
8 action." (Emphasis Added). *See also, Morrison v. Beach City LLC*, 116 Nev. 34, 36, 991  
9 P.2d 982, 983 (2000). The burden of proving subject matter jurisdiction is placed on  
10 Plaintiffs. *See Morrison*, 116 Nev. at 36-7 (citations omitted). Plaintiffs can only meet their  
11 burden through the submission of "summary judgment type evidence relevant to the amount in  
12 controversy," in existence at the time of the filing of their Complaint. *See e.g., Singer v. State*  
13 *Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9<sup>th</sup> Cir. 1997).  
14

15 As demonstrated below, this Court lacks jurisdiction over Plaintiffs' individual matter  
16 since each Plaintiff has failed to demand any amount whatsoever, any amount allegedly in  
17 excess of \$10,000.00, and/or it appears to a legal certainty that the maximum recovery for  
18 their asserted Unjust Enrichment claim for relief is worth less than the required \$10,000.00.  
19 Therefore, Russell Road's Motion for Summary Judgment against Plaintiffs should be  
20 granted.  
21  
22  
23  
24  
25  
26  
27  
28

---

<sup>1</sup> Effective January 1, 2017, the jurisdictional amount has been increased to \$15,000.00. Plaintiffs' Complaint was filed prior to January 1, 2017, and therefore is subject to the \$10,000.00 threshold.



MORAN BRANDON  
BENDAUID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 **III. ARGUMENT**

2 **A. Plaintiffs Have Failed to Meet The Required Jurisdictional Amount Because**  
3 **Plaintiffs' Third Amended Complaint Fails to Claim Any Damages In Excess of**  
4 **\$10,000.00.**

5 N.R.C.P. 8(a)(2) requires Plaintiffs to include in their Complaint a demand for  
6 judgment for the relief sought by Plaintiffs. If Plaintiffs are seeking to recover an amount in  
7 excess of \$10,000.00, Plaintiffs further are required by N.R.C.P. 8(a)(2) to include in their  
8 demand the phrase, "in excess of \$10,000.00." If Plaintiffs fail to provide this required  
9 assertion or otherwise fail to assert a specific amount that exceeds \$10,000.00, then Plaintiffs  
10 have failed to sufficiently allege an amount of recovery in excess of the jurisdictional amount  
11 as provided by NRS 4.370(1). *See Morrison*, 116 Nev. at 37 (recognizing court's ability to  
12 determine jurisdiction based solely on amount of damages claimed). *See also, Royal*  
13 *Insurance*, 110 Nev. at 120 (dismissed claim for lack of subject matter jurisdiction because  
14 claimed damages were less than jurisdictional amount required); and *e.g., Penrose v. Fritsch*,  
15 2014 U.S. Dist. LEXIS 145667, at \*3 (D. Nev. 2014) (Dismissal appropriate if the complaint  
16 fails to allege facts on its face sufficient to establish subject matter jurisdiction).  
17

18  
19 On the face of Plaintiffs' Complaint, this Court lacks jurisdiction over the subject  
20 matter. Plaintiffs filed their Third Amended Complaint on October 2, 2015. *See Third*  
21 *Amended Complaint* at 1. Plaintiffs' Third Amended Complaint fails to allege any facts  
22 establishing that this Court has jurisdiction over the subject matter. *See generally, Id.* Instead,  
23 Plaintiffs state the following:  
24

- 25 1. This Court has jurisdiction over the subject matter and the person of  
26 defendants. Venue is proper in Clark County. *Id.* at 2.



MORAN BRANDON  
BENDAUID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 In no possible manner, does the above declaration asserted by Plaintiffs in their Third  
2 Amended Complaint operate to establish that this Court has subject matter jurisdiction. *See*  
3 *supra*.

4 Plaintiffs' second claim for relief asserts a claim for relief in equity for Unjust  
5 Enrichment. *See Id.* at 6. This claim for relief makes no demand whatsoever let alone for an  
6 amount that exceeds \$10,000.00. *See Id.* Thus, Plaintiffs' second claim for relief again fails  
7 to demand the recovery of an amount that exceeds \$10,000 for any one of the Plaintiffs. *See*  
8 *Id.*

9  
10 Plaintiffs' Third Amended Complaint also provides Plaintiffs' "Request for Relief."  
11 *See Id.* at 6. Here, Plaintiffs demand restitution to Plaintiffs of all "fees, fines, and other  
12 monies" that were "not otherwise accounted for as damages" for Russell Road's alleged  
13 failure to pay wages. *Id.* Again, however, this prayer for relief fails to request an award in an  
14 amount in "excess of \$10,000.00." *See Id.*

15  
16 Thus, Plaintiffs' Third Amended Complaint, on its face, fails to assert, at any time, a  
17 demand for an award that "exceeds \$10,000.00" as required by N.R.C.P. 8(a)(2). *See supra.*  
18 As such, this Court lacks jurisdiction over the subject matter in this case since Plaintiffs failed  
19 to claim or demand the recovery any amount in excess of \$10,000.00. *See N.R.C.P. 12(h)(3).*  
20 *See also, Royal Insurance*, 110 Nev. at 120; and *Morrison*, 116 Nev. at 37-38. Therefore,  
21 Russell Road's Motion for Summary Judgment against Plaintiffs should be granted.  
22

23  
24 **B. Plaintiffs' Second Claim for Relief Must Be Dismissed Since It Appears To a Legal**  
25 **Certainty That Plaintiffs' Second Claim for Relief Is For Less Than The**  
26 **Jurisdictional Amount As Plaintiffs Have Failed to Allege a Sufficient Amount of**  
27 **Damages On the Face of Their Complaint.**

28 Where the Court is required to look beyond any damages claimed in a complaint to  
determine whether the claimed damages meet the jurisdictional requirement, Nevada has



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 adopted the federal courts' "legal certainty" test. *See Morrison*, 116 Nev. at 38, fn. 15  
2 (adopting the federal court's legal certainty test for determining the jurisdictional amount in  
3 controversy in Nevada district courts). This test requires that in order to dismiss a matter or  
4 claim based on a lack of subject matter jurisdiction, it must appear to a legal certainty that the  
5 claim is worth less than the jurisdictional amount. *See Id. (citing St. Paul Indemnity Co. v.*  
6 *Cab Co.*, 303 U.S. 283, 288-89, 82 L. Ed. 845, 58 S. Ct. 586 (1938); and *Budget Rent-A-Car,*  
7 *Inc., v. Higashiguchi*, 109 F.3d 1471, 1473 (9<sup>th</sup> Cir. 1997).

9 Under the "legal certainty" test, the amount in controversy ordinarily is determined  
10 from the face of the complaint and unless a different rule is required by law, the amount  
11 alleged controls if made in good faith. *See Pachinger v. MGM Grand Hotel-Las Vegas, Inc.*,  
12 802 F.2d 362, 363-64 (9<sup>th</sup> Cir. 1986). In the 9<sup>th</sup> Circuit, three (3) situations exist where the  
13 Court can go beyond the pleadings to determine whether a claim is worth less than the  
14 jurisdictional amount: (1) when the terms of a contract limit possible recovery; (2) when a  
15 specific rule of law or measure of damages limits the amount of damages recoverable; and (3)  
16 when independent facts show that the amount of damages was claimed merely to obtain  
17 jurisdiction. *See Id.* at 364 (quotation omitted).

18 Here, relying simply on the face of Plaintiffs' Complaint demands dismissal as  
19 explained above since Plaintiffs failed to allege pursuant to N.R.C.P. 8(a)(2) any amount of  
20 damages and pursuant to N.R.C.P. 8(a)(2), failed to allege that their damages exceed  
21 \$10,000.00. *See generally*, Third Amended Complaint. No determination of whether the  
22 Court should "go beyond" the face of the Complaint to establish jurisdiction is required  
23 because Plaintiffs did not assert an amount of damages to establish subject matter jurisdiction  
24 in this Court. *See Id.* As such, this Court lacks jurisdiction over the subject matter in this case  
25  
26  
27  
28



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 since Plaintiffs failed to claim or demand any damages in excess of \$10,000.00. *See* N.R.C.P.  
2 12(h)(3). *See also, Royal Insurance*, 110 Nev. at 120; and *Morrison*, 116 Nev. at 37-38.  
3 Therefore, Russell Road's Motion for Summary Judgment against Plaintiffs should be  
4 granted.  
5

6 **C. Plaintiffs' Second Claim for Relief Must Be Dismissed Since Plaintiffs Are Prohibited**  
7 **As a Matter of Nevada Law From Recovering In Equity On Their Second Claim for**  
8 **Relief Because Plaintiffs' First Claim For Relief Afforded Plaintiffs An Adequate**  
9 **Legal Remedy.**

10 Even if the Court "goes beyond" the face of Plaintiffs' Complaint, applicable rules of  
11 law limit the amount Plaintiffs' may recover on the second claim for relief because Plaintiffs  
12 cannot recover any amount in equity where an adequate legal remedy was available to them.  
13 *See infra*. Under Nevada law, Plaintiffs may not recover in equity where Plaintiffs have a full  
14 and adequate remedy at law. *See State ex rel. Nenzel v. Second Judicial Dist. Court in & for*  
15 *Washoe County*, 49 Nev. 145, 159, 241 P. 317, 322 (1925) (superseded by statute on other  
16 grounds). *See also, Small v. Univ. Med. Ctr. Of S. Nev.*, 2016 U.S. Dist. LEXIS 102508 at \*8  
17 (D. Nev. 2016) (Dismissing an unjust enrichment claim in a minimum wage case because  
18 federal law provided an adequate legal remedy). "Count Two" of Plaintiffs' Third Amended  
19 Complaint attempts to assert a claim in equity against Russell Road for Unjust Enrichment but  
20 as an alleged violation of the MWA. *See Third Amended Complaint* at 3-4 and at 6<sup>2</sup>.  
21 Plaintiffs' second claim for relief specifically alleges that the wages allegedly earned by  
22 Plaintiffs but not paid by Russell Road constituted a benefit conferred on Russell Road by  
23 Plaintiffs. *See Id.* Plaintiffs, therefore, conclude in their second claim for relief that Russell  
24 Road has been unjustly enriched by accepting and retaining this benefit conferred by  
25 Plaintiffs. *See Id.* Consequently, Plaintiffs, as part of their prayer for relief, demand  
26  
27  
28

---

<sup>2</sup> Plaintiffs' second claim for relief specifically incorporates Plaintiffs' general allegations. *See Id.* at 6.



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568



1 restitution of all “fees, fines, and other monies” that were “not otherwise accounted for as  
2 damages” for Russell Road’s alleged failure to pay wages.

3         On its face, Plaintiffs’ second cause of action for Unjust Enrichment must be dismissed  
4 for lack of subject matter jurisdiction. Plaintiffs’ second claim for relief attempts to recover in  
5 equity Plaintiffs’ alleged unpaid wages and all “fees, fines, and other monies” that were “not  
6 otherwise accounted for as damages” for Russell Road’s alleged failure to pay wages. *See Id.*  
7 However, the MWA and NRS 608.260 provided Plaintiffs with an adequate and full remedy at  
8 law to sue and recover any actual unpaid wages owed. *See Nev. Const., Article XV, Sec.*  
9 *16(B); and NRS 608.260. See also, Perry v. Terrible Herbst, Inc., 132 Nev. Adv. Rep. 75 at*  
10 *\*7, 383 P.3d 257, 260 (2016) (determining that claim for failure to pay Nevada’s Minimum*  
11 *Wage under the MWA was in reality a claim for back pay under NRS 608.260 and the method*  
12 *for calculating damages is derived directly from the MWA). Further, Plaintiffs’ first claim for*  
13 *relief already asserts a claim under the MWA for the recovery of their allegedly unpaid wages.*  
14 *See Third Amended Complaint at 5.*

15         Here, Plaintiffs cannot recover under their first claim for relief only because they did  
16 not perform at Russell Road’s Crazy Horse III Gentlemen’s Club within the prescribed two (2)  
17 year statute of limitation<sup>3</sup> from the date of Plaintiffs’ November 4, 2014 Complaint. *See*  
18 *Charge Summary and Dance Dollar Report for Plaintiffs, attached hereto and incorporated*  
19 *herein as Exhibit “1.” See also, Perry, 132 Nev. Adv. Rep. 75 at \*12 (determining that claim*  
20 *for failure to pay Nevada’s Minimum Wage under the MWA is subject to a two (2) year*  
21 *statute of limitation as set forth in NRS 608.260).*

22  
23  
24  
25  
26  
27  
28  

---

<sup>3</sup> Plaintiffs have also conceded this fact during the hearing on June 1, 2017 for Defendant’s Motion for Summary Judgment.



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 Had Plaintiffs commenced an action against Russell Road within the required two (2)  
2 years, an adequate legal remedy was available to Plaintiffs. *See supra*. Plaintiffs failed to do  
3 so and are now barred as a matter of law from any recovery under their first claim for relief.  
4 *See Id.* As a result, it is impossible for Plaintiffs to recover the same allegedly unpaid wages  
5 in equity as part of their second claim for relief for Unjust Enrichment since an adequate legal  
6 remedy was available to Plaintiffs and Plaintiffs, therefore, cannot recover on their second  
7 claim for relief that asserts an equitable claim of Unjust Enrichment. As such, this Court lacks  
8 jurisdiction over the subject matter in this case since Plaintiffs cannot recover any amount in  
9 equity pursuant to their second claim for relief. *See N.R.C.P. 12(h)(3)*. *See also, Royal*  
10 *Insurance*, 110 Nev. at 120; and *Morrison*, 116 Nev. at 37-38.

13 Of course, Plaintiffs attempt to avoid this reality by declaring that their second claim  
14 for relief is an equitable claim for Unjust Enrichment and only seeks restitution of fees and  
15 fines that Russell Road allegedly extracted from Plaintiffs. *See infra*. From the onset of this  
16 case, Russell Road has objected to and sought the dismissal of Plaintiffs' second claim for  
17 relief for Unjust Enrichment since Plaintiffs' cannot recover in equity where Plaintiffs could  
18 recover as a matter of law. *See Russell Road's Motion to Dismiss at 20-21*. Originally,  
19 Plaintiffs avoided the dismissal of their second claim for relief on the ground that they had  
20 asserted their second claim for relief in the "alternative." *See Order Granting in Part and*  
21 *Denying in Part Russell Road's Motion to Dismiss at 26*.

23 Since that time, however, Plaintiffs repeatedly have attempted to redefine and newly  
24 characterize their second claim for relief as an "independent" claim for relief asserted  
25 separately from their first claim for relief. *See Plaintiffs' Motion to Compel Discovery*  
26 *Responses at 6*. *See also, Reply in Support of Motion for Certification at 10-11*. In each  
27  
28



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 instance, Russell Road has objected<sup>4</sup> to these attempts since Plaintiffs' second claim for relief  
2 asserted in their Third Amended Complaint plainly alleges a violation of the MWA and  
3 demands payment of their allegedly unpaid wages. *See supra*.

4         Regardless, Plaintiffs' most recent contention fails because Plaintiffs have not  
5 demonstrated that such "fees and fines" would not be repaid to Plaintiffs as part of any award  
6 of damages Plaintiffs could have received under their first claim for relief, which alleged a  
7 violation of the MWA. *See supra*. Certainly, Plaintiffs would contend that they are entitled to  
8 the repayment of such "fees and fines" in addition to any minimum wage if it was determined  
9 they were employees of Russell Road. *See e.g., Third Amended Complaint* at 6. Under such  
10 circumstances, no amount of "fees and fine" would remain outside of any award of damages  
11 granted under Plaintiffs' first claim for relief.  
12

13  
14         As such, this Court lacks jurisdiction over the subject matter in this case since an  
15 adequate legal remedy exists that allows Plaintiffs to recover at law all of their "fees and  
16 fines" that Plaintiffs sought to recover in equity under their second claim for relief. *See*  
17 *N.R.C.P. 12(h)(3)*. *See also, Royal Insurance*, 110 Nev. at 120; and *Morrison*, 116 Nev. at  
18 37-38. As such, Plaintiffs cannot recover any amount under a theory of Unjust Enrichment.  
19 Therefore, Russell Road's Motion for Summary Judgment against Plaintiffs should be  
20 granted.  
21

22         **D. This Court Lack Jurisdiction Over Plaintiffs Since It Appears To a Legal**  
23         **Certainty That The Amount That Could be Recovered Is Less Than The**  
24         **Jurisdictional Amount.**

25         This Court lacks subject matter jurisdiction in this matter because it is impossible for  
26 each Plaintiff to recover an amount in equity pursuant to their second claim for relief that  
27

28  

---

4 Russell Road does not waive or forego any of its objections related to Plaintiffs' improper attempts to  
redefine their second claim for relief.



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 exceeds the required jurisdictional amount of \$10,000.00. *See infra*. Under Nevada law,  
2 recovery under a theory of unjust enrichment is limited to the reasonable value of the services,  
3 money, or property unjustly retained. *See Asphalt Prods. Corp. v. All Star Ready Mix*, 111  
4 Nev. 799, 802, 898 P. 2d 699, 701 (1995). Here, Plaintiffs' most recent characterization of  
5 their second claim for relief is that Plaintiffs only seek to recover the "fees and fines" paid to  
6 Russell Road. *See supra*. Plaintiffs' Third Amended Complaint alleges that Russell Road  
7 "imposed various monetary fines" on Plaintiffs for their failure to comply with various alleged  
8 rules and regulations. Third Amended Complaint at 4. Plaintiffs also allege that Russell Road  
9 "imposed various fees" on Plaintiffs such as fees "to work a shift and fees for declining to  
10 dance on the stage during a shift." *Id*.

13 Although Plaintiffs have asserted these allegations, Plaintiffs have not disclosed any  
14 calculation of the amounts of "fees and fines" allegedly assessed against Plaintiffs. *See*  
15 Plaintiffs' Initial List of Disclosures and Witness (w/o documents), and amendments thereto,  
16 copies of which are attached hereto as Exhibit "2." Further, Plaintiffs have not disclosed any  
17 evidence demonstrating that Plaintiffs actually were assessed any "fees and fines" by Russell  
18 Road. *See Id*.

20 To the contrary, Russell Road's previously disclosed Charge Summary and Dance  
21 Dollar Report for each Plaintiff identifies the exact amount of alleged "fees and fines"  
22 recorded for each Plaintiff. *See Exhibit "1."* Since the period for Discovery closed on May  
23 19, 2017, no further evidence can be discovered that could determine a different amount of  
24 "fees and fines" recorded for each Plaintiff. *See Stipulation and Order Extending Discovery*  
25 Period. Based on these reports, the total amount of "fees and fines" actually exists for each  
26 Plaintiff are as follows:  
27  
28



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 A. Plaintiff, Stacie Allen (Beginning 2010 to Present):

2 House Fees \$330.00  
3 Credits and Adjustments: -\$0.00  
4 Off Stage Fees \$80.00  
5 Fines \$00.00  
6  
7 Retained % of Dance Dollars: \$408.00  
8 **Total** **\$818.00.** Exhibit "1."

9 B. Plaintiff, Michaela Moore (Beginning 2010 to Present):

10 House Fees \$665.00  
11 Credits and Adjustments: -\$70.00  
12 Off Stage Fees \$120.00  
13 Fines \$00.00  
14  
15 Retained % of Dance Dollars: \$0.00  
16 **Total** **\$715.00.** Id.

17  
18 Relying entirely on Plaintiffs' assertion of recovery as set forth in their second claim  
19 for relief and applicable Nevada law, Plaintiffs, as provided above, cannot under a legal  
20 certainty recover an amount in equity for their respective "fees and fines" in excess of  
21 \$10,000.00. *See supra.* As such, this Court lacks jurisdiction over the subject matter of  
22 Plaintiffs' individual cases. *See N.R.C.P. 12(h)(3).* *See also, Royal Insurance*, 110 Nev. at  
23 120; and *Morrison*, 116 Nev. at 37-38. Therefore, Russell Road's Motion for Summary  
24 Judgment against Plaintiffs should be granted.  
25

26 ///

27 ///



28  
MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 **IV. CONCLUSION**

2 Based on the arguments provided above, Russell Road respectfully requests that this  
3 Court grant its Motion for Summary Judgment as to Plaintiffs.  
4

5 DATED this 15<sup>th</sup> day of June, 2017.

6 **MORAN BRANDON BENDAVID MORAN**

7 /s/ Jeffery A. Bendavid,

8 **JEFFERY A. BENDAVID, ESQ.**

Nevada Bar No. 6220

9 **STEPHANIE J. SMITH, ESQ.**

10 Nevada Bar No. 11280

630 South 4<sup>th</sup> Street

11 Las Vegas, Nevada 89101

12 (702) 384-8424

13 **KAMER ZUCKER ABBOTT**

14 /s/ Gregory J. Kamer

15 **GREGORY J. KAMER, ESQ.**

Nevada Bar No. 0270

16 **KAITLIN H. ZIEGLER, ESQ.**

Nevada Bar No. 013625

17 3000 W. Charleston Blvd., #3

18 Las Vegas, Nevada 89102

(702) 259-8640

19 *Attorneys for Defendant*



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

# Exhibit “1”

PLAINTIFF  
MICHAELA DIVINE AKA MOORE



6/24/2016

CH3LV

Page 1 of 2

## Entertainer Charge Summary

1860311 Zoey

DATE	TYPE	REASON	AMOUNT	Running Total
7/28/2011 1:08:56AM	Charge	Off Stage Fee	\$40.00	\$40.00
7/28/2011 1:09:04AM	Payment		\$-40.00	\$0.00
7/30/2011 2:01:41AM	Charge	House Fee	\$35.00	\$35.00
7/30/2011 2:01:49AM	Payment		\$-35.00	\$0.00
8/13/2011 2:03:12AM	Charge	House Fee	\$35.00	\$35.00
8/13/2011 2:03:28AM	Charge	Off Stage Fee	\$40.00	\$75.00
8/13/2011 2:03:35AM	Payment		\$-35.00	\$40.00
8/13/2011 2:03:35AM	Payment		\$-40.00	\$0.00
8/28/2011 2:12:07AM	Charge	House Fee	\$35.00	\$35.00
8/28/2011 2:12:16AM	Payment		\$-35.00	\$0.00
9/4/2011 12:49:19AM	Charge	House Fee	\$70.00	\$70.00
9/4/2011 12:49:30AM	Charge	Off Stage Fee	\$40.00	\$110.00
9/4/2011 12:49:46AM	Payment		\$-70.00	\$40.00
9/4/2011 12:49:46AM	Payment		\$-5.00	\$35.00
9/4/2011 11:05:19AM	Adjustment	Misring	\$-35.00	\$0.00
9/14/2011 12:36:33AM	Charge	House Fee	\$35.00	\$35.00
9/14/2011 3:20:08AM	Payment		\$-35.00	\$0.00
9/29/2011 10:36:20PM	Charge	House Fee	\$35.00	\$35.00
9/29/2011 10:36:30PM	Payment		\$-35.00	\$0.00
10/2/2011 10:35:26PM	Charge	House Fee	\$35.00	\$35.00
10/2/2011 10:36:02PM	Payment		\$-35.00	\$0.00
10/5/2011 1:08:17AM	Charge	House Fee	\$35.00	\$35.00
10/5/2011 1:08:45AM	Payment		\$-35.00	\$0.00
10/7/2011 1:16:02AM	Charge	House Fee	\$35.00	\$35.00
10/7/2011 1:16:26AM	Payment		\$-35.00	\$0.00
10/9/2011 2:15:22AM	Charge	House Fee	\$35.00	\$35.00
10/9/2011 2:15:31AM	Payment		\$-35.00	\$0.00
10/17/2011 10:37:11PM	Charge	House Fee	\$35.00	\$35.00
10/17/2011 10:42:43PM	Payment		\$-35.00	\$0.00
10/19/2011 11:48:27PM	Charge	House Fee	\$35.00	\$35.00
10/19/2011 11:48:52PM	Payment		\$-35.00	\$0.00
10/29/2011 3:09:43AM	Charge	House Fee	\$35.00	\$35.00
10/29/2011 3:10:11AM	Charge	NST	\$35.00	\$70.00
10/29/2011 3:10:18AM	Payment		\$-35.00	\$35.00

RR0604

6/24/2016

CH3LV

Page 2 of 2

Entertainer Charge Summary

1860311 Zoey

<u>DATE</u>	<u>TYPE</u>	<u>REASON</u>	<u>AMOUNT</u>	<u>Running Total</u>
10/29/2011 3:10:18AM	Payment		\$-35.00	\$0.00
10/31/2011 12:05:19AM	Charge	House Fee	\$35.00	\$35.00
10/31/2011 12:05:57AM	Adjustment	nsf	\$-35.00	\$0.00
11/2/2011 1:21:41AM	Charge	House Fee	\$35.00	\$35.00
11/2/2011 1:22:01AM	Payment		\$-35.00	\$0.00
11/5/2011 1:20:04AM	Charge	House Fee	\$70.00	\$70.00
11/5/2011 1:21:31AM	Payment		\$-70.00	\$0.00
Total Due			\$0.00	

RR0605

PLAINTIFF  
STACIE ALLEN

8/29/2015

**Russell Road F & B**

Page 1 of 3

**Entertainer Charge Summary****Between****8/28/06 1:00 pm and 8/29/15 12:59 pm**

1459027 Carrie Jo

<u>DATE</u>	<u>TYPE</u>	<u>REASON</u>	<u>AMOUNT</u>	<u>Running Total</u>
1/2/2007 10:07:27PM	Charge	House Fee	\$30.00	\$30.00
1/4/2007 8:29:45PM	Charge	House Fee	\$30.00	\$60.00
1/4/2007 8:30:40PM	Payment		\$-30.00	\$30.00
5/4/2007 11:28:55PM	Charge	House Fee	\$50.00	\$80.00
8/28/2007 8:41:54PM	Charge	House Fee	\$30.00	\$110.00
11/8/2007 6:11:21PM	Charge	House Fee	\$60.00	\$170.00
11/8/2007 6:11:26PM	Payment		\$-10.00	\$160.00
11/9/2007 7:58:00PM	Charge	House Fee	\$60.00	\$220.00
11/9/2007 7:58:27PM	Payment		\$-40.00	\$180.00
11/9/2007 7:58:27PM	Payment		\$-20.00	\$160.00
11/9/2007 11:36:27PM	Adjustment	locals party	\$-50.00	\$110.00
11/23/2007 8:27:48PM	Charge	House Fee	\$60.00	\$170.00
11/23/2007 8:28:31PM	Payment		\$-50.00	\$120.00
11/23/2007 8:28:31PM	Payment		\$-10.00	\$110.00
12/8/2007 6:28:49PM	Charge	House Fee	\$60.00	\$170.00
12/8/2007 6:28:59PM	Payment		\$-10.00	\$160.00
12/8/2007 6:28:59PM	Payment		\$-50.00	\$110.00
12/15/2007 8:37:50PM	Charge	House Fee	\$60.00	\$170.00
12/15/2007 8:39:10PM	Adjustment	migule	\$-40.00	\$130.00
12/15/2007 8:39:30PM	Payment		\$-10.00	\$120.00
12/15/2007 8:39:30PM	Payment		\$-10.00	\$110.00
12/15/2007 8:40:11PM	Adjustment	migule	\$-110.00	\$0.00
12/21/2007 9:50:36PM	Charge	House Fee	\$60.00	\$60.00
12/21/2007 9:50:42PM	Payment		\$-60.00	\$0.00
1/3/2008 8:29:33PM	Charge	House Fee	\$60.00	\$60.00
1/3/2008 8:29:38PM	Payment		\$-20.00	\$40.00
1/4/2008 9:01:36PM	Charge	House Fee	\$60.00	\$100.00
1/4/2008 9:01:46PM	Payment		\$-20.00	\$80.00
1/6/2008 6:43:21PM	Charge	House Fee	\$40.00	\$120.00
1/6/2008 6:43:26PM	Payment		\$-20.00	\$100.00
1/7/2008 11:29:12PM	Charge	House Fee	\$40.00	\$140.00
1/8/2008 2:18:22AM	Payment		\$-20.00	\$120.00
6/6/2008 10:05:39PM	Charge	House Fee	\$60.00	\$180.00
6/6/2008 10:05:44PM	Payment		\$-20.00	\$160.00
6/6/2008 10:05:44PM	Payment		\$-40.00	\$120.00

RR0085

8/29/2015

**Russell Road F & B**

Page 2 of 3

**Entertainer Charge Summary**

Between

8/28/06 1:00 pm and 8/29/15 12:59 pm

1459027

Carrie Jo

<u>DATE</u>	<u>TYPE</u>	<u>REASON</u>	<u>AMOUNT</u>	<u>Running Total</u>
6/11/2008 9:38:25PM	Charge	House Fee	\$60.00	\$180.00
6/11/2008 9:38:34PM	Payment		\$-20.00	\$160.00
6/11/2008 9:38:34PM	Payment		\$-40.00	\$120.00
6/12/2008 3:00:31AM	Adjustment	clear out fees	\$-120.00	\$0.00
6/25/2008 12:54:29AM	Charge	House Fee	\$60.00	\$60.00
6/25/2008 3:52:38AM	Payment		\$-60.00	\$0.00
6/25/2008 9:19:15PM	Charge	House Fee	\$60.00	\$60.00
6/25/2008 9:19:20PM	Payment		\$-60.00	\$0.00
10/1/2008 9:13:23PM	Charge	House Fee	\$40.00	\$40.00
10/1/2008 9:14:39PM	Payment		\$-40.00	\$0.00
6/9/2009 9:54:12PM	Charge	House Fee	\$50.00	\$50.00
6/9/2009 11:42:52PM	Adjustment	1st night comp	\$-50.00	\$0.00
6/13/2009 1:19:08AM	Charge	House Fee	\$50.00	\$50.00
6/13/2009 1:19:43AM	Payment		\$-50.00	\$0.00
6/13/2009 9:18:39PM	Charge	House Fee	\$50.00	\$50.00
6/13/2009 9:18:54PM	Payment		\$-50.00	\$0.00
6/19/2009 9:29:04PM	Charge	House Fee	\$50.00	\$50.00
6/19/2009 9:29:09PM	Payment		\$-50.00	\$0.00
6/19/2009 9:29:39PM	Charge	Off Stage Fee	\$40.00	\$40.00
6/20/2009 1:56:19AM	Payment		\$-40.00	\$0.00
6/20/2009 9:26:22PM	Charge	House Fee	\$50.00	\$50.00
6/20/2009 9:26:29PM	Payment		\$-50.00	\$0.00
6/21/2009 12:11:54AM	Charge	Off Stage Fee	\$40.00	\$40.00
6/21/2009 12:12:04AM	Payment		\$-40.00	\$0.00
1/29/2011 8:44:35PM	Charge	House Fee	\$50.00	\$50.00
1/29/2011 8:45:00PM	Charge	Off Stage Fee	\$40.00	\$90.00
1/29/2011 8:45:08PM	Payment		\$-50.00	\$40.00
1/29/2011 8:45:08PM	Payment		\$-40.00	\$0.00
4/12/2011 10:37:47PM	Charge	Off Stage Fee	\$40.00	\$40.00
4/12/2011 10:37:54PM	Payment		\$-40.00	\$0.00
5/27/2011 10:32:12PM	Charge	House Fee	\$70.00	\$70.00
5/27/2011 10:32:23PM	Payment		\$-50.00	\$20.00
5/28/2011 5:00:59AM	Payment		\$-20.00	\$0.00
5/28/2011 10:50:40PM	Charge	House Fee	\$35.00	\$35.00
5/28/2011 10:50:47PM	Payment		\$-35.00	\$0.00

RR0086

8/29/2015

## Russell Road F & B

Page 3 of 3

### Entertainer Charge Summary

Between

8/29/06 1:00 pm and 8/29/15 12:53 pm

1459027

Carrie Jo

<u>DATE</u>	<u>TYPE</u>	<u>REASON</u>	<u>AMOUNT</u>	<u>Running Total</u>
6/3/2011 10:52:35PM	Charge	House Fee	\$70.00	\$70.00
6/3/2011 10:52:44PM	Payment		\$-70.00	\$0.00
6/11/2011 9:44:29PM	Charge	House Fee	\$35.00	\$35.00
6/11/2011 9:44:50PM	Payment		\$-35.00	\$0.00
6/25/2011 9:20:37PM	Charge	House Fee	\$35.00	\$35.00
6/25/2011 9:21:19PM	Payment		\$-35.00	\$0.00
7/9/2011 9:36:51PM	Charge	House Fee	\$35.00	\$35.00
7/9/2011 11:28:46PM	Payment		\$-35.00	\$0.00
Total Due			\$0.00	

RR0087

8/29/2015

## Russell Road F & B

Page 1 of 1

### Dance Dollar Report

For

Stacie Allen (1459027) - Carrie Jo

2005

Amount

\$6,120.00

2007

Amount

\$1,296.00

2008

Amount

\$1,800.00

2011

Amount

\$3,672.00

Grand Totals:

\$12,888.00

RR0088

# Exhibit “2”



1 **DDW**

Ryan M. Anderson (NV Bar No. 11040)

2 Daniel R. Price (NV Bar No. 13564)

~~MORRIS~~ // ANDERSON

3 716 S. Jones Blvd

Las Vegas, Nevada 89107

4 Phone: (702) 333-1111

Fax: (702) 507-0092

5 ryan@morrisandersonlaw.com

daniel@morrisandersonlaw.com

6 P. Andrew Sterling (NV Bar No. 13769)

7 Michael J. Rusing (AZ Bar 6617) (*Admitted Pro Hac Vice*)

**RUSING LOPEZ & LIZARDI, PLLC**

8 6363 North Swan Road, Suite 151

Tucson, Arizona 85718

9 Phone: (520) 792-4800

Fax: (520) 529-4262

10 rusinglopez@rllaz.com

*Attorneys for Plaintiffs*

11 **DISTRICT COURT OF THE STATE OF NEVADA**  
12 **IN AND FOR CLARK COUNTY**

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

17 Plaintiffs,

18 v.

19 RUSSELL ROAD FOOD AND  
20 BEVERAGE, LLC, a Nevada limited  
21 liability company (d/b/a CRAZY HORSE  
22 III GENTLEMEN'S CLUB) SN  
23 INVESTMENT PROPERTIES, LLC, a  
24 Nevada limited liability company (d/b/a  
CRAZY HORSE III GENTLEMEN'S  
CLUB), DOE CLUB OWNER, I-X, DOE  
EMPLOYER, I-X, ROE CLUB OWNER,  
I-X, and ROE EMPLOYER, I-X,

Defendants.

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

**PLAINTIFFS' INITIAL DISCLOSURE OF  
DOCUMENTS AND WITNESSES  
PURSUANT TO NRCP 16.1**

1 **PLAINTIFFS' INITIAL DISCLOSURE OF DOCUMENTS AND WITNESSES PURSUANT**  
2 **TO NRCP 16.1**

3 Plaintiffs by and through their counsel, Ryan M. Anderson and Daniel R. Price of the law  
4 firm of MORRIS ANDERSON LAW, and Michael J. Rusing and P. Andrew Sterling of the law  
5 firm of RUSING LOPEZ & LIZARDI, P.L.L.C., hereby submit their list of witnesses and documents  
6 pursuant to NRCP 16.1.

7 **DOCUMENTS**

8 **INITIAL PRODUCTION:**

9 A. **INITIAL EXHIBITS**

10 1 – 100 *Reserved for future use.*

11 Plaintiffs reserve the right to submit as an exhibit any document or tangible item identified  
12 by any other party in this action or obtained from any third party. Plaintiffs further reserve the right  
13 to amend and/or supplement this list of documents or tangible items as discovery proceeds.

14 In addition, neither inclusion of any documents or tangible items within this disclosure nor  
15 acceptance of documents provided by any other party hereto in a disclosure shall be deemed as a  
16 waiver by Plaintiffs of any evidentiary rights Plaintiffs may have with respect to those documents  
17 and/or tangible items, including, but not limited to, objections related to authenticity, materiality,  
18 relevance, foundation, hearsay, or any other rights as may be permitted pursuant to the Nevada  
19 Rules of Evidence.

20 **II.**

21 **WITNESSES**

- 22 1. JACQUELINE FRANKLIN, Plaintiff  
23 c/o MORRIS ANDERSON  
24 716 S. Jones Blvd.  
Las Vegas, Nevada 89107

Ms. Franklin is a Plaintiff in the instant litigation and expected to provide testimony as to the  
facts and circumstances relative to Plaintiffs' claims and damages in this matter.



1           7.     SAMANTHA JONES, Plaintiff  
2                 c/o MORRIS ANDERSON  
3                 716 S. Jones Blvd.  
               Las Vegas, Nevada 89107

4           Ms. Jones is a Plaintiff in the instant litigation and expected to provide testimony as to the  
5 facts and circumstances relative to Plaintiffs' claims and damages in this matter.

6           8.     KARINA STRELKOVA, Plaintiff  
7                 c/o MORRIS ANDERSON  
               716 S. Jones Blvd.  
               Las Vegas, Nevada 89107

8           Ms. Strelkova is a Plaintiff in the instant litigation and expected to provide testimony as to  
9 the facts and circumstances relative to Plaintiffs' claims and damages in this matter.

10          9.     LASHONDA STEWART, Plaintiff  
11                 c/o MORRIS ANDERSON  
12                 716 S. Jones Blvd.  
               Las Vegas, Nevada 89107

13          Ms. Stewart is a Plaintiff in the instant litigation and expected to provide testimony as to  
14 the facts and circumstances relative to Plaintiffs' claims and damages in this matter.

15          10.    DANIELLE LAMAR, Plaintiff  
16                 c/o MORRIS ANDERSON  
               716 S. Jones Blvd.  
               Las Vegas, Nevada 89107

17          Ms. Lamar is a Plaintiff in the instant litigation and expected to provide testimony as to the  
18 facts and circumstances relative to Plaintiffs' claims and damages in this matter.

19          11.    DIRUBIN TAMAYO, Plaintiff  
20                 c/o MORRIS ANDERSON  
21                 716 S. Jones Blvd.  
               Las Vegas, Nevada 89107

22          Ms. Tamayo is a Plaintiff in the instant litigation and expected to provide testimony as to the  
23 facts and circumstances relative to Plaintiffs' claims and damages in this matter.

24         ///

12. Person(s) Most Knowledgeable for  
RUSSELL ROAD FOOD AND BEVARAGE, LLC, Defendant  
c/o KAMER ZUCKER ABBOTT  
3000 West Charleston Blvd. #3  
Las Vegas, NV 89102  
and  
c/o MORAN BRANDON BENDAVID MORN  
630 South 4<sup>th</sup> Street  
Las Vegas, NV 89101

The Person(s) Most Knowledgeable is/are a Defendant(s) in this action and is/are expected to provide testimony as to the facts and circumstances relative to Plaintiffs' claims and damages in this matter.

Plaintiffs hereby reserve the right to name any other witness as may be necessary for the purpose of rebuttal and/or impeachment.

Plaintiffs further reserve the right to name additional witnesses should they become known and to utilize any witnesses named by Defendant.

Plaintiffs will make disclosure(s) with respect to expert witnesses as provided by NRC 16.1(a)(2) after such experts are retained.

### III.

### NRCP 16.1(A)(1)(C) COMPUTATION OF DAMAGES

NRCP 16.1(a)(1)(C) states in pertinent part as follows:

“A computation of any category of damages claimed by the disclosing party, making available for inspection and copying under Rule 34 the documents or other evidentiary matter, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered.”

Defendant is in possession of all documents and other evidentiary matter on which Plaintiffs' damage computation is based. Plaintiffs' damages include, but are not limited to unpaid wages (prevailing minimum wage for all hours reflected in the log-in and log-out records for each of them during the relevant class period); all funds collected and withheld from Plaintiffs by Defendant

1 including all fees and fines collected and withheld for any reason; all amounts retained by Defendant  
2 for Plaintiffs' redemption of any "Dance Dollars" or any other such in-house vouchers; penalty  
3 payment pursuant to 608.040 and 608.050; pre and post judgment interest on such sums at the highest  
4 rate permitted by law; and attorney fees and costs.

5 As discovery has not yet begun, Plaintiffs believe that Defendant possesses much of the  
6 documents that will establish Plaintiffs' damages, and Plaintiffs therefore have estimated their  
7 damages above. From the facts Plaintiffs do have, the damages are in the millions of dollars.  
8 Plaintiffs reserve the right to revise this computation of damages as Plaintiffs continue to ascertain  
9 the same through discovery.

10 Plaintiffs reserve all rights to seek other damages including, but not limited to, general  
11 damages, in an amount to be proved at trial.

12 Plaintiffs reserve the right to supplement this Computation of Damages including any and all  
13 other relevant documents and records, which come into their possession during discovery.

#### 14 IV.

#### 15 DEMONSTRATIVE EXHIBITS

16 Plaintiffs may offer at trial, certain exhibits for demonstrative purposes including, but not  
17 limited to, the following:

- 18 a. Charts;
- 19 b. Photographs;
- 20 c. Story boards and computer digitized power point images; and
- 21 d. Blow-ups/transparencies/digitized images of records, agreements, photographs and  
22 other exhibits.

23 Plaintiffs reserve the right to supplement these disclosures with any and all other relevant  
24 information and documents and records that come into their possession during discovery.

Plaintiffs further reserve the right to use any and all of any other parties' exhibits at the time  
of trial of this matter.

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4

2  
3  
4

5  
6

7  
8

9

0  
1

2  
3  
4  
5

6  
7  
8  
9

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of MORRIS ANDERSON LAW,  
3 and that on this 13th day of January, 2016, I served a copy of the foregoing PLAINTIFFS' INITIAL  
4 DISCLOSURE OF DOCUMENTS AND WITNESSES PURSUANT TO NRCP 16.1 by serving a  
5 true copy thereof via the Court's electronic system upon the following:

6 Gregory J. Kamer, Esq.  
Kaitlin H. Ziegler, Esq.  
7 KAMER ZUCKER ABBOTT  
3000 W. Charleston Blvd., Suite 3  
8 Las Vegas, NV 89102

9 Jeffery A. Bendavid, Esq.  
MORAN BRANDON BENDAVID MORAN  
10 630 S. 4th Street  
Las Vegas, NV 89101  
11 Attorneys for Defendant Russell Road Food and Beverage, LLC

12  
13 /s/ Marilyn A. Abel  
14 An employee of MORRIS ANDERSON  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24



1 **SUPP**

2 RYAN M. ANDERSON, ESQ.

3 Nevada Bar No.: 11040

4 LAUREN CALVERT, ESQ.

5 Nevada Bar No.: 10534

6 **MORRIS//ANDERSON**

7 716 S. Jones Blvd.

8 Las Vegas, Nevada 89107

9 Phone: (702) 333-1111

10 Email: [lauren@morrisandersonlaw.com](mailto:lauren@morrisandersonlaw.com)

11 P. ANDREW STERLING, ESQ.

12 Nevada Bar No.: 13769

13 MICHAEL J. RUSING, ESQ.

14 Arizona Bar No.: 6617 (*Admitted Pro Hac Vice*)

15 **RUSING LOPEZ & LIZARDI, PLLC**

16 6363 North Swan Road, Suite 151

17 Tucson, Arizona 85718

18 Phone: (520) 792-4800

19 Email: [asterling@rllaz.com](mailto:asterling@rllaz.com)

20 *Attorneys for Plaintiffs*

21 **DISTRICT COURT**

22 **CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

23 RUSSELL ROAD FOOD AND BEVERAGE,  
24 LLC, a Nevada limited liability company (d/b/a  
25 CRAZY HORSE III GENTLEMEN'S CLUB)  
26 SN INVESTMENT PROPERTIES, LLC, a  
27 Nevada limited liability company (d/b/a CRAZY  
28 HORSE III GENTLEMEN'S CLUB), DOE  
CLUB OWNER, I-X, DOE EMPLOYER, I-X,  
ROE CLUB OWNER, I-X, and ROE  
EMPLOYER, I-X,

Defendants.

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

**PLAINTIFFS' FIRST**  
**SUPPLEMENTAL DISCLOSURE OF**  
**DOCUMENTS AND WITNESSES**  
**PURSUANT TO NRCP 16.1**

1                    **PLAINTIFFS' FIRST SUPPLEMENTAL DISCLOSURE OF DOCUMENTS AND**  
2                    **WITNESSES PURSUANT TO NRCP 16.1**

3                    Plaintiffs, by and through their counsel, RYAN M. ANDERSON, ESQ., and LAUREN  
4 CALVERT, ESQ., with the Law Offices of MORRIS//ANDERSON, and P. ANDREW  
5 STERLING, ESQ., and MICHAEL J. RUSING, ESQ., with the Law Offices of RUSING LOPEZ  
6 & LIZARDI, PLLC, hereby submits their supplemental list of witnesses and documents pursuant  
7 to NRCP 16.1 as follows:

8                    **Supplement in Bold:**

9  
10                    **DOCUMENTS**

11                    **INITIAL PRODUCTION:**

12                    A. **INITIAL EXHIBITS**

- 13                    1.        **Deposition Transcript of Keith Ragano – Case No.: 2:2015-cv-01440.**  
14                               ***(Bates Stamped PLTF0001 – PLTF0117)***
- 15                    2.        **Color Photograph – Shower Rules.**  
16                               ***(Bates Stamped PLTF0118)***
- 17                    3.        **Dance Dollar and Payment Receipts.**  
18                               ***(Bates Stamped PLTF0119 – PLTF0128)***
- 19                    4.        **Sheriff's Card – Karina Strelkova.**  
20                               ***(Bates Stamped PLTF0129)***

21                    5 – 100        *Reserved for future use.*

22                    Plaintiffs reserve the right to submit as an exhibit any document or tangible item identified  
23 by any other party in this action or obtained from any third party. Plaintiffs further reserve the  
24 right to amend and/or supplement this list of documents or tangible items as discovery proceeds.

25                    In addition, neither inclusion of any documents or tangible items within this disclosure nor  
26 acceptance of documents provided by any other party hereto in a disclosure shall be deemed as a  
27 waiver by Plaintiffs of any evidentiary rights Plaintiffs may have with respect to those documents  
28 and/or tangible items, including, but not limited to, objections related to authenticity, materiality,

1 relevance, foundation, hearsay, or any other rights as may be permitted pursuant to the Nevada  
2 Rules of Evidence.

3  
4 **II.**

5 **WITNESSES**

- 6 1. JACQUELINE FRANKLIN, Plaintiff  
7 c/o MORRIS//ANDERSON  
8 716 S. Jones Blvd.  
9 Las Vegas, Nevada 89107

10 Ms. Franklin is a Plaintiff in the instant litigation and expected to provide testimony as to the  
11 facts and circumstances surrounding this incident and the injuries she received.

- 12 2. ASHLEIGH PARK, Plaintiff  
13 c/o MORRIS//ANDERSON  
14 716 S. Jones Blvd.  
15 Las Vegas, Nevada 89107

16 Ms. Park is a Plaintiff in the instant litigation and expected to provide testimony as to the  
17 facts and circumstances surrounding this incident and the injuries she received.

- 18 3. LILY SHEPHARD, Plaintiff  
19 c/o MORRIS//ANDERSON  
20 716 S. Jones Blvd.  
21 Las Vegas, Nevada 89107

22 Ms. Shephard is a Plaintiff in the instant litigation and expected to provide testimony as to  
23 the facts and circumstances surrounding this incident and the injuries she received.

- 24 4. STACIE ALLEN, Plaintiff  
25 c/o MORRIS//ANDERSON  
26 716 S. Jones Blvd.  
27 Las Vegas, Nevada 89107

28 Ms. Allen is a Plaintiff in the instant litigation and expected to provide testimony as to the  
facts and circumstances surrounding this incident and the injuries she received

5. MICHAELA DIVINE, Plaintiff  
c/o MORRIS//ANDERSON  
716 S. Jones Blvd.  
Las Vegas, Nevada 89107

1 Ms. Divine is a Plaintiff in the instant litigation and expected to provide testimony as to the  
2 facts and circumstances surrounding this incident and the injuries she received.

3 6. SAMANTHA JONES, Plaintiff  
4 c/o MORRIS//ANDERSON  
5 716 S. Jones Blvd.  
6 Las Vegas, Nevada 89107

7 Ms. Jones is a Plaintiff in the instant litigation and expected to provide testimony as to the  
8 facts and circumstances surrounding this incident and the injuries she received.

9 7. KARINA STRELKOVA, Plaintiff  
10 c/o MORRIS//ANDERSON  
11 716 S. Jones Blvd.  
12 Las Vegas, Nevada 89107

13 Ms. Strelkova is a Plaintiff in the instant litigation and expected to provide testimony as to  
14 the facts and circumstances surrounding this incident and the injuries she received.

15 8. DANIELLE LAMAR, Plaintiff  
16 c/o MORRIS//ANDERSON  
17 716 S. Jones Blvd.  
18 Las Vegas, Nevada 89107

19 Ms. Lamar is a Plaintiff in the instant litigation and expected to provide testimony as to the  
20 facts and circumstances surrounding this incident and the injuries she received.

21 9. Person(s) Most Knowledge for  
22 RUSSELL ROAD FOOD AND BEVARAGE, LLC, Defendant  
23 c/o KAMER ZUCKER ABBOTT  
24 3000 West Charleston Blvd., #3  
25 Las Vegas, Nevada 89102

26 and

27 MORAN BRANDON BENDAVID MORN  
28 630 South 4<sup>th</sup> Street  
Las Vegas, Nevada 89101

The Person(s) Most Knowledgeable is/are a Defendant(s) in this action and is/are expected  
to provide testimony as to the facts and circumstances surrounding this incident.

1 Plaintiffs hereby incorporate all expert witness lists propounded by the Defendant and  
2 reserve the right to call rebuttal witnesses to any expert witness called by the Defendant at time of  
3 trial. Plaintiffs also reserve the right to name any other witness as may be necessary for the purpose  
4 of rebuttal and/or impeachment.

5  
6 Plaintiffs further reserve the right to name additional witnesses should they become known.  
7 Plaintiffs further reserve the right to utilize any witnesses named by Defendant.

8 **III.**

9 **NRCP 16.1(A)(1)(C) COMPUTATION OF DAMAGES**

10 NRCP 16.1(a)(1)(C) states in pertinent part as follows:

11 "A computation of any category of damages claimed by the disclosing  
12 party, making available for inspection and copying under Rule 34 the  
13 documents or other evidentiary matter, not privileged or protected from  
14 disclosure, on which such computation is based, including materials  
bearing on the nature and extent of injuries suffered."

15 Defendant is in possession of all documents and other evidentiary matter on which Plaintiffs'  
16 damage computation is based. Plaintiffs' damages include, but are not limited to unpaid wages  
17 (prevailing minimum wage for all hours reflected in the log-in and log-out records for each of them  
18 during the relevant class period); all funds collected and withheld from Plaintiffs by Defendant  
19 including all fees and fines collected and withheld for any reason; all amounts retained by Defendant  
20 for Plaintiffs' redemption of any and all in-house or any other such vouchers; penalty payment  
21 pursuant to 608.040 and 608.050; pre and post judgment interest on such sums at the highest rate  
22 permitted by law; attorney fees and costs; and exemplary damages.

23  
24 As discovery has not yet begun, Plaintiffs believe that Defendant possesses much of the  
25 documents that will establish Plaintiffs damages, and Plaintiffs therefore have estimated their  
26 damages above. Plaintiffs reserve the right to revise this computation of damages as Plaintiffs  
27 continue to ascertain the same through discovery.  
28

1 Plaintiffs reserve all rights to seek other damages including, but not limited to, general and  
2 exemplary damages, in an amount to be proved at trial.

3 Plaintiffs reserve the right to supplement this Computation of Damages including any and all  
4 other relevant documents and records, which come into their possession during discovery.  
5

#### 6 IV.

#### 7 DEMONSTRATIVE EXHIBITS

8 Plaintiffs may offer at trial, certain Exhibits for demonstrative purposes including, but not  
9 limited to, the following:

- 10 a. Charts depicting Plaintiffs' damages;  
11 b. Photographs of Plaintiffs' Witnesses;  
12 c. Story boards and computer digitized power point images; and  
13 d. Blow-ups/transparencies/digitized images of records, agreements, photographs and  
14 other exhibits.

15 Plaintiffs reserve the right to supplement these disclosures with any and all other relevant  
16 information and documents and records that come into their possession during discovery.

17 Plaintiffs further reserve the right to use any and all of any other parties' exhibits at the  
18 time of trial of this matter.

#### 19 OBJECTIONS TO THE AUTHENTICITY OF DOCUMENTS PRODUCED

20 Pursuant to N.R.C.P. 16.1(c)(3), Plaintiffs may object to the authenticity of any documents  
21 produced by the parties without proper authentication from the custodian of records or the  
22 opportunity to inspect the originals from which they were produced.

23 Plaintiffs reserve the right to utilize any and all responses to Interrogatories, Requests for  
24 Production and Requests for Admissions from Defendant.

25 ///

26 ///

27 ///

Plaintiffs reserve the right to supplement this list of documents as information becomes available. Plaintiffs further reserve the right to utilize any documents produced by Defendant.

DATED this 21st day of February, 2017.

MORRIS//ANDERSON

/s/ Lauren Calvert, Esq.

**RYAN M. ANDERSON, ESQ.**

Nevada Bar No.: 11040

**LAUREN CALVERT, ESQ.**

Nevada Bar No.: 10534

716 S. Jones Blvd.

Las Vegas, Nevada 89107

P. ANDREW STERLING, ESQ.

Nevada Bar No.: 13769

MICHAEL J. RUSING, ESQ.

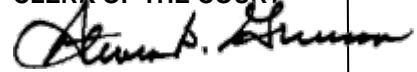
Arizona Bar No.: 6617 (*Admitted Pro Hac Vice*)

**RUSING LOPEZ & LIZARDI, PLLC**

6363 North Swan Road, Suite 151

Tucson, Arizona 85718

*Attorneys for Plaintiffs*



**SUPP**

RYAN M. ANDERSON, ESQ.

Nevada Bar No.: 11040

LAUREN CALVERT, ESQ.

Nevada Bar No.: 10534

**MORRIS//ANDERSON**

716 S. Jones Blvd.

Las Vegas, Nevada 89107

Phone: (702) 333-1111

Email: [lauren@morrisandersonlaw.com](mailto:lauren@morrisandersonlaw.com)

P. ANDREW STERLING, ESQ.

Nevada Bar No.: 13769

MICHAEL J. RUSING, ESQ.

Arizona Bar No.: 6617 (*Admitted Pro Hac Vice*)

**RUSING LOPEZ & LIZARDI, PLLC**

6363 North Swan Road, Suite 151

Tucson, Arizona 85718

Phone: (520) 792-4800

Email: [asterling@rllaz.com](mailto:asterling@rllaz.com)

[mrusing@rllaz.com](mailto:mrusing@rllaz.com)

*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JACQUELINE FRANKLIN, ASHLEIGH  
PARK, LILY SHEPARD, STACIE ALLEN,  
MICHAELA DIVINE, VERONICA VAN  
WOODSEN, SAMANTHA JONES, KARINA  
STRELKOVA, LASHONDA STEWART,  
DANIELLE LAMAR and DIRUBIN TAMAYO  
individually, and on behalf of Class of similarly  
situated individuals,

Plaintiffs,

v.

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

Defendants.

CASE NO.: A-14-709372-C

DEPT. NO.: XXXI

**PLAINTIFFS' SUPPLEMENTAL**  
**BRIEFING OPPOSING DEFENDANT'S**  
**MOTION FOR SUMMARY**  
**JUDGMENT AGAINST PLAINTIFFS**  
**MICHAELA MOORE AND STACIE**  
**ALLEN PURSUANT TO N.R.C.P. 56**



1 **PLAINTIFFS' SUPPLEMENTAL BRIEFING OPPOSING DEFENDANT'S MOTION FOR**  
2 **SUMMARY JUDGMENT AGAINST PLAINTIFFS MICHAELA MOORE AND STACIE**  
3 **ALLEN PURSUANT TO N.R.C.P. 56**

4 Plaintiffs, individually and on behalf of all persons similarly situated, hereby file their  
5 Supplemental Briefing Opposing Defendant's Motion for Summary Judgment Against Plaintiffs  
6 Michaela Moore and Stacie Allen Pursuant to N.R.C.P. 56.

7 This Supplemental Briefing is based upon the following Memorandum of Points and  
8 Authorities and any oral argument this Court may wish to entertain at the hearing of this Motion.

9 DATED this 15th day of June, 2017.

10 **MORRIS ANDERSON**

11 By: /s/ Lauren Calvert

12 **RYAN M. ANDERSON, ESQ.**

13 Nevada Bar No.: 11040

14 **LAUREN CALVERT, ESQ.**

15 Nevada Bar No.: 10534

16 716 S. Jones Blvd.

17 Las Vegas, Nevada 89107

18 **P. ANDREW STERLING, ESQ.**

19 Nevada Bar No.: 13769

20 **MICHAEL J. RUSING, ESQ.**

21 AZ Bar No.: 6617 (*Admitted Pro Hac Vice*)

22 **RUSING LOPEZ & LIZARDI, PLLC**

23 6363 N. Swan Road, Ste. 151

24 Tucson, AZ 85718

25 *Attorneys for Plaintiffs*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF FACTS**

3 This is an action by exotic dancers against the owners of Crazy Horse III Gentlemen's Club  
4 (the "Club"), a Las Vegas strip club, for failure to pay a minimum hourly wage as required by  
5 Nevada's constitution (Count 1) and for unjust enrichment (Count 2). The Club is owned and  
6 operated by Defendant Russell Road Food and Beverage, LLC ("Defendant"). The original  
7 Complaint was filed on November 4, 2014. Plaintiff Stacie Allen ("Plaintiff Allen") was added to  
8 the instant action in the First Amended Complaint, filed on February 19, 2015. Plaintiff Michaela  
9 Moore ("Plaintiff Moore") was added to the instant action in the Second Amended Complaint, filed  
10 on July 21, 2015. The Third Amended Complaint was filed on October 2, 2015. The essence of the  
11 Complaint is that Plaintiffs are employees of the Club, yet at no time were they paid any wages by  
12 Defendants. To the contrary, Defendant charged its dancers a fee to perform at the Club, required  
13 dancers to make regular payments to management staff, the disc jockey, and other employees, and  
14 assessed fines against the dancers purportedly to enforce various club rules.  
15

16  
17 On April 11, 2017, Defendant filed its Motion for Summary Judgment contending that  
18 Plaintiffs Allen and Moore's claims are barred by the applicable statute of limitations and  
19 jurisdictional threshold of \$10,000. At the hearing, this Court determined it would allow the parties  
20 to submit supplemental briefing limited solely to the issue of whether subject matter jurisdiction  
21 exists over Moore and Allen and if their individual damages are less than \$10,000 each. After the  
22 hearing, Defendant filed its Motion to Dismiss the case entirely based upon this argument—that  
23 each Plaintiff individually has less than \$10,000 in damages and no subject matter jurisdiction exists.  
24

25  
26 Discovery has closed in this matter. Plaintiffs' motion to certify class was previously denied,  
27 and they currently have pending their renewed motion to certify. This renewed motion for  
28

1 certification and Defendant's motion to dismiss are scheduled to be heard on the same day. If class  
2 certification is granted, the motion to dismiss premised on subject matter jurisdiction becomes moot.

## 3 4 **II. LEGAL STANDARD**

5 Although we have not previously addressed what standards should  
6 guide the district court in determining whether the claimed damages  
7 meet the jurisdictional requirement, federal courts apply a "legal  
8 certainty" test to determine whether a complaint satisfies the amount-  
9 in-controversy requirement of diversity jurisdiction under 28 U.S.C. §  
10 1332. In order to dismiss a case based on lack of subject matter  
11 jurisdiction, it must appear to a legal certainty that the claim is worth  
12 less than the jurisdictional amount. A claim in excess of the requisite  
13 amount, made in good faith, satisfies the jurisdictional requirement. A  
14 court should be cautious about dismissing a complaint for failing to  
15 meet the jurisdictional requirement: "Under the 'legal certainty' test, it  
16 should be emphasized, **the plaintiff must establish merely that it  
17 does not appear to a legal certainty that the claim is below the  
18 jurisdictional minimum. Thus, under this standard, courts must be  
19 very confident that a party cannot recover the jurisdictional  
20 amount before dismissing the case for want of jurisdiction.**" 15  
21 Moore's § 102.106[1]. We adopt the federal courts' legal certainty test  
22 for determining the jurisdictional amount in controversy in Nevada  
23 district courts.

24 *Morrison v. Beach City LLC*, 116 Nev. 34, 38, 991 P.2d 982, 984 (2000) (internal citations omitted)  
25 (emphasis added).

26 In assessing the amount in controversy for threshold jurisdiction purposes, the court assumes  
27 the plaintiff will establish liability in all respects. *Campbell v. Vitran Express, Inc.*, 471 Fed. Appx.  
28 646 (9th Cir. 2012). Compensatory damages, punitive damages, injunction and other equitable relief  
as well as attorneys' fees, if authorized or mandated by statute, are included. *Guglielmino v. McKee*  
*Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007); *see also Goldberg v. CPC International Inc.*, 678  
F.2d 1365, 1367 (9th Cir. 1982) ("attorneys' fees can be taken into account in determining the amount

1 in controversy if a statute authorizes fees to a successful litigant.)<sup>1</sup> More to the point, where  
2 discretionary or mandatory pursuant to statute, attorneys' fees are properly "included in the amount  
3 in controversy in a class action." *Lowdermilk v. U.S. Bank*, 479 F.3d 994, 1000 (9th Cir. 2007),  
4 citing *Gibson v. Chrysler Corp.*, 261 F.3d 927, 942-43 (9th Cir.2001). Pursuant to the MWA, an  
5 employee "who prevails in any action to enforce this section shall be awarded his or her reasonable  
6 attorney's fees and costs."

8 The period of time for which a court reviews the jurisdictional requirement is as of filing,  
9 and dismissal of certain claims thereafter cannot destroy jurisdiction. *See Edwards v. Emperor's*  
10 *Garden Rest.*, 122 Nev. 317, 330 n. 38, 130 P.3d 1280, 1288 n. 38 (2006) ("When the district court  
11 denied injunctive relief, however, it did not thereby lose its jurisdiction to consider Edwards' claims  
12 for monetary damages," which were well below the district court's jurisdictional threshold); *see also*  
13 *United Steel v. Shell Oil Co.*, 602 F.3d 1087, 1091-92 (9th Cir. 2010); *Cunningham Charter Corp.*  
14 *v. Learjet, Inc.*, 592 F.3d 805, 807 (7th Cir. 2010), citing *St. Paul Mercury Indem. v. Red Cab Co.*,  
15 303 U.S. 283, 293-95 (1938) ("jurisdiction once properly invoked is not lost by developments after  
16 a suit is filed,") (Posner, J.); *Metz v. Unizan Bank*, 649 F.3d 492, 500-01 (6th Cir. 2011) ("if  
17 jurisdiction exists as the time an action is commenced, such jurisdiction may not be divested by  
18 subsequent events"). This holds true for a putative class action. *Metz*, 649 F.3d at 500 ("By defining  
19 a class action as any civil action 'filed under' Federal Rule of Civil Procedure 23 or similar state  
20 statute or rule, it is the time of filing that matters for determining jurisdiction").

---

26 <sup>1</sup> As a general rule, attorneys' fees are excludable in determining the amount in controversy because,  
27 normally, the successful party does not collect his attorneys' fees in addition to or as part of the  
28 judgment. There are however, two logical exceptions to this rule: one where the fees are provided  
for by contract, and two, where a statute mandates or allows the payment of such fees. *Gait G/S v.*  
*JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir.1998); *see also* 14 C. Wright A. Miller, Federal  
Practice and Procedure, § 3712, at 507 (1976).

1 “Behind the principle that jurisdiction once obtained normally is secure is a desire to  
2 minimize expense and delay. If at all possible, therefore, a case should stay in the system that first  
3 acquired jurisdiction. It should not be shunted between court systems; litigation is not ping-pong...”  
4 *Cunningham*, 592 F.3d at 807. Nevertheless, rather than dismissing a case, if an action is filed in the  
5 district court and a district judge determines that the action is properly within the jurisdiction of the  
6 justice court pursuant to N.R.S. 4.370, the district judge may transfer original jurisdiction of the  
7 action to the justice’s court. N.R.S. 3.221. Thus, even in the event this Court finds jurisdiction is  
8 properly within justice court for Moore and Allen, original jurisdiction should be transferred there  
9 rather than dismissing their suits.  
10

11 There are only three situations that “clearly meet the legal certainty standard: 1) when the  
12 terms of a contract limit the plaintiff’s possible recovery; 2) when a specific rule of law or measure  
13 of damages limits the amount of damages recoverable; and 3) when independent facts show that the  
14 amount of damages was claimed merely to obtain” threshold jurisdiction.” *Naffe*, 789 F.3d at 1040  
15 (quotation omitted). Only the third scenario has been raised by Defendant.  
16

17 Nevada case law demonstrates the importance of class actions in cases where individuals  
18 would be otherwise unable to obtain redress because their claims are too small. *Shuette v. Beazer*  
19 *Homes Holdings Corp.*, 121 Nev. 837, 846, 124 P.3d 530, 537 (2005). Class actions serve a valuable  
20 function where a litany of small claims stem from a singular wrong by encouraging efficiency.  
21 *Picardi v. Eighth Judicial Dist. Court*, 127 Nev. 106, 251 P.3d 723 (2011). Nevada case law supports  
22 this policy, especially when providing multiple plaintiffs, who individually have valid but small  
23 claims, with an adequate remedy. *D.R. Horton v. Eighth Judicial Dist. Court*, 125 Nev. 449, 215  
24 P.3d 697 (2009).  
25

26 In *El Rancho*, Plaintiff and Defendant engaged in 26 separate transactions under 26 different  
27 sales contracts. *El Rancho, Inc. v. New York Meat & Provision Co.*, 88 Nev. 111, 116, 493 P.2d  
28

1 1318, 1322 (1972). Several sales contracts were for an amount less than \$300 (the threshold amount  
2 for the district court then), and the question was presented whether the district court had jurisdiction  
3 as to those. *Id.* The Court held Plaintiffs are “entitled to aggregate the separate claims so that the  
4 jurisdictional amount for the district court is obtained.” *Id.*, citing *Hartford M. Co. v. H.L. & C. Co.*,  
5 61 Nev. 17, 107 P.2d 132, 114 P.2d 1093 (1941); 13 Cal.Jur.2d 578, Courts § 75 (1954). Nevada’s  
6 federal district courts likewise hold that plaintiffs can aggregate individual claims to satisfy the  
7 amount in controversy requirement. *See U.S. Home Corporation v. Parker-Hansen et al*, 12:11-CV-  
8 426 (D. Nev. 2012); *Greystone Nevada, LLC, et. al. v. Anthem Highlands Community Association*,  
9 2:11-cv-1424 (D. Nev. 2011).

10  
11 Even where aggregation would not be traditionally available, “when several plaintiffs unite  
12 to enforce a single title or right in which they have a common and undivided interest, it is enough if  
13 their interests collectively equal the jurisdictional amount.” *Pinel v. Pinel*, 240 U.S. 594, 596 (1916).  
14 Such is the case here, where Plaintiffs seek to ultimately enforce the Nevada Constitution and  
15 Minimum Wage Act following systematic employee misclassification. *See Terry v. Sapphire*, 130  
16 Nev. Adv. Op. 87, 336 P. 3d 951 (2014) and *Dancer I-VII v. Golden Coin, Ltd.*, 124 Nev. 28, 32-34,  
17 176 P.3d 271, 274-75 (2008), wherein dancers maintained class actions premised on employee  
18 misclassification, despite many having claims under the jurisdictional threshold.

19  
20 That an individual class member may not receive damages in an amount greater than the  
21 jurisdictional minimum threshold is speculative and not case-ending. As in *Golden Coin*, if a  
22 plaintiff becomes an unwilling or inappropriate to serve as a class representative, a substitute is  
23 permitted to protect “the interests of the class, which has a separate and distinct legal status from  
24 that of the representative.” *Id.*, 124 Nev. at 34. Even under stringent jurisdictional analysis under  
25 CAFA, federal courts may adjudicate claims for less than \$75,000 as long as at least one class  
26  
27  
28

1 member satisfies the “legal certainty test” at the \$75,000 threshold. *See Exxon Mobil, Inc. v.*  
2 *Allapattah Servs., Inc.*, 545 U.S. 546, 559 (2005).

3 Therefore, a putative class action cannot be dismissed prior to the deadline for class  
4 certification where the putative class’s damages, or at least one class representative’s damages,  
5 would meet the jurisdictional threshold. Where it is merely apparent (not conclusively proven) that  
6 as of the time of filing there is not legal certainty that the claim is below the jurisdictional minimum,  
7 a class representative’s individual damages later reduced are not dispositive.

8  
9 Assuming Plaintiffs will establish liability, as the Court must do under the legal certainty  
10 test, compensatory damages will be awarded and attorney’s fees are mandated. The Court assess this  
11 as of the filing of the Complaint, and if jurisdiction attached at that time, it cannot be lost by  
12 subsequent actions. Ashleigh Park, as sole named plaintiff, alleged in the Complaint filed on  
13 November 4, 2014, that on behalf of herself and a class of other similarly situated persons, thought  
14 to be in excess of 3,000 persons (Comp. at ¶ 10), Defendant misclassified dancers at its club as  
15 independent contractors, failed to pay a minimum wage and was unjustly enriched. Plaintiff sought  
16 damages in excess of \$10,000 (Comp. at ¶40) and attorney’s fees. Plaintiffs’ First Amended  
17 Complaint, filed February 19, 2015, named additional class representatives, but alleged the same  
18 bases of liability; number of potential class members; damages in excess of \$10,000 for the class  
19 (ACOM at ¶54); and attorney fees. Even if Plaintiffs did not allege the \$10,000 threshold amount in  
20 the third amended complaint, it is obvious that \$10,000 divided by the minimum wage of \$8.25  
21 results in approximately 1,212 hours (or about thirty 40-hour weeks) to have been worked since  
22 November 6, 2012, exclusive of wait-time penalties, attorney’s fees or unjust enrichment damages,  
23 spread across 3,000 possible claimants.

24 Defendant admits the current-named class representatives alone meet this number of hours  
25 without even considering the other thousands of affected class members. *See* MTD at 14. Jurisdiction  
26  
27  
28

1 attaches on this basis alone. The joint maximum amount of penalties pursuant to NRS 608.040  
2 exceeds \$10,000 as well for the named plaintiffs. *See* MTD at 16. Lastly, the amount of damages  
3 resulting from the unjust enrichment claim apart from wages, as calculated by Defendant, exceeds  
4 \$10,000 for the named plaintiffs. MTD pp. 20-25. Moreover, Plaintiffs Franklin and Strelkova each  
5 meet the \$10,000 threshold independently. *Id.* The district court undisputedly has original  
6 jurisdiction over their claims, which permits the motion for class certification to proceed regardless  
7 of the amount of damages of other plaintiffs. If granted, the individualized damages of class  
8 members cannot thereafter defeat jurisdiction over class members' claims so long as they fall within  
9 the definition of the class (or sub-class).  
10

11 None of these calculations account for the mandatory award of attorney's fees. Plaintiffs  
12 think it sufficient to take judicial notice of the docket in this matter to surmise that the \$10,000  
13 threshold has been exceeded and that such is not unusual in an employment misclassification, given  
14 the innate complexities.  
15

### 16 **III. CONCLUSION**

17 For the foregoing reasons, Plaintiffs respectfully request that this Court enter an Order  
18 Denying Defendant's Motion for Summary Judgment Against Plaintiffs Michaela Moore and Stacie  
19 Allen in this matter.  
20

21 ///

22  
23 ///

24  
25 ///

26  
27  
28 ///



1 DATED this 15th day of June, 2017.

2 **MORRIS ANDERSON**

3 By: /s/ Lauren Calvert

4 **RYAN M. ANDERSON, ESQ.**

5 Nevada Bar No.: 11040

6 **LAUREN CALVERT, ESQ.**

7 Nevada Bar No.: 10534

8 716 S. Jones Blvd.

9 Las Vegas, Nevada 89107

10 P. ANDREW STERLING, ESQ.

11 Nevada Bar No.: 13769

12 MICHAEL J. RUSING, ESQ.

13 AZ Bar No.: 6617 (*Admitted Pro Hac Vice*)

14 **RUSING LOPEZ & LIZARDI, PLLC**

15 6363 N. Swan Road, Ste. 151

16 Tucson, AZ 85718

17 *Attorneys for Plaintiffs*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of  
3 **MORRIS ANDERSON**, and on the 15th day of June, 2017, I served the foregoing ***PLAINTIFFS'***  
4 ***SUPPLEMENTAL BRIEFING OPPOSING DEFENDANT'S MOTION FOR SUMMARY***  
5 ***JUDGMENT AGAINST PLAINTIFFS MICHAELA MOORE AND STACIE ALLEN PURSUANT***  
6 ***TO N.R.C.P. 56*** as follows:  
7

8 ☒ Electronic Service – By serving a copy thereof through the Court's electronic  
9 service system; and/or

10 ☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage  
11 prepaid and addressed as listed below; and/or

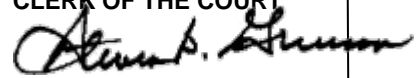
12 ☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile  
13 number(s) shown below and in the confirmation sheet filed herewith. Consent to  
14 service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by  
facsimile transmission is made in writing and sent to the sender via facsimile within  
24 hours of receipt of this Certificate of Service.

15 Gregory J. Kamer, Esq.  
16 KAMER ZUCKER ABBOTT  
17 3000 W. Charleston Blvd., Suite 3  
Las Vegas, Nevada 89102

18 Jeffery A. Bendavid, Esq.  
19 MORAN BRANDON BENDAVID MORAN  
20 630 S. 4th Street  
Las Vegas, Nevada 89101

21 *Attorneys for Defendants*

22  
23 /s/ Erickson Finch  
24 An employee/agent of **MORRIS//ANDERSON**  
25  
26  
27  
28



**OPPM**

RYAN M. ANDERSON, ESQ.

Nevada Bar No. 11040

LAUREN CALVERT, ESQ.

Nevada Bar No. 10534

**MORRIS ANDERSON**

716 S. Jones Blvd.

Las Vegas, Nevada 89107

Phone: (702) 333-1111

Email: [lauren@morrisandersonlaw.com](mailto:lauren@morrisandersonlaw.com)

P. ANDREW STERLING, ESQ.

Nevada Bar No. 13769

MICHAEL J. RUSING, ESQ.

Arizona Bar No. 6617 (*Admitted Pro Hac Vice*)

**RUSING LOPEZ & LIZARDI, PLLC**

6363 North Swan Road, Suite 151

Tucson, Arizona 85718

Phone: (520) 792-4800

Email: [asterling@rllaz.com](mailto:asterling@rllaz.com)

*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JACQUELINE FRANKLIN, ASHLEIGH  
PARK, LILY SHEPARD, STACIE ALLEN,  
MICHAELA DIVINE, VERONICA VAN  
WOODSEN, SAMANTHA JONES, KARINA  
STRELKOVA, LASHONDA STEWART,  
DANIELLE LAMAR and DIRUBIN TAMAYO  
individually, and on behalf of Class of similarly  
situated individuals,

Plaintiffs,

v.

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

Defendants.

CASE NO.: A-14-709372-C

DEPT. NO.: XXXI

**PLAINTIFFS' OPPOSITION TO**  
**DEFENDANT/COUNTERCLAIMANT**  
**RUSSELL ROAD FOOD AND**  
**BEVERAGE, LLC'S MOTION TO**  
**DISMISS PLAINTIFFS' COMPLAINT**  
**PURSUANT TO N.R.C.P. 12(b)(1) AND**  
**N.R.C.P. 12(h)(3)**

1 Plaintiffs, individually and on behalf of all persons similarly situated, hereby file their  
2 Opposition to Defendant/Counterclaimant Russell Road Food and Beverage, LLC's Motion to  
3 Dismiss Plaintiffs' Complaint Pursuant to N.R.C.P. 12(b)(1) and N.R.C.P. 12(h)(3).

4  
5 This Opposition is based upon the following Memorandum of Points and Authorities and  
6 any oral argument this Court may wish to entertain at the hearing of this Motion.

7 DATED this 19th day of June, 2017.

8 **MORRIS ANDERSON**

9 By: /s/ Lauren Calvert

10 **RYAN M. ANDERSON, ESQ.**

Nevada Bar No. 11040

11 **LAUREN CALVERT, ESQ.**

Nevada Bar No. 10534

12 716 S. Jones Blvd.

13 Las Vegas, Nevada 89107

14 **P. ANDREW STERLING, ESQ.**

Nevada Bar No. 13769

15 **MICHAEL J. RUSING, ESQ.**

16 AZ Bar No. 6617 (*Admitted Pro Hac Vice*)

**RUSING LOPEZ & LIZARDI, PLLC**

17 6363 N. Swan Road, Ste. 151

18 Tucson, AZ 85718

19 *Attorneys for Plaintiffs*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is an action by exotic dancers against the owners of Crazy Horse III Gentlemen's Club  
4 (the "Club"), a Las Vegas strip club, for failure to pay a minimum hourly wage as required by  
5 Nevada's constitution (Count 1) and for unjust enrichment (Count 2). The Club is owned and  
6 operated by Defendant Russell Road Food and Beverage, LLC ("Defendant"). The original  
7 Complaint was filed on November 4, 2014. The Third Amended Complaint was filed on October 2,  
8 2015. The essence of the Complaint is that Plaintiffs are employees of the Club yet at no time were  
9 they paid any wages by Defendants. To the contrary, Defendant charged its dancers a fee to perform  
10 at the Club, required dancers to make regular payments to management staff, the disc jockey, and  
11 other employees, and assessed fines against the dancers purportedly to enforce various club rules.  
12

13 On April 11, 2017, Plaintiffs and Defendant filed their cross-motions for summary judgment,  
14 the decision and order of which is still pending. At the hearing on these cross-motions, the Court  
15 determined it would allow the parties to submit supplemental briefing limited solely to the issue of  
16 whether subject matter jurisdiction exists over Plaintiffs Moore and Allen if their individual damages  
17 are less than the \$10,000 threshold. The Court indicated that it would decline to grant summary  
18 judgment as to the unjust enrichment claims of the plaintiffs, despite Defendant's continual statute  
19 of limitation argument. After the hearing, Defendant filed the instant Motion to Dismiss based solely  
20 upon this same argument—that Plaintiffs individually have less than \$10,000 in damages and no  
21 subject matter jurisdiction exists.  
22

23 Discovery has closed in this matter. Plaintiffs' motion to certify class was previously denied,  
24 and they currently have pending their renewed motion to certify. This renewed motion for  
25 certification and Defendant's motion to dismiss are scheduled to be heard on the same day. It is not  
26 disputed that at least one of Plaintiffs' class representatives meets the jurisdictional threshold and  
27  
28

1 has standing to maintain the action. If class certification is granted, the motion to dismiss premised  
2 on subject matter jurisdiction becomes moot because there is no legal support for the proposition  
3 that class members qualifying under the class definition cannot recover damages less than  
4 \$10,000.00.

## 6 II. LEGAL STANDARD

7 Defendant moves to dismiss the complaint of Plaintiffs for lack of subject matter jurisdiction.  
8 A complaint will not be dismissed pursuant to Rule 12 unless it appears beyond a doubt that the  
9 plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him to relief.  
10 *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 858 (1993). All factual allegations of the  
11 complaint must be accepted as true. *Capital Mortgage Holding v. Hahn*, 101 Nev. 314, 315 (1985).  
12 The Court "must construe the pleading liberally and draw every fair intendment in favor of the [non-  
13 moving party]." *Vacation Village, Inc. v. Hitachi America, Ltd.*, 110 Nev. 481, 484 (1994).

14  
15 Although we have not previously addressed what standards should  
16 guide the district court in determining whether the claimed damages  
17 meet the jurisdictional requirement, federal courts apply a "legal  
18 certainty" test to determine whether a complaint satisfies the amount-  
19 in-controversy requirement of diversity jurisdiction under 28 U.S.C. §  
20 1332. In order to dismiss a case based on lack of subject matter  
21 jurisdiction, it must appear to a legal certainty that the claim is worth  
22 less than the jurisdictional amount. A claim in excess of the requisite  
23 amount, made in good faith, satisfies the jurisdictional requirement. A  
24 court should be cautious about dismissing a complaint for failing to  
25 meet the jurisdictional requirement: "Under the 'legal certainty' test,  
26 it should be emphasized, **the plaintiff must establish merely that it  
does not appear to a legal certainty that the claim is below the  
jurisdictional minimum. Thus, under this standard, courts must  
be very confident that a party cannot recover the jurisdictional  
amount before dismissing the case for want of jurisdiction.**" 15  
Moore's § 102.106[1]. We adopt the federal courts' legal certainty test  
for determining the jurisdictional amount in controversy in Nevada  
district courts.

27 *Morrison v. Beach City LLC*, 116 Nev. 34, 38, 991 P.2d 982, 984 (2000) (internal citations  
28 omitted) (emphasis added).

1 In assessing the amount in controversy for threshold jurisdiction purposes, the court assumes  
2 the plaintiff will establish liability in all respects. *Campbell v. Vitran Express, Inc.*, 471 Fed. Appx.  
3 646 (9th Cir. 2012). Compensatory damages, punitive damages, injunction and other equitable relief  
4 as well as attorneys' fees, if authorized or mandated by statute, are included. *Guglielmino v. McKee*  
5 *Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007); *see also Goldberg v. CPC International Inc.*, 678  
6 F.2d 1365, 1367 (9th Cir. 1982) ("attorneys' fees can be taken into account in determining the amount  
7 in controversy if a statute authorizes fees to a successful litigant.)<sup>1</sup> More to the point, where  
8 discretionary or mandatory pursuant to statute, attorneys' fees are properly "included in the amount  
9 in controversy in a class action." *Lowdermilk v. U.S. Bank*, 479 F.3d 994, 1000 (9th Cir. 2007),  
10 citing *Gibson v. Chrysler Corp.*, 261 F.3d 927, 942-43 (9th Cir.2001). Pursuant to the MWA, an  
11 employee "who prevails in any action to enforce this section shall be awarded his or her reasonable  
12 attorney's fees and costs."

13  
14  
15 The period of time for which a court reviews the jurisdictional requirement is as of filing,  
16 and dismissal of certain claims thereafter cannot destroy jurisdiction. *See Edwards v. Emperor's*  
17 *Garden Rest.*, 122 Nev. 317, 330 n. 38, 130 P.3d 1280, 1288 n. 38 (2006) ("When the district court  
18 denied injunctive relief, however, it did not thereby lose its jurisdiction to consider Edwards' claims  
19 for monetary damages," which were well below the district court's jurisdictional threshold); *see also*  
20 *United Steel v. Shell Oil Co.*, 602 F.3d 1087, 1091-92 (9th Cir. 2010); *Cunningham Charter Corp.*  
21 *v. Learjet, Inc.*, 592 F.3d 805, 807 (7th Cir. 2010), citing *St. Paul Mercury Indem. v. Red Cab Co.*,  
22 303 U.S. 283, 293-95 (1938) ("jurisdiction once properly invoked is not lost by developments after  
23  
24  
25

---

26 <sup>1</sup> As a general rule, attorneys' fees are excludable in determining the amount in controversy because,  
27 normally, the successful party does not collect his attorneys' fees in addition to or as part of the  
28 judgment. There are however, two logical exceptions to this rule: one where the fees are provided  
for by contract, and two, where a statute mandates or allows the payment of such fees. *Gait G/S v.*  
*JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir.1998); *see also* 14 C. Wright A. Miller, Federal  
Practice and Procedure, § 3712, at 507 (1976).

1 a suit is filed,”) (Posner, J.); *Metz v. Unizan Bank*, 649 F.3d 492, 500-01 (6th Cir. 2011) (“if  
2 jurisdiction exists as the time an action is commenced, such jurisdiction may not be divested by  
3 subsequent events”). This holds true for a putative class action. *Metz*, 649 F.3d at 500 (“By defining  
4 a class action as any civil action ‘filed under’ Federal Rule of Civil Procedure 23 or similar state  
5 statute or rule, it is the time of filing that matters for determining jurisdiction”).

6  
7 “Behind the principle that jurisdiction once obtained normally is secure is a desire to  
8 minimize expense and delay. If at all possible, therefore, a case should stay in the system that first  
9 acquired jurisdiction. It should not be shunted between court systems; litigation is not ping-pong...”  
10 *Cunningham*, 592 F.3d at 807. Nevertheless, rather than dismissing a case, if an action is filed in the  
11 district court and a district judge determines that the action is properly within the jurisdiction of the  
12 justice court pursuant to N.R.S. 4.370, the district judge may transfer original jurisdiction of the  
13 action to the justice’s court. N.R.S. 3.221. Thus, even in the event the Court finds jurisdiction is  
14 properly within justice court, original jurisdiction should be transferred there rather than dismissal  
15 of the suit.  
16

17 There are only three situations that “clearly meet the legal certainty standard: 1) when the  
18 terms of a contract limit the plaintiff’s possible recovery; 2) when a specific rule of law or measure  
19 of damages limits the amount of damages recoverable; and 3) when independent facts show that the  
20 amount of damages was claimed merely to obtain” threshold jurisdiction.” *Naffe*, 789 F.3d at 1040  
21 (quotation omitted). Only the third scenario has been raised by Defendant.  
22

23 Nevada case law demonstrates the importance of class actions in cases where individuals  
24 would be otherwise unable to obtain redress because their claims are too small. *Shuette v. Beazer*  
25 *Homes Holdings Corp.*, 121 Nev. 837, 846, 124 P.3d 530, 537 (2005). Class actions serve a valuable  
26 function where a litany of small claims stem from a singular wrong by encouraging efficiency.  
27 *Picardi v. Eighth Judicial Dist. Court*, 127 Nev. 106, 251 P.3d 723 (2011). Nevada case law supports  
28



1 this policy, especially when providing multiple plaintiffs, who individually have valid but small  
2 claims, with an adequate remedy. *D.R. Horton v. Eighth Judicial Dist. Court*, 125 Nev. 449, 215  
3 P.3d 697 (2009).

4 In *El Rancho*, Plaintiff and Defendant engaged in 26 separate transactions under 26 different  
5 sales contracts. *El Rancho, Inc. v. New York Meat & Provision Co.*, 88 Nev. 111, 116, 493 P.2d  
6 1318, 1322 (1972). Several sales contracts were for an amount less than \$300 (the threshold amount  
7 for the district court then), and the question was presented whether the district court had jurisdiction  
8 as to those. *Id.* The Court held Plaintiffs are “entitled to aggregate the separate claims so that the  
9 jurisdictional amount for the district court is obtained.” *Id.*, citing *Hartford M. Co. v. H.L. & C. Co.*,  
10 61 Nev. 17, 107 P.2d 132, 114 P.2d 1093 (1941); 13 Cal.Jur.2d 578, Courts § 75 (1954). Nevada’s  
11 federal district courts likewise hold that plaintiffs can aggregate individual claims to satisfy the  
12 amount in controversy requirement. *See U.S. Home Corporation v. Parker-Hansen et al*, 12:11-CV-  
13 426 (D. Nev. 2012); *Greystone Nevada, LLC, et. al. v. Anthem Highlands Community Association*,  
14 2:11-cv-1424 (D. Nev. 2011).

15 Even where aggregation would not be traditionally available, “when several plaintiffs unite  
16 to enforce a single title or right in which they have a common and undivided interest, it is enough if  
17 their interests collectively equal the jurisdictional amount.” *Pinel v. Pinel*, 240 U.S. 594, 596 (1916).  
18 Such is the case here, where Plaintiffs seek to ultimately enforce the Nevada Constitution and  
19 Minimum Wage Act following systematic employee misclassification. *See Terry v. Sapphire*, 130  
20 Nev. Adv. Op. 87, 336 P. 3d 951 (2014) and *Dancer I-VII v. Golden Coin, Ltd.*, 124 Nev. 28, 32-34,  
21 176 P.3d 271, 274-75 (2008), wherein dancers maintained class actions premised on employee  
22 misclassification, despite many having claims under the jurisdictional threshold.

23 That an individual class member may not receive damages in an amount greater than the  
24 jurisdictional minimum threshold is speculative and not case-ending. As in *Golden Coin*, if a  
25  
26  
27  
28

1 plaintiff becomes an unwilling or inappropriate to serve as a class representative, a substitute is  
2 permitted to protect “the interests of the class, which has a separate and distinct legal status from  
3 that of the representative.” *Id.*, 124 Nev. at 34. Even under stringent jurisdictional analysis under  
4 CAFA, federal courts may adjudicate claims for less than \$75,000 as long as at least one class  
5 member satisfies the “legal certainty test” at the \$75,000 threshold. *See Exxon Mobil, Inc. v.*  
6 *Allapattah Servs., Inc.*, 545 U.S. 546, 559 (2005). Alternatively, in the event certain absent class  
7 members do not meet the amount in controversy requirement, rather than dismiss the class, the court  
8 should dismiss the members affected. *Central Wesleyan College v W.R. Grace & Co.*, 6 F3d 177,  
9 186(3) (4th Cir. 1993). In the event all class members cannot meet the jurisdictional amount in the  
10 class as defined, it is within the inherent power of the court to permit the class definition to be  
11 changed so as to include only those members over which the court has jurisdiction.  
12

### 13 14 **III. LEGAL ARGUMENT**

15 A putative class action cannot be dismissed prior to the deadline for class certification where  
16 the putative class’s damages, or at least one class representative’s damages, would meet the  
17 jurisdictional threshold. Where it is merely apparent (not conclusively proven) that as of the time of  
18 filing there is not legal certainty that the claim is below the jurisdictional minimum, a class  
19 representative’s individual damages later reduced are not dispositive.  
20

21 Assuming Plaintiffs will establish liability, as the Court must do under the legal certainty  
22 test, compensatory damages will be awarded and attorney’s fees are mandated. The Court assesses  
23 this as of the filing of the Complaint, and if jurisdiction attached at that time, it cannot be lost by  
24 subsequent actions. Ashleigh Park, as sole named plaintiff, alleged in the Complaint filed on  
25 November 4, 2014, that on behalf of herself and a class of other similarly situated persons, thought  
26 to be in excess of 3,000 persons (Comp. at ¶ 10), Defendant misclassified dancers at its club as  
27 independent contractors, failed to pay a minimum wage and was unjustly enriched. Plaintiff sought  
28

1 damages in excess of \$10,000 (Comp. at ¶40) and attorney's fees. Plaintiffs' First Amended  
2 Complaint, filed February 19, 2015, named additional class representatives, but alleged the same  
3 bases of liability; number of potential class members; damages in excess of \$10,000 for the class  
4 (ACOM at ¶54); and attorney fees. Even if Plaintiffs did not allege the \$10,000 threshold amount in  
5 the third amended complaint, they did so in their original and amended complaint. It is also obvious  
6 that \$10,000 divided by the minimum wage of \$8.25 results in approximately 1,212 hours (or about  
7 thirty 40-hour weeks) to have been worked since November 6, 2012, exclusive of wait-time  
8 penalties, attorney's fees or unjust enrichment damages, spread across 3,000 possible claimants.  
9 Plaintiff Franklin alone clocked-in for 1,086.59 hours. *See* Defendant's produced log-in/log-out  
10 documents at RR0607. This is oddly missing from Defendant's motion. *See* MTD at 14, omitting  
11 Franklin.  
12

13  
14 Defendant admits the current-named class representative Plaintiffs alone meet this number  
15 of hours without even considering the other thousands of affected class members (or Plaintiff  
16 Franklin). *See* MTD at 14. Jurisdiction attaches on this basis alone. The joint maximum amount of  
17 penalties pursuant to NRS 608.040 exceeds \$10,000 as well for the named plaintiffs. *See* MTD at  
18 16. Lastly, the amount of damages resulting from the unjust enrichment claim apart from wages, as  
19 calculated by Defendant, exceeds \$10,000 for the named Plaintiffs. MTD at 20-25.  
20

21 Unlike the anti-aggregation cases cited by Defendant (where, e.g., former employees suing  
22 an employer for wrongful discharge and breach of contract under their individual contracts must  
23 each individually satisfy the jurisdiction amount requirement), this case does not present "a mere  
24 joinder of distinct causes of action by distinct parties." To the contrary, the class is so numerous that  
25 joinder of class members is impracticable. Their singular interest against a singular defendant  
26 derives from their common rights held in group status.  
27  
28

1 Even without aggregation, Plaintiffs Franklin and Strelkova each meet the \$10,000 threshold  
2 independently. MTD at 20-25. Although skipped over in Defendant's motion to dismiss, Franklin  
3 worked 1,085.59 hours, entitling her to \$8,964.37 in minimum wages, plus the \$1,980 penalty fee  
4 under NRS 608.040, as calculated by Defendant (*see* MTD at 15), for a total of \$10,944.37 for her  
5 wage claim alone. For Franklin's unjust enrichment claim solely, house and stage fees assessed by  
6 the Club against Franklin were \$10,795, not including the mandatory tip outs she was required to  
7 pay Club employees. *See* RR0607 at ln. 170. Her damages for the two claims exceed \$20,000 based  
8 on Defendant's documentation alone. Plaintiff Strelkova would be entitled to \$7,515.75 on her wage  
9 claim, per Defendant (MTD at 16), and she was assessed fees of \$6,135, not including the mandatory  
10 tip outs. *See* RR0613. Her two claims undeniably exceed \$13,000. The district court thus  
11 undisputedly has original jurisdiction over these claims, which permits the motion for class  
12 certification to proceed regardless of the amount of damages of other plaintiffs. If granted, the award  
13 of damages to an individual class member cannot thereafter defeat jurisdiction over the case or class  
14 members' claims so long as they fall within the definition of the class (or sub-class).

15  
16  
17 None of the calculations above or in Defendant's motion account for the mandatory award  
18 of attorney's fees. Plaintiffs think it sufficient to take judicial notice of the docket in this matter to  
19 find that the \$10,000 threshold has been exceeded via attorney's fees independently and that such is  
20 not unusual in an employment misclassification class action, given the innate complexities.  
21 Additionally, none of the calculations above or in Defendant's motion take into account the  
22 mandatory tip outs required of Plaintiffs as a condition of their employment to the DJ, house mom,  
23 floor host, VIP host, managers, cashiers and valets. These additional amounts coupled with the  
24 damages admitted by Defendant make clear that Plaintiffs have established "merely that it does not  
25 appear to a legal certainty that the claim is below the jurisdictional minimum." Defendant has not  
26 met its burden to prevail on a motion to dismiss.  
27  
28

1 **IV. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request that this Court enter an Order  
3 Denying Defendant/Counterclaimant Russell Road Food and Beverage, LLC's Motion to Dismiss  
4 Plaintiffs' Complaint Pursuant to N.R.C.P. 12(b)(1) and N.R.C.P. 12(h)(3) in this matter.  
5

6 DATED this 19th day of June, 2017.

7 **MORRIS//ANDERSON**

8 By: /s/ Lauren Calvert

9 **RYAN M. ANDERSON, ESQ.**

10 Nevada Bar No.: 11040

11 **LAUREN CALVERT, ESQ.**

12 Nevada Bar No.: 10534

13 716 S. Jones Blvd.

14 Las Vegas, Nevada 89107

15 P. ANDREW STERLING, ESQ.

16 Nevada Bar No.: 13769

17 MICHAEL J. RUSING, ESQ.

18 AZ Bar No.: 6617 (*Admitted Pro Hac Vice*)

19 **RUSING LOPEZ & LIZARDI, PLLC**

20 6363 N. Swan Road, Ste. 151

21 Tucson, AZ 85718

22 *Attorneys for Plaintiffs*  
23  
24  
25  
26  
27  
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of  
3 **MORRIS ANDERSON**, and on the 19th day of June, 2017, I served the foregoing **PLAINTIFFS'**  
4 **OPPOSITION TO DEFENDANT/COUNTERCLAIMANT RUSSELL ROAD FOOD AND**  
5 **BEVERAGE, LLC'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT PURSUANT TO**  
6 **N.R.C.P. 12(b)(1) AND N.R.C.P. 12(h)(3)** as follows:  
7

8 ☒ Electronic Service – By serving a copy thereof through the Court's electronic  
9 service system; and/or

10 ☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage  
11 prepaid and addressed as listed below; and/or

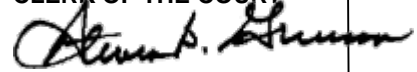
12 ☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile  
13 number(s) shown below and in the confirmation sheet filed herewith. Consent to  
14 service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by  
facsimile transmission is made in writing and sent to the sender via facsimile within  
24 hours of receipt of this Certificate of Service.

15 Gregory J. Kamer, Esq.  
16 KAMER ZUCKER ABBOTT  
17 3000 W. Charleston Blvd., Suite 3  
Las Vegas, Nevada 89102

18 Jeffery A. Bendavid, Esq.  
19 MORAN BRANDON BENDAVID MORAN  
20 630 S. 4th Street  
Las Vegas, Nevada 89101

21 *Attorneys for Defendants*

22  
23 /s/ Erickson Finch  
24 An employee/agent of **MORRIS//ANDERSON**  
25  
26  
27  
28



1 **MSJD**

2 RYAN M. ANDERSON, ESQ.

3 Nevada Bar No.: 11040

4 LAUREN CALVERT, ESQ.

5 Nevada Bar No.: 10534

6 **MORRIS ANDERSON**

7 716 S. Jones Blvd.

8 Las Vegas, Nevada 89107

9 Phone: (702) 333-1111

10 Email: [lauren@morrisandersonlaw.com](mailto:lauren@morrisandersonlaw.com)

11 P. ANDREW STERLING, ESQ.

12 Nevada Bar No.: 13769

13 MICHAEL J. RUSING, ESQ.

14 Arizona Bar No.: 6617 (*Admitted Pro Hac Vice*)

15 **RUSING LOPEZ & LIZARDI, PLLC**

16 6363 North Swan Road, Suite 151

17 Tucson, Arizona 85718

18 Phone: (520) 792-4800

19 Email: [asterling@rllaz.com](mailto:asterling@rllaz.com)

20 [mrusing@rllaz.com](mailto:mrusing@rllaz.com)

21 *Attorneys for Plaintiffs*

22 **DISTRICT COURT**

23 **CLARK COUNTY, NEVADA**

24 JACQUELINE FRANKLIN, ASHLEIGH  
25 PARK, LILY SHEPARD, STACIE ALLEN,  
26 MICHAELA DEVINE, SAMANTHA JONES,  
27 KARINA STRELKOVA, DANIELLE LAMAR  
28 individually, and on behalf of Class of similarly  
situated individuals,

Plaintiffs,

v.

22 RUSSELL ROAD FOOD AND BEVERAGE,  
23 LLC, a Nevada limited liability company (d/b/a  
24 CRAZY HORSE III GENTLEMEN'S CLUB)  
25 SN INVESTMENT PROPERTIES, LLC, a  
26 Nevada limited liability company (d/b/a CRAZY  
HORSE III GENTLEMEN'S CLUB), DOE  
27 CLUB OWNER, I-X, DOE EMPLOYER, I-X,  
28 ROE CLUB OWNER, I-X, and ROE  
EMPLOYER, I-X,

Defendants.

CASE NO.: A-14-709372-C

DEPT. NO.: XXXI

**PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT ON  
EMPLOYEE STATUS**

///

1                   **PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON EMPLOYEE STATUS**

2                   Plaintiffs, individually and on behalf of all persons similarly situated, hereby file their  
3 Motion for Summary Judgment on Employee Status.

4                   This Motion is based upon the following Memorandum of Points and Authorities and any  
5 oral argument this Court may wish to entertain at the hearing of this Motion.  
6

7                   DATED this 19th day of June, 2017.

8   **MORRIS ANDERSON**

9   By: /s/ Lauren Calvert

10    **RYAN M. ANDERSON, ESQ.**

11    Nevada Bar No.: 11040

12    **LAUREN CALVERT, ESQ.**

13    Nevada Bar No.: 10534

14    716 S. Jones Blvd.

15    Las Vegas, Nevada 89107

16    P. ANDREW STERLING, ESQ.

17    Nevada Bar No.: 13769

18    MICHAEL J. RUSING, ESQ.

19    AZ Bar No.: 6617 (*Admitted Pro Hac Vice*)

20    **RUSING LOPEZ & LIZARDI, PLLC**

21    6363 N. Swan Road, Ste. 151

22    Tucson, AZ 85718

23    *Attorneys for Plaintiffs*



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

YOU WILL PLEASE TAKE NOTICE that the foregoing **MOTION** will come on for hearing before the above entitled Court on the 25 day of July, 2017, at 9:30 am \_\_.m., or as soon thereafter as counsel can be heard.

# MORRIS ANDERSON

By: /s/ Lauren Calvert  
**RYAN M. ANDERSON, ESQ.**  
Nevada Bar No.: 11040  
**LAUREN CALVERT, ESQ.**  
Nevada Bar No.: 10534  
716 S. Jones Blvd.  
Las Vegas, Nevada 89107

**P. ANDREW STERLING, ESQ.**  
Nevada Bar No.: 13769  
**MICHAEL J. RUSING, ESQ.**  
AZ Bar No.: 6617 (*Admitted Pro Hac Vice*)  
**RUSING LOPEZ & LIZARDI, PLLC**  
6363 N. Swan Road, Ste. 151  
Tucson, AZ 85718

*Attorneys for Plaintiffs*

**TABLE OF CONTENTS**

I. INTRODUCTION

II. RELEVANT PROCEDURAL HISTORY

III. STATEMENT OF UNDISPUTED MATERIAL FACTS (“SOF”)

IV. ARGUMENT

1. The Court’s interlocutory order regarding the application of NRS 608.0155 to limit MWA claims was clearly erroneous and should be modified.

A. A mere statute cannot, consistent with the principle of constitutional supremacy, remove any individual from the broad scope of the MWA’s protections.

B. The MWA’s definition of employee incorporates the economic realities test used in the FLSA, the parallel federal minimum wage law.

C. The Club’s dancers are its employees under the MWA’s economic realities test.

(1) Substantial persuasive authority indicates strip club dancers are employees under the economic realities test.

(2) The economic reality factors lopsidedly favor a finding that the Club’s dancers are employees as a matter of law.

(a) Dancers do not exert control over a meaningful part of the business.

(b) The dancers’ opportunities for profit or loss does not depend on managerial skill.

(c) Exotic dancing does not require a special skill.

(d) The fact that the dancer-club relationship lacks a high degree of permanence carries little persuasive value.

(e) The services rendered by exotic dancers are an integral part of the Club’s business.

1 (f) Consideration of all factors indicate the Club's dancers are its  
2 employees as a matter of law.

3 2. Even if the Court chooses to apply NRS 608.0155 to limit the scope of the MWA, the result  
4 would not change.

5 A. The test for independent contractor status is not met where, as here, there is no  
6 underlying contract to perform work.

7 B. Even assuming, for argument's sake, that the NRS 608.0155 test could coherently be  
8 applied to the club-dancer relationship, its requirements still would not be met.

9  
10 V. CONCLUSION  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is an employee misclassification case. Plaintiffs, dancers at Defendants' Las Vegas strip  
4 club, claim they are the Club's employees within the meaning of the Minimum Wage Amendment  
5 to the Nevada Constitution, Nev. Const. Art. XV, sec. 16. (the MWA). Defendants (the Club) make  
6 all of its dancers sign an "Entertainers Agreement" which purports, as other Clubs have done, to  
7 characterize dancers as licensees who must pay to rent space in the club to conduct their own  
8 allegedly independent business with their "clients" (the club patrons). *See, e.g., Reich v. Circle C.*  
9 *Investments, Inc.*, 998 F.2d 324, 329 (5th Cir. 1993) ("We reject the defendants' creative argument  
10 that the dancers are mere tenants who rent stages, lights, dressing rooms, and music from [the  
11 club]"). But the undisputed facts here show the Club is not a landlord leasing space to independent  
12 businesswomen in a facility the Club just happens to license and run as a strip club; nor are they  
13 providing services to the Club as independent contractors. Rather, as the Nevada Supreme Court and  
14 numerous other courts around the country uniformly have held, exotic dancers are employees of the  
15 strip clubs in which they work as a matter of law and Plaintiffs now move for summary judgment  
16 on that issue.

17 **II. RELEVANT PROCEDURAL HISTORY**

18 Plaintiffs' complaint was filed in November 2014. On April 6, 2017 this Court entered an  
19 order denying plaintiffs' motion for class certification without prejudice and determining that NRS  
20 608.0155, a recently enacted test for independent contractor status, "applies to actions to recover  
21 unpaid wages asserted under Nevada's Minimum Wage Amendment." 4/6/2017 Order at 2:19-20.  
22 Two other motions currently are pending before the Court: (1) Plaintiffs' renewed motion for class  
23 certification, and (2) Defendants' motion to dismiss the complaint for failure to satisfy the statutory  
24 amount in controversy requirement.

1     **III.     STATEMENT OF UNDISPUTED MATERIAL FACTS (“SOF”)**

2     1.     The Club required dancers to obey a list of Entertainer Guidelines and Entertainer Rules.  
3     Def’s Responses to Plaintiffs’ First Set of Interrogatories at Response to Rog 2 and documents  
4     RR0048-54 and RR0122-139 (attached as Exhibit 1).

5  
6     2.     The Club enforced its guidelines and rules by assessing fines against dancers, placing them  
7     on inactive status, or termination. Ex. 1 at Response to Rog 3 and documents RR0048-54 and  
8     RR0122-139.

9     3.     The club could fine or deactivate dancers for missing a stage call, not checking out properly,  
10    not leaving the floor within five minutes after checking out, and/or discouraging Club patrons’  
11    purchase of alcohol from the Club. Ex. 1 at Response to Rogs 3 and 4 and documents RR0053,  
12    RR0128, RR0130, RR0132, and RR0135-136.  
13

14    4.     The Club required dancers to sign an “Entertainers Agreement” that purported to define the  
15    relationship between the dancers and the Club. Def’s Responses to Plaintiffs’ First Set of Request  
16    for Production of Documents at Response to Request No. 5 and documents RR0043-47 (attached as  
17    Exhibit 2).  
18

19    5.     At all relevant times, the Club controlled and paid for all expenses relating to operating the  
20    facility, including paying rent, utilities, special promotions, obtaining licensing, bar and kitchen  
21    inventory, hiring and paying staff, and repair and maintenance. Dancers were not required to  
22    contribute money towards the payment of those expenses. Videotaped Deposition of Keith Ragano  
23    at 110:6-111:20 (attached as Exhibit 3).  
24

25    6.     At all relevant times, the Club controlled whether to charge patrons who wished to access  
26    the Club a cover charge, and controlled the amount of such charges. Ex. 3 at 110:12-14; Ex. 1 at  
27    document RR0054.

28    7.     The Club did not require its dancers to possess any formal dance training. Ex. 3 at 95:4-7.

1 8. The Club did not treat its dancers as employees and did not issue W-2s or 1099s to dancers  
2 for their services. Ex. 3 at 16:17-23 and 18:16-20.

3 9. The Club set the pricing for dancers' performances. Ex. 1 at document RR0054.

4 10. The Club required dancers to pay a "house fee" to dance at the Club. Ex.3 at 16:24-17:11.

5 11. The Club did not allow dancers to seat guests; all guests would be seated by Club directors  
6 or other Club personnel. Ex.1 at Response to Interrogatory No. 2, document RR0053 at ¶¶12 and  
7 15.

8 12. The Club set up one or more stages and implemented a rotation system whereby dancers  
9 would be called up to perform on stage. Ex. 3 at 58:25-62:7.

10 13. Dancers who did not want to perform on stage were required to pay \$40 to the Club to be  
11 taken off the stage rotation. Ex. 3 at 65:13-66:1.

12 14. The Club required its dancers to check in when they arrived and to check out when they left.  
13 Ex. 1 at Response to Interrogatory No. 2, document RR0053 at ¶5 and documents RR0127-128 and  
14 RR0136.

15 15. The Club established and maintained designated "VIP" areas. Ex. 1 at 109:2-9.

16 16. To use the VIP room the Club required Dancers to check in and be escorted by a host. Ex. 3  
17 at 109:2-9; Ex. 1 at Response No. 2 and documents RR0052 and rR0053 at ¶12.

18 17. Dancers could not take patrons into the VIP room unless the patron paid fees set by the Club  
19 and made minimum drink purchases from the Club. Ex. 1 at Response No. 2 and documents RR0054  
20 and RR0139.

21 18. Dancers were required to comply with a dress code set by the Club that included coverage  
22 of large tattoos. Ex. 1 at Response Nos. 2 and 6 and document RR0053 at ¶8.

1 19. The Club required dancers to remove all clothing but a G-string on the first song on stage  
2 and to leave their clothing off for every song on stage thereafter. Ex. 1 at Response to No. 2 and  
3 document RR0053 at ¶¶1 and 23.

4 20. The Club specifically mandated that dancers' performances include a personal thank you,  
5 invitation to return to the Club, and a "goodbye." Dancers were required to intercept patrons who  
6 were leaving to the Club and "not let anybody [they] danced for get out the door without a final  
7 thank you and smile." Ex. 1 at Response to No. 2 and document RR0051.

9 21. The Club required dancers to be "attentive and intelligent, polished, polite, watchful, prompt,  
10 thoughtful, devoted, sophisticated, friendly, and helpful." Ex.1 at Response to No. 2 and document  
11 RR0051-52.

12 22. Dancers were not permitted to run tabs on dances and were not permitted to ask patrons who  
13 paid with Dance Dollars to reimburse them for the 10% redemption fee mandated by the Club. Ex.  
14 1 at Response No. 2 and document RR0053 at ¶¶ 13 and 16.

16 25. The Club assigned work shifts for each dancer. Ex. 1 at Response No. 5.

17 26. The Club made final decisions concerning music played for dancers' performances to ensure  
18 that the format and genre was in accordance with the Club's desired image. Ex. 1 at Response No.  
19 7.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

1 **IV. ARGUMENT**

2 **1. The Court's interlocutory order regarding the application of NRS 608.0155 to limit**  
3 **MWA claims was clearly erroneous and should be modified<sup>1</sup>**

4 **A. A mere statute cannot, consistent with the principle of constitutional supremacy,**  
5 **remove any individual from the broad scope of the MWA's protections**

6 In its April 2017 order denying class certification, this Court determined that NRS 608.0155,  
7 a recently-enacted statutory test for independent contractor status, "applies to actions to recover  
8 unpaid wages asserted under Nevada's Minimum Wage Amendment." 4/6/2017 Order at 2:19-20.  
9 The Order did not provide any reasoning but the Club argued as follows:

10 NRS 608.0155 operates not to establish an [impermissible] exception to the definition  
11 of "employee" provided by Nevada's Minimum Wage Amendment, but to provide  
12 the elements necessary for establishing a conclusive presumption that an individual  
13 is an independent contractor prior to any determination of whether an individual is  
14 an employee engaged in an employment relationship under Nevada law. *See* NRS  
15 608.255(3). If that conclusive presumption applies to an individual, then that  
16 individual cannot be an "employee" as defined by Nevada's Minimum Wage  
17 Amendment and therefore, is not entitled to the rights granted employees provided  
18 therein. This analysis must occur prior to any analysis of whether an individual is an  
19 employee as defined by Nevada's Minimum Wage Amendment. Thus, an individual  
20 who is presumed conclusively to be an Independent Contractor is not an employee  
21 excepted from the requirements of Nevada's Minimum Wage Amendment, but is not  
22 an employee in the first place who by Nevada law is not engaged in an employment  
23 relationship. Therefore, he or she cannot be granted the rights set forth in Nevada's  
24 Minimum Wage Amendment.

25 Def. Supp. Brief on SB 224 at 20:26-21:17 (emphasis in original). The Court should modify its  
26 ruling on this issue because Defendants' reasoning (which cites no legal authority) and, therefore,  
27 the Court's conclusion on this issue, is clearly erroneous.

28 Whether a statute creates an exception to the scope of the MWA's definition of employee  
(as in *Thomas*) or an exclusionary test to be applied before considering the scope of that definition

---

<sup>1</sup> An interlocutory order "is subject to revision at any time before the entry of judgment adjudicating all the rights and liabilities of all the parties." NRCp 54(b). *See also United States v. Martin*, 226 F.3d 1042, 1048-49 (9th Cir.2000) (stating that, until final judgment is entered, trial court has "inherent jurisdiction to modify, alter, or revoke" interlocutory decisions) (construing analogous federal rule).



1 (as here) is irrelevant. According to the well-established principle of constitutional supremacy, the  
2 key question in determining the limits of the legislature’s power to affect the scope of the MWA in  
3 both cases is whether, if the statute was ignored, a person would be an employee as defined by the  
4 MWA. If the answer to that question is yes, then the statutory exception and/or exclusionary test  
5 necessarily is unconstitutional to the extent it purports to remove that person from the scope of the  
6 MWA’s protections, whether by prior exclusion or subsequent exception. *See Thomas* at 522 (“If  
7 the Legislature could change the Constitution by ordinary enactment, ‘no longer would the  
8 Constitution be ‘superior paramount law, unchangeable by ordinary means.’ It would be ‘on a level  
9 with ordinary legislative acts, and, like other acts, ... alterable when the legislature shall please to  
10 alter it.’”) (*quoting City of Boerne v. Flores*, 521 U.S. 507, 529 (1997) (alteration in original)  
11 (*quoting Marbury v. Madison*, 5 U.S. 137 (1803))). *See also Strickland v. Waymire*, 126 Nev. 230,  
12 241, 235 P.3d 605, 613 (2010) (“The constitution may not be construed according to a statute enacted  
13 pursuant thereto; rather, statutes must be construed consistent with the constitution — and rejected  
14 if inconsistent therewith.”) (emphasis added).

15  
16  
17 As discussed below, the MWA’s broad definition of employee incorporates the economic  
18 realities test used in the FLSA, the parallel federal minimum wage law, and the Club’s dancers are  
19 employees under that test. As such, the Court’s determination that NRS 608.0155 could apply to the  
20 dancers’ MWA claim to deny them employee status guaranteed by Nevada’s constitution is clearly  
21 erroneous. A mere statute cannot, consistent with the principle of constitutional supremacy, remove  
22 any individual from the broad scope of the MWA’s protections.  
23

24  
25 **B. The MWA’s definition of employee incorporates the economic realities test used  
26 in the FLSA, the parallel federal minimum wage law**

27 The MWA (enacted by voter initiative) defines “employee” as  
28

1 any person who is employed by an employer as defined herein but does not include  
2 [1] an employee who is under eighteen (18) years of age, [2] employed by a nonprofit  
3 organization for after school or summer employment or [3] as a trainee for a period  
not longer than ninety (90) days.

4 Nev. Const. Art. XV, sec. 16(C). The Nevada Supreme Court has yet to squarely address what  
5 Nevada voters intended this definition to mean, but has provided clear guidance on how to go about  
6 the job:

7 To determine a constitutional provision's meaning, we turn first to the provision's  
8 language. In so doing, we give that language its plain effect, unless the language is  
9 ambiguous. If a constitutional provision's language is ambiguous, meaning that it is  
10 susceptible to two or more reasonable but inconsistent interpretations, we may look  
11 to the provision's history, public policy, and reason to determine what the voters  
intended. . . . Whatever meaning ultimately is attributed to a constitutional provision  
may not violate the spirit of that provision.

12 *Miller v. Burk*, 124 Nev. 579, 590–91, 188 P.3d 1112, 1119–20 (2008) (quotations and citations  
13 omitted).

14 In applying the *Miller* methodology, the first step is to ask whether the MWA definition of  
15 employee is ambiguous. Three well-established canons of construction and several hints from the  
16 Nevada Supreme Court (the ultimate authority on what the Nevada Constitution means) suggest it  
17 is not.<sup>2</sup>

18 First, anyone familiar with familiar with the last eighty or so years of American labor law  
19 immediately will recognize that the MWA definition of employee is identical to the well-known  
20 definition in the federal Fair Labor Standards Act of 1938, 29 USC §§ 201-219. *See* 29 U.S.C. §  
21 203(e)(I) (“the term ‘employee’ means any individual employed by an employer”). Both definitions  
22 may be tautological, but the FLSA definition is a well-known term of art, and for decades it  
23  
24  
25  
26

---

27 <sup>2</sup> Canons of statutory construction apply to the interpretation of a constitutional provision. *Harvey v. Dist. Ct.*, 117 Nev.  
28 754, 763, 32 P.3d 1263, 1269 (2001).

1 consistently has been interpreted by courts with reference to the economic realities test.<sup>3</sup> “Generally,  
2 when a legislature [or voters] uses a term of art in a statute [or initiative], it does so with full  
3 knowledge of how that term has been interpreted in the past, and it is presumed that the legislature  
4 [or voters] intended it to be interpreted in the same fashion.” *Beazer Homes Nevada, Inc. v. Dist.*  
5 *Ct.*, 120 Nev. 575, 587, 97 P.3d 1132, 1139–40 (2004) (emphasis added).  
6

7 Second, where, as here, a state statute or constitutional provision parallels language in a  
8 federal counterpart, Nevada courts look to federal precedent interpreting the federal statute for  
9 guidance. *See, e.g., Century Steel, Inc. v. State, Div. of Indus. Relations, Occupational Safety &*  
10 *Health Section*, 122 Nev. 584, 589, 137 P.3d 1155, 1159 (2006) (holding when “state and federal  
11 acts are substantially similar and the state statute does not reflect a contrary legislative intent” courts  
12 will “adopt the construction placed on the federal statute by federal courts”).  
13

14 Third, the MWA unquestionably is a remedial constitutional provision. *See Terry*, 336 P.3d  
15 at 955 (noting MWA was enacted by Nevada voters to ensure that “more, not fewer, persons would  
16 receive minimum wage protections”). When construing remedial provision, “a broad and liberal  
17 construction is required, in order that the purposes designed by them shall be most completely  
18 served.” *Warren v. De Long*, 59 Nev. 481, 97 P.2d 792, 795 (1940) (emphasis added).  
19

20 These three canons of interpretation all suggest the MWA’s definition is not ambiguous, and  
21 that the only reasonable interpretation is that Nevada voters intended that the MWA would protect  
22 the same people protected by the parallel federal minimum wage law.

23 Reinforcing this conclusion is the fact that the Nevada Supreme Court clearly has indicated  
24 in *Terry* and *Thomas* that the scope of the MWA should be broadly construed. In *Terry* the Court in  
25 a unanimous opinion noted that the MWA was enacted by Nevada voters to ensure that “more, not  
26

---

27  
28 <sup>3</sup> The genesis of the economic reality test for employee status typically is traced back to *United States v. Silk*, 331 U.S.  
704 (1947).

1 fewer, persons would receive minimum wage protections.” *Terry*, 336 P.3d at 955 (emphasis added).

2 The Court’s conclusion in its April 2017 Order that NRS 608.0155 might apply to MWA claims to  
3 remove people from the scope of its protections clearly conflicts with this pronouncement from  
4 Nevada’s highest court. Also, although the Court in *Terry* primarily was tasked with interpreting the  
5 Chapter 608 definition of employee (NRS 608.010), and not the MWA, it nonetheless provides a  
6 perfect roadmap for how it would interpret the MWA definition. In fact, the Chapter 608 definition  
7 if anything would be less likely to be aligned with the FLSA definition because, unlike the MWA,  
8 the Chapter 608 definition of employee does not parallel the FLSA definition. *See* NRS 608.010  
9 (“‘Employee’ includes both male and female persons in the service of an employer under any  
10 appointment or contract of hire or apprenticeship, express or implied, oral or written, whether  
11 lawfully or unlawfully employed.”). Despite this difference in language, the Supreme Court still  
12 adopted the FLSA definition for NRS 608.010 due to the strong public policy and efficiency  
13 concerns outlined in this brief. There is no reason it would not do the same when it is called upon to  
14 interpret the MWA. Then in *Thomas* the Court struck down a legislative carve-out for taxi drivers  
15 from the broad MWA definition of employee because “[t]he Minimum Wage Amendment expressly  
16 and broadly defines employee, exempting only certain groups.” *Thomas* at 327 P.3d at 521. “Taxi  
17 drivers” is not one of those enumerated groups. Neither is “whoever the legislature chooses to define  
18 as an independent contractor.”

22 Even if the MWA definition of employee were ambiguous, this Court next should examine  
23 “the provision’s history, public policy, and reason to determine what the voters intended.” *Miller*,  
24 124 Nev. at 590–91, 188 P.3d at 1119–20.

26 As noted above, the historical and public policy connections are immediately apparent  
27 because the MWA definition of employee is identical to the well-known FLSA definition.  
28 Interpreting the MWA definition to be consistent with the FLSA definition furthers public policy

1 concerns and is faithful to the spirit of the provision because the MWA, like the FLSA, is a remedial  
2 law that must be broadly construed in light of its remedial purpose. *Terry* at 956. *See also Warren*  
3 *v. De Long*, 59 Nev. 481, 97 P.2d 792, 795 (1940) (“For statutes so highly remedial, a broad and  
4 liberal construction is required, in order that the purposes designed by them shall be most completely  
5 served.”).

6  
7 Finally, in determining, for similar reasons, that the definition of employee in NRS 608.010  
8 also should incorporate the FLSA economic realities test, the Nevada Supreme Court noted it would  
9 make no sense and sow considerable confusion to have different rules for who qualifies as an  
10 employee under state and federal wage laws. *See Terry* at 957 (“having no substantive reason to  
11 break with the federal courts on this issue, judicial efficiency implores us to use the same test as the  
12 federal courts).

13  
14 The MWA’s history, considerations of public policy and reason thus conclusively establish  
15 that the MWA’s definition of employee must be construed in the same manner as the identical  
16 definition in the parallel federal minimum wage law (*i.e.*, by reference to the economic realities test).  
17 There is no other plausible interpretation. To needlessly restrict or alter the definition would sow  
18 confusion and not comport with “the spirit of the provision.” *Miller*, 124 Nev. at 590–91, 188 P.3d  
19 at 1119–20.  
20

21 **C. The Club’s dancers are its employees under the MWA’s economic realities test**

22 **(1) Substantial persuasive authority indicates strip club dancers are**  
23 **employees under the MWA’s economic realities test**

24 The MWA incorporates FLSA’s “economic reality” test to determine employment status.  
25 Courts in applying this test consider various factors, such as: (1) the degree of the alleged employer’s  
26 right to control the manner in which the work is to be performed; (2) the alleged employee’s  
27 opportunity for profit or loss depending upon his managerial skill; (3) the alleged employee’s  
28 investment in equipment or materials required for his task, or his employment of helpers; (4) whether

1 the service rendered requires a special skill; (5) the degree of permanence of the working  
2 relationship; and (6) whether the service rendered is an integral part of the alleged employer's  
3 business. *Real v. Driscoll Strawberry Associates, Inc.*, 603 F.2d 748, 754 (9th Cir. 1979). “Neither  
4 the presence nor the absence of any individual factor is determinative.” *Donovan v. Sureway*  
5 *Cleaners*, 656 F.2d 1368, 1370 (9th Cir.1981). Contractual labels and the subjective intent of the  
6 parties are not relevant factors in this analysis. *Driscoll*, 603 F.2d at 755. “When a disposition in  
7 either direction can be justified, the Court must err in favor of a broader reading of ‘employee.’”  
8 *Hanson v. Trop, Inc.*, 167 F.Supp.3d 1324, 1328 (N.D. Ga. 2016) (citing *Usery v. Pilgrim Equip.*  
9 *Co., Inc.*, 527 F.2d 1308, 1311 (5th Cir. 1976).

10  
11 Before embarking on an examination of the economic realities factors as applicable to the  
12 facts of this action, it is important to note that many courts have addressed the question of whether  
13 an exotic dancer is an employee under the economic realities test, and almost.

14  
15 ‘[w]ithout exception, these courts have found an employment relationship and  
16 required the nightclub to pay its dancers a minimum wage.’ *Harrell v. Diamond A*  
17 *Entm’t, Inc.*, 992 F.Supp. 1343, 1347–48 (M.D.Fla.1997) (citing e.g. *Reich v.*  
18 *Circle C. Invs., Inc.*, 998 F.2d 324 (5th Cir.1993) (finding dancers are employees  
19 under the FLSA); *Reich v. Priba Corp.*, 890 F.Supp. 586 (N.D.Tex.1995) (same);  
20 *Martin v. Priba Corp.*, 1992 WL 486911 (N.D.Tex. Nov.6, 1992) (same)); see also  
21 *Morse v. Mer Corp.*, No. 1:08–cv–1389–WLT–JMS, 2010 WL 2346334 (S.D.Ind.  
22 June 4, 2010) (same); *Jeffcoat v. Alaska Dep’t of Labor*, 732 P.2d 1073 (Alaska  
23 1987) (finding entertainers to be employees under state labor laws based on  
24 FLSA); *Doe v. Cin–Lan, Inc.*, No. 08–cv–12719, 2008 WL 4960170 (E.D.Mich.  
25 Nov. 20, 2008) (granting entertainer's motion for preliminary injunction, holding  
26 that entertainer was substantially likely to succeed on claim that she is an employee  
27 under FLSA).

28 *Clinicy v. Galardi S. Enterprises, Inc.*, 808 F. Supp. 2d 1326, 1343 (N.D. Ga. 2011) (granting  
plaintiff’s motion for partial summary judgment on employee status) (cited with approval in *Terry*).<sup>4</sup>

---

<sup>4</sup> See also *Lester v. Agment LLC*, 2016 WL 1588654 (N.D. Ohio Apr. 20, 2016); *Foster v. Gold & Silver Private Club, Inc.*, 2015 WL 8489998 (W.D. Va. Dec. 9, 2015); *McFeeley v. Jackson St. Entm’t LLC*, 47 F.Supp.3d 260 (D.Md. 2014); *Whitworth v. French Quarter Partners, LLC*, No. 6:13-CV-6003, 2014 WL 12594213 (W.D. Ark. June 30, 2014); *Stevenson v. Great Am. Dream, Inc.*, No. 1:12-CV-3359-TWT, 2013 WL 6880921 (N.D. Ga. Dec. 31, 2013); *Butler v.*

1                   **(2) The economic reality factors lopsidedly favor a finding that the Club’s**  
2                   **dancers are employees as a matter of law**

3                   **(a) Dancers do not exert control over a meaningful part of the**  
4                   **business**

5                   The Club disclaims any control over its dancers in order to avoid its obligations as an  
6                   employer. But the Nevada Supreme Court in *Terry* was entirely unimpressed with another club’s  
7                   similar disclaimer of control. The Court noted dancers at Sapphire, like those at Defendants’ Club,  
8                   could “choose” whether or not to perform lap dances and could “choose” not to perform a stage  
9                   rotation by paying a fee but concluded that

10                   by forcing them to make such ‘choices,’ Sapphire is actually able to ‘heavily monitor  
11                   the performers, including dictating their appearance, interactions with customers,  
12                   work schedules, and minute to minute movements when working’ while ostensibly  
13                   ceding control to them.” This reality undermines Sapphire’s characterization of the  
14                   ‘choices’ it offers performers and the freedom it suggests that these choices allow  
15                   them; the performers are, for all practical purposes, ‘not on a pedestal but in a cage.’

16                   *Terry* at 959 (2014) (*quoting* Sheerine Alemzadeh, Baring Inequality: Revisiting the Legalization  
17                   Debate Through the Lens of Strippers’ Rights, 19 Mich. J. Gender & L. 339, 347 (2013)). *See also*  
18                   *Harrell*, 992 F. Supp.. at 1349 (“The mere fact that [the club] has delegated a measure of discretion  
19                   to its dancers does not necessarily mean that its dancers are elevated to the status of independent  
20                   contractors.”) (cited with approval in *Terry*).

21                   The Nevada Supreme Court has made clear that strip club owners cannot evade their legal  
22                   obligations as an employer by disclaiming control over the dancers who work for them. *See Terry*  
23                   at 959 (rejecting Club’s efforts to disclaim control as “a framework of false autonomy”). *See also*  
24                   *Reich v. Circle C. Investments, Inc.*, 998 F.2d 324, 327 (5th Cir. 1993) (rejecting strip club’s “effort  
25                   on appeal to downplay [the club’s] control”) (cited with approval in *Terry*); *Mednick v. Albert*

---

26  
27  
28                   *PP & G, Inc.*, No. CIV.A. WMN-13-430, 2013 WL 5964476 (D. Md. Nov. 7, 2013); *Thornton v. Crazy Horse, Inc.*,  
2012 WL 2175753 (D.Alaska June 14, 2012); *Thompson v. Linda and A. Inc.*, 779 F.Supp.2d 139 (D.D.C.2011); *Mason*  
*v. Fantasy, LLC*, 2015 WL 4512327 (D. Colo. July 27, 2015); *Verma v. 3001 Castor, Inc.*, No. CIV.A. 13-3034, 2014  
WL 2957453 (E.D.Pa. June 30, 2014); *Hart v. Rick’s Cabaret Int’l, Inc.*, 967 F. Supp. 2d 901 (S.D.N.Y. 2013).

1 *Enters., Inc.*, 508 F.2d 297, 303 (5th Cir. 1975) (“An employer cannot saddle a worker with the  
2 status of independent contractor, thereby relieving itself of its duties [as an employer] by granting  
3 him some legal powers where the economic reality is that the worker is not and never has been  
4 independently in the business in which the employer would have him operate.”). As other courts  
5 have noted in rejecting similar efforts by other clubs to disclaim control, “[t]he real question is  
6 whether the dancer exerts control over a ‘meaningful’ part of the business.” *Harrell*, 992 F.Supp. at  
7 1349 (cited with approval in *Terry*). And courts consistently find that strip clubs, and not their  
8 dancers, control all meaningful aspects of the exotic dance business.

10 As in those other cases, numerous undisputed facts and admissions comfortably establish  
11 that the Club’s wields significant control over the most meaningful parts of the erotic dance business:

- 13 • The Club required dancers to obey a list of Entertainer Guidelines and Entertainer Rules  
14 (SOF 1)
- 15 • The Club enforced its guidelines and rules by assessing fines against dancers, placing  
16 them on inactive status, or termination (SOF 2)
- 17 • The Club could fine or deactivate dancers for missing a stage call, not checking out  
18 properly, not leaving the floor within five minutes after checking out, and/or  
19 discouraging Club patrons’ purchase of alcohol from the Club. (SOF 3)
- 20 • The Club did not allow dancers to seat guests; all guests would be seated by Club  
21 directors or other Club personnel (SOF 11)
- 22 • The Club set up one or more stages and implemented a rotation system whereby dancers  
23 would be called up to perform on stage (SOF 12)
- 24 • The Club required its dancers to check in when they arrived and to check out when they  
25 left (SOF 14)
- 26 • The Club set up and controlled access to a VIP area within the club (SOF 15)



- 1 • Dancers could not take patrons into the VIP room unless the patron paid fees set by the  
2 Club and made minimum drink purchases from the Club (SOF 17)
- 3 • Dancers were required to comply with a dress code set by the Club that included coverage  
4 of large tattoos (SOF 18)
- 5 • The Club required dancers to remove all clothing but a G-string on the first song on stage  
6 and to leave their clothing off for every song on stage thereafter (SOF 19)
- 7 • The Club required dancer interactions with club patrons to include a personal thank you,  
8 invitation to return to the Club, and a “goodbye.” Dancers were required to intercept  
9 patrons who were leaving to the Club and “not let anybody [they] danced for get out the  
10 door without a final thank you and smile.” (SOF 20)
- 11 • Dancers were not permitted to run tabs on dances and were not permitted to ask patrons  
12 who paid with Dance Dollars to reimburse them for the 10% redemption fee mandated  
13 by the Club (SOF 22)
- 14 • The Club assigned work shifts for each dancer (SOF 23)
- 15 • The Club made final decisions concerning music played for dancers’ performances to  
16 ensure that the format and genre was in accordance with the Club’s desired image (SOF  
17 24)

18 These undisputed facts, which are similar to the undisputed facts in *Terry* and in the  
19 numerous other dancer cases, unquestionably “overshadow[] the smaller freedoms [the club]  
20 allowed its dancers.” *Harrell*, 992 F. Supp. at 1350 (cited with approval in *Terry*). Here, as in these  
21 other dancer cases,

22 [t]he club controls all the advertising, without which the entertainers could not  
23 survive. Moreover, the defendants created and controlled the atmosphere and  
24 surroundings at [the club], the existence of which dictates the flow of customers into  
25 the club. An entertainer can be considered an independent contractor only if she  
26 ‘exerts such control over a meaningful part of the business that she stands as a  
27  
28

1 separate economic entity.’ In this case, the entertainer’s economic status is  
2 inextricably linked to those conditions over which defendants have complete control.

3 *Priba Corp.* 890 F. Supp. at 592 (cited with approval in *Terry*).

4 The control factor cuts in favor of economic dependence.

5 **(b) The dancers’ opportunities for profit or loss does not depend on**  
6 **managerial skill**

7 The second factor evaluates the workers’ opportunities for profit or loss dependent on their  
8 managerial skill. As one court explained, “entertainers do not control the key determinants of profit  
9 and loss of a successful enterprise . . . Any profit to the entertainers is more analogous to earned  
10 wages than a return for risk on capital investment.” *Priba Corp.*, 890 F. Supp. at 593. *See also Reich*  
11 *v. Circle C. Investments, Inc.*, 998 F.2d 324, 328 (5th Cir. 1993) (“Given its control over  
12 determinants of customer volume, [the Club] exercises a high degree of control over a dancer’s  
13 opportunity for ‘profit.’”). As yet another court convincingly reasoned:

15 Defendant would have us believe that a dancer . . . could hang out her own shingle,  
16 pay nothing in overhead, no advertising, no facilities, no bouncers, and draw in a  
17 constant stream of paying customers. A dancer at [the club] risks little more than a  
18 daily ‘tip out’ fee, the cost of her costumes, and her time. That a dancer may increase  
19 her earnings by increased ‘hustling’ matters little. As is the case with the zealous  
20 waiter at a fancy, four star restaurant, a dancer’s stake, her take and the control she  
21 exercises over each of these are limited by the bounds of good service; ultimately it  
22 is the restaurant that takes the risks and reaps the rewards.

23 *Harrell*, 992 F.Supp. at 1352 (cited with approval in *Terry*). Here, as in these other cases, the Club  
24 controls and pays for all expenses relating to marketing and operating the venue, including paying  
25 rent, utilities, special promotions, obtaining licensing, bar and kitchen inventory, and repair and  
26 maintenance (SOF 5). Accordingly, the undisputed fact that the Club controlled its dancers’  
27 opportunity for profit and loss also weighs in favor of finding employee status.

28 **(c) Exotic dancing does not require a special skill**

As the Nevada Supreme Court and many other courts have found, little specialized skill is  
required to be a nude dancer. *See* cases cited in section B(1), above. The Club did not require its

dancers to possess any formal dance training or certification (SOF 7). Viewing the evidence in the light most favorable to the Club, the lack of specialized skills required for the job (or any skills, for that matter, other than looking good in a bikini) weighs strongly in favor of finding employee status.

**(d) The fact that the dancer-club relationship lacks a high degree of permanence carries little persuasive value**

Clubs hire dancers on an at-will basis and dancers are able to work at other clubs. Accordingly, viewing the evidence in the light most favorable to the Club, this factor weighs against employee status. But “this factor carries little persuasive value in the context of topless dancers and the clubs at which they perform, and cannot alone tilt the scales in [the club’s] favor.” *Terry* at 960. *See also Thompson v. Linda And A., Inc.*, 779 F.Supp.2d 139, 150 (2011) (“Many of the courts that have found exotic dancers to be employees . . . did so despite finding the employment relationship lacked a high degree of permanence.”) (citing cases).

**(e) The services rendered by exotic dancers are an integral part of the Club’s business**

Defendants operate a licensed exotic dance establishment and market itself as a strip club. As such, it is “a self-evident conclusion that nude dancers form an integral part of [the club’s] business.” *Linda & A.*, 779 F.Supp.2d at 150. *See also Terry* at 960 (“Given that Sapphire bills itself as the ‘World’s Largest Strip Club,’ and not, say, a sports bar or night club, we are confident that women strip-dancing there are useful and indeed necessary to its operation.”). This factor, too, points strongly towards employee status.

**(f) Consideration of all factors indicate the Club’s dancers are its employees as a matter of law**

Viewing the evidence in the light most favorable to the Club, the economic reality factors unquestionably indicate that the Club’s dancers are its employees as a matter of law. The only factor that does not clearly weigh in favor of employee status is the permanence of the working relationship, and numerous other courts, including the Nevada Supreme Court, have found exotic

dancers to be employees despite the typically impermanent nature of the work force in this industry. *See* cases cited in section B(1), above. “[T]he economic reality is that the dancers are not in business for themselves but are dependent upon finding employment in the business of others.” *Circle C. Invs.*, 998 F.2d at 329 (cited with approval in *Terry*). As such, Plaintiffs are employees within the meaning of the MWA and are entitled to all rights and privileges flowing therefrom, including a minimum wage and the right to not have to pay to work.

**2. Even if the Court chooses to apply NRS 608.0155 to limit the scope of the MWA, the result would not change**

**A. The NRS 608.0155 test for independent contractor status is not met where, as here, there is no underlying contract to perform work**

NRS 608.0155 is a recent statutory amendment and no court appears to have attempted to apply it. However, the text of NRS 608.0155 makes clear its purpose as a threshold test is to determine whether a worker providing services should be presumptively classified (and thus paid) as an independent contractor and that, as such, it can only be applied where there is a contract between two parties for one to perform work for the other. Consistent with this purpose, four of the five criteria enumerated in NRS 608.0155(1)(c) make absolutely no sense unless there is an underlying contract between two parties to perform work. *See* NRS 608.0155(1)(c)(1) (asking whether “the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the principal in the contract”); *id.* at (c)(2) (asking whether principal has given putative contractor “control over the time the work is performed”); *id.* at (c)(3) (asking whether putative contractor “is required to work exclusively for one principal”); *id.* at (c)(4) (asking whether the putative contractor “is free to hire employees to assist with the work”). The test could be coherently applied, for example, if a package delivery company hired and paid its delivery drivers as independent contractors and the drivers claimed they were in fact employees, as was the case in *Alexander v. FedEx Ground Package Sys., Inc.*, 765 F.3d 981 (9th Cir. 2014). The test also

1 could coherently be applied if the Club classified and paid its dancers as independent contractors,  
2 which it has never done (SOF 8). Thus, even if the NRS 608.0155 test for independent contractor  
3 status applied to MWA claims, the test would not be met here and the Court would move on, as  
4 instructed by NRS 608.0155(2), to determine that the dancers are employees under the MWA's  
5 economic realities test.  
6

7 **B. Even assuming, for argument's sake, that the NRS 608.0155 test could**  
8 **coherently be applied to the club-dancer relationship, its requirements still**  
9 **would not be met**

10 An individual is an independent contractor under NRS 608.0155 only if they are "required  
11 by the contract with the principal to hold any necessary state business registration or local business  
12 license and to maintain any necessary occupational license, insurance or bonding." NRS  
13 608.0155(1)(b). If dancers were providing their services to the Club as independent contractors then  
14 they would be required by law to obtain a state business registration. *See* NRS 76.100(1) ("[a] person  
15 shall not conduct a business in this State unless and until the person obtains a state business  
16 registration."). If dancers were leasing space in the Club to engage in their own erotic dance business,  
17 then each individual dancer also would have to be licensed as an erotic dance establishment. *See* Las  
18 Vegas Municipal Code 6.35.040 and the Clark County Code 6.160.040 (both classifying a business  
19 as an erotic dance establishment "when one or more dancers displays or exposes, with less than a  
20 full opaque covering, that portion of the female breast lower than the upper edge of the areola").  
21

22 The requisite showing under NRS 608.0155(1)(b) is not met here because the Entertainer  
23 Agreement (the contract between the parties) - which contains a robust integration clause - does not  
24 require dancers "to hold any necessary state business registration or local business license." Because  
25 NRS 608.0155(1)(b) is not met the statute's independent contractor inquiry is at an end and the Court  
26 would move on, as instructed by NRS 608.0155(2), to determine that the dancers are the Club's  
27 employees under MWA's economic realities test.  
28

1 Looking, as an academic exercise, to the other criteria in NRS 608.0155 for independent  
2 contractor status, it also is clear the Club could not meet its burden of satisfying the requisite three  
3 out of the five criteria or “sub-factors” listed in NRS 608.0155(1)(c). The only factor that would be  
4 met (if there were the requisite contract to perform work) is section (c)(3) (dancers not required to  
5 work exclusively for one principal).  
6

7 The first sub-factor asks whether the putative contractor has “control and discretion over the  
8 means and manner of the performance of any work and the result of the work, rather than the means  
9 or manner by which the work is performed, is the primary element bargained for by the principal in  
10 the contract.” NRS 608.0155(1)(c)(1). As discussed in Section B(2)(a), above, the Club’s self-  
11 interested disclaimer of control is unconvincing. The Club exerts significant control over its dancers  
12 while they are on the job by, for example, enforcing guidelines and rules by assessing fines against  
13 dancers and/or firing them (SOF 2), setting up one or more stages and implementing a rotation  
14 system whereby dancers would be called up to perform on stage (SOF 12) and establishing and  
15 controlling access to a designated “VIP” room (SOF 15). As other courts have found on these facts,  
16 which are similar to the undisputed facts supporting the conclusion reached by the Nevada Supreme  
17 Court in *Terry* and by numerous other courts, the reality of the dancers’ situation “undermines [the  
18 club’s] characterization of the ‘choices’ it offers performers and the freedom it suggests that these  
19 choices allow them; the performers are, for all practical purposes, ‘not on a pedestal, but in a cage.’”  
20 *Terry*, 336 P.3d at 959 (quoting *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973)). Additionally,  
21 the second part of NRS 608.0155(1)(c)(1) requires that “the result of the work, rather than the means  
22 or manner by which the work is performed, is the primary element bargained for by the principal in  
23 the contract.” Regardless of the extent of control, this sub-factor clearly cannot be met because,  
24 according to the contract the Club drafted and made its dancers sign, the dancers do not perform any  
25  
26  
27  
28

1 work for the Club but merely lease space in which to perform their own independent business (SOF  
2 4).

3 The second sub-factor asks whether “the person has control over the time the work is  
4 performed.” NRS 608.0155(1)(c)(2). This sub-factor cannot be met because dancers perform no  
5 work for the Club and, in any event, this provision expressly states it does not apply “if the work  
6 contracted for is entertainment.” NRS 608.0155(1)(c)(2). Even if the Club had contracted with its  
7 dancers to provide dancing services, section (c)(2) in that case simply would not apply.  
8

9 The fourth sub-factor asks whether the dancers are “free to hire employees to assist with the  
10 work.” NRS 608.0155(1)(c)(4). The Entertainer Agreement the Club made each dancer sign, which  
11 contains a robust integration clause, clearly states that dancers “may not assign or delegate any of  
12 his or her rights of [sic] obligations hereunder without first obtaining the prior written consent of  
13 The Crazy Horse III.” (SOF 4).  
14

15 The fifth sub-factor asks whether the dancers contribute “a substantial investment of capital  
16 in the business of the person.” NRS 608.0155(1)(c)(5). Here, it is undisputed that dancers are  
17 required to make no capital investment in the Club facilities, rent, advertising, maintenance, food,  
18 beverage, other inventory or staffing efforts (all of which is provided by the Club) (SOF 5). As the  
19 Nevada Supreme Court has noted, it is facially implausible to suggest that the amount of money a  
20 dancer must spend on skimpy costumes and makeup could ever amount to a substantial investment  
21 of capital or otherwise indicate that dancers are independent entrepreneurs. *See Terry*, 336 P.3d at  
22 959 (noting “performers' financial contributions are limited to . . . their costume and appearance-  
23 related expenses and house fees” and thus “are far more closely akin to wage earners toiling for a  
24 living, than to independent entrepreneurs seeking a return on their risky capital investments”)  
25 (*quoting Reich v. Circle C. Invs., Inc.*, 998 F.2d 324, 328 (5th Cir.1993)).  
26  
27

28 ///

1     **V.     CONCLUSION**

2             The Club’s owners have made a lot of money off its dancers by treating them as independent  
3     businesswomen who “choose” to rent space in its facility, which just happens to be set up and heavily  
4     marketed as a strip club. It is a lucrative business model, but it is illegal and exploitative. NRS  
5     608.0155 does not apply to MWA claims and, even if it did, the outcome would not change. Plaintiffs  
6     are entitled to judgment as a matter of law as to their employee status because the undisputed facts  
7     in the record clearly establish that the economic reality of the relationship between the Club and its  
8     dancers is identical to the economic reality of dependence conclusively identified in so many other  
9     dancer misclassification cases.  
10

11             DATED this 19th day of June, 2017.

12                             **MORRIS ANDERSON**

13  
14                             By: /s/ Lauren Calvert  
15                             **RYAN M. ANDERSON, ESQ.**  
16                             Nevada Bar No.: 11040  
17                             **LAUREN CALVERT, ESQ.**  
18                             Nevada Bar No.: 10534  
19                             716 S. Jones Blvd.  
20                             Las Vegas, Nevada 89107  
21                             Attorneys for Plaintiffs  
22  
23  
24  
25  
26  
27  
28



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

☒ Electronic Service – By serving a copy thereof through the Court’s electronic service system; and/or

☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or

☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below and in the confirmation sheet filed herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of Service.

/s/ *Erickson Finch*  


---

An employee/agent of **MORRIS//ANDERSON**

# EXHIBIT “1”

1 **ANS**  
2 **JEFFERY A. BENDAVID, ESQ.**  
3 Nevada Bar No. 6220  
4 **MORAN BRANDON BENDAVID MORAN**  
5 630 South 4<sup>th</sup> Street  
6 Las Vegas, Nevada 89101  
7 (702) 384-8424

8 **GREGORY J. KAMER, ESQ.**  
9 Nevada Bar No. 0270

10 **KAITLIN H. ZIEGLER, ESQ.**  
11 Nevada Bar No. 013625

12 **KAMER ZUCKER ABBOTT**  
13 3000 W. Charleston Blvd., #3

14 Las Vegas, Nevada 89102

15 (702) 259-8640

16 *Attorneys for Russell Road Food and Beverage, LLC*

17 **DISTRICT COURT**  
18 **CLARK COUNTY, NEVADA**

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

Case No.: A-14-709372-C

Dept. No.: 31

Plaintiffs,

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.

AND RELATED COUNTERCLAIMS



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 **DEFENDANT, RUSSELL ROAD FOOD AND BEVERAGE, LLC'S ANSWERS AND**  
2 **OBJECTIONS TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

3 TO: Plaintiffs, Jacqueline Franklin, Ashleigh Park, Lily Shepard, Stacie Allen, Michaela  
4 Divine, Veronica Van Woodsen, Samantha Jones, Karina Strelkova, Lashonda  
Stewart, Danielle Lamar, and Dirubin Tamayo (collectively, the "Plaintiff"); and

5 TO: Ryan M. Anderson, Esq., and Daniel R. Price, Esq., Morris//Anderson, Attorneys  
6 for Plaintiffs.

7 COMES NOW, Defendant, RUSSELL ROAD FOOD AND BEVERAGE, LLC, a  
8 Nevada limited liability, dba CRAZY HORSE III GENTLEMEN'S CLUB (the  
9 "Defendant"), by and through its attorneys of record, JEFFERY A. BENDAVID, ESQ., of  
10 MORAN BRANDON BENDAVID MORAN, GREGORY J. KAMER, ESQ., and  
11 KAITLIN H. ZIELGER, ESQ., of KAMER ZUCKER ABBOTT, and hereby submits  
12 pursuant to N.R.C.P. 33, DEFENDANT'S ANSWERS AND OBJECTIONS TO  
13 PLAINTIFFS' FIRST SET OF INTERROGATORIES.  
14

15 **GENERAL OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS**

16 1. Defendant objects to the instructions and definitions accompanying  
17 Plaintiff's Interrogatories to the extent they seek to expand or modify Defendant's  
18 obligations under the Nevada Rules of Civil Procedure.  
19

20 2. Defendant objects to Plaintiff's definition of and instructions regarding the  
21 terms "You" and "Your" as it pertains to the pursuit of information that is privileged from  
22 discovery by the attorney-client communications privilege, the attorney work product  
23 doctrine, and the consulting-only expert privilege.  
24

25 3. Defendant objects to Plaintiff's definition of and instructions regarding the  
26 terms "You" and "Your" as it pertains to the pursuit of information concerning the owners  
27 and principals of Defendant, who are not named Defendants in this matter and as a matter of  
28



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 Nevada law cannot be liable to Plaintiff for the claims asserted by Plaintiff in Plaintiff's  
2 Complaint against Defendant.

3 4. Defendant objects to Plaintiff's definition of and instructions regarding the  
4 term "Dancer," as it pertains to any individual who performed at Defendant's Crazy Horse  
5 III club as an erotic dancer who is not a named party to this action. The information  
6 provided by Defendant in response to Plaintiff's Interrogatories shall only involve those  
7 "Dancers" who performed at Defendant's Crazy Horse III club as an exotic dancer who are  
8 individually named as a Plaintiff in this matter.  
9

10 5. Defendant objects to the Interrogatories to the extent they seek information  
11 protected, privileged, or otherwise exempt from discovery pursuant to applicable state  
12 statutes, the Nevada Rules of Civil Procedure, or any other applicable rule, decision, or law.  
13 Specifically and without limitation, Defendant objects to the disclosure of any information  
14 protected by the attorney-client privilege, work product doctrine, consulting-only expert  
15 privilege, trade secret privilege, or any other applicable privilege, doctrine, or exemption  
16 that would make the information immune or exempt from discovery. Nothing contained in  
17 these objections is intended to be nor should be considered a waiver of the attorney-client  
18 privilege, the work product doctrine, consulting-only expert privilege, trade secret privilege,  
19 or any other applicable privilege or doctrine, and to the extent that any Interrogatory may be  
20 construed as calling for disclosure of information and the identity of documents protected by  
21 such privileges or doctrines, a continuing objection to each and every Interrogatory is hereby  
22 made.  
23  
24  
25

26 6. Defendant objects to the Interrogatories to the extent they are irrelevant,  
27 immaterial, not reasonably calculated to lead to the discovery of relevant and admissible  
28



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 evidence, and are unduly burdensome and oppressive because they seek information on  
2 matters unrelated to the subject matter of the present lawsuit.

3 7. Defendant objects to the Interrogatories to the extent they seek information  
4 available from public sources and, as such, subject Defendant to undue burden and  
5 oppression.  
6

7 8. Defendant objects to the Interrogatories to the extent they seek disclosure of  
8 confidential commercial, financial, and/or proprietary information without establishing the  
9 relevancy of such information to the issues raised in this litigation.  
10

11 9. Defendant objects to the phrase "relevant time period," to the extent that  
12 Plaintiff's pursuit of information within the time period of November 4, 2010 to present as  
13 specified in Plaintiff's Definition AND Instruction No. 1. Specifically, Defendant objects to  
14 the Interrogatories to the extent they seek the disclosure of information outside the two (2)  
15 year statute of limitation prescribed by NRS 608.260, which the Court previously has  
16 deemed applicable in its Order filed on June 25, 2015. The information provided by  
17 Defendant in response to Plaintiff's Interrogatories shall only involve those events, actions,  
18 instances, times, and dates occurring within the prescribed two (2) year statute of limitation.  
19

20 10. Defendant objects, as irrelevant, to the Interrogatories to the extent that  
21 Plaintiff seeks information from Defendant on behalf of those similarly situated as  
22 Plaintiff's Third Amended Complaint fails to make a prima facie showing in her Third  
23 Amended Complaint of the prerequisites of N.R.C.P. 23, and therefore has failed to meet her  
24 initial burden to demonstrate that the discovery sought are likely to produce persuasive  
25 information substantiating her class action allegations.  
26



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 11. Defendant objects to Plaintiff's Interrogatories to the extent that Plaintiff  
2 seeks information that would invade the privacy of any individual or entity not a party to  
3 this action.

4 **ANSWERS AND OBJECTIONS TO SPECIFIC INTERROGATORIES**

5  
6 **INTERROGATORY NO. 1:**

7 Identify by name, address, telephone number and ownership interest, each person or  
8 entity with an ownership interest in the club known as Crazy Horse at any time between  
9 November 4, 2010 and the present. For each entity with an ownership interest:

11 a. Define whether it is a corporation, partnership, sole proprietorship, or joint  
12 venture;

13 b. For each entity that is a corporation, identify the state in which incorporated,  
14 the date on which incorporated, your principal place of business, the names and addresses of  
15 all officers, and when the corporation was licensed to do business in the State of Nevada;

17 c. For each entity that is a partnership, identify the names and addresses of each  
18 partner, whether general or limited, and the official business address of the partnership;

19 d. For each entity that is a sole proprietorship, identify the name and address of  
20 each owner; and

21 e. For each entity that is a joint venture, identify the name address of each joint  
22 venturer.

23  
24 **ANSWER TO INTERROGATORY NO. 1:**

25 Defendant objects to this Interrogatory as overbroad as to time and scope since  
26 Plaintiff's Interrogatory seeks information from Defendant beyond the two (2) year  
27 applicable statute of limitation. Pursuant to the Court's Order filed on June 25, 2015,  
28



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 information concerning Defendant's ownership. However, Defendant's Members are  
2 not parties to Plaintiff's Complaint and both of Plaintiff's remaining claims are  
3 asserted only against Defendant.

4 Further, Defendant is a Nevada limited liability company managed by a  
5 designated Manager. As such, Defendant's Members do not manage Defendant as a  
6 matter of Nevada law. In addition, NRS 86.371 expressly declares that neither  
7 Defendant's Managers nor its Members can be liable for any of the liabilities of  
8 Defendant, which absolutely includes the claims against Defendant asserted in  
9 Plaintiff's Complaint.  
10

11 As such, Plaintiff's Interrogatory is irrelevant and no actual, admissible  
12 evidence concerning Plaintiff's claims asserted only against Defendant can be  
13 discovered from the disclosure of the ownership information sought by Plaintiff's  
14 Interrogatory.  
15

16 In addition, Plaintiff already knows, by name, that Defendant, that Russell  
17 Road Food and Beverage, LLC, owns and operates Crazy Horse III.  
18

19 Since Discovery is ongoing, Defendant reserves the right to supplement its  
20 response to this Interrogatory.

21 **INTERROGATORY NO. 2:**

22 Describe in detail all work rules, regulations, restrictions and the like which applied  
23 to Dancers during the relevant time period. To the extent any of these regulations changed  
24 over time, describe which regulations were in effect for which period of time.  
25  
26  
27  
28



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568



1 **ANSWER TO INTERROGATORY NO. 2:**

2 Defendant objects to this Interrogatory to the extent that Plaintiff seeks  
3 information concerning “all work rules, regulations, restrictions, and the like” that  
4 applied to the Dancers that are not a named party in this action or for a class of  
5 similarly situated Dancers that does not exist, that Plaintiff has not moved to certify,  
6 and has not been certified by the Court. At the time of Plaintiff’s Interrogatory,  
7 Plaintiff consists of eleven (11) individually named Plaintiffs who allegedly were  
8 formerly performed at Defendant’s Crazy Horse III club. As such, Plaintiff’s  
9 Interrogatory is premature and Plaintiff is not entitled to the discovery of such  
10 information at this time.  
11

12  
13 Defendant further objects to this Interrogatory as overbroad as to time and  
14 scope since Plaintiff’s Interrogatory seeks information from Defendant beyond the two  
15 (2) year applicable statute of limitation. Pursuant to the Court’s Order filed on June  
16 25, 2015, Plaintiff’s claim for unpaid wages pursuant to Nevada’s Minimum Wage  
17 Amendment is subject to the two (2) year statute of limitation prescribed by NRS  
18 608.260. *See* Order Granting in Part and Denying Part Defendant’s Motion to Dismiss  
19 and Granting Defendant’s Motion to Strike Prayer for Exemplary and Punitive  
20 Damages dated June 25, 2015. Plaintiff filed a Complaint on November 4, 2014.  
21 However, Plaintiff’s Interrogatory seeks information from Defendant beginning from  
22 November 4, 2010. As such, Plaintiff’s Interrogatory seeks information far outside the  
23 prescribed two (2) year statute of limitation. Accordingly, Plaintiff’s Interrogatory is  
24 overbroad to the extent Plaintiff’s Interrogatory seeks information beginning from  
25 November 4, 2010, which is beyond the applicable two (2) year statute of limitation.  
26  
27  
28



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 Defendant further objects to this Interrogatory as irrelevant to the extent that  
2 Plaintiff's Interrogatory seeks information from Defendant outside the applicable two  
3 (2) year statute of limitation. As already stated above, Plaintiff's Interrogatory seeks  
4 information regarding the Defendant's work rules, regulations, and restrictions  
5 commencing from November 4, 2010, which is well beyond the parameters of the  
6 applicable two (2) year statute of limitation. Any information outside the applicable  
7 two (2) year statute of limitation is irrelevant as such information regarding  
8 Defendant's rules, regulations, and restrictions could not lead to the discovery of  
9 actual, admissible evidence.  
10

11  
12 Defendant further objects to this Interrogatory as overbroad and unduly  
13 burdensome as Plaintiff's Interrogatory constitutes a blockbuster Interrogatory  
14 seeking all possible "work rules, regulations, restrictions, and the like, which applied to  
15 Dancers during the relevant time period." As a matter of law, such a blockbuster  
16 Interrogatory as served by Plaintiff is overbroad and imposes an undue burden on  
17 Defendant. *See e.g., In re Datacom Sys., 2014 Bankr. Lexis 5348 \*43 (D. Nev. Bkr. July*  
18 *25, 2014) (citing Bat v. A.G. Edwards & Sons, Inc., 2005 U.S. Dist. LEXIS 47995 \*11*  
19 *(D. Colo. Nov. 18, 2005); and Hilt v. SFC, Inc., 170 F.R.D. 182, 186-87 (D. Kan. 1997).*  
20

21 Defendant further objects to this Interrogatory to the extent that the phrase  
22 "work rules, regulations, restrictions and the like" characterizes or implies that  
23 Plaintiff was subject to such "work rules, regulations, restrictions and the like"  
24 because they were employees of Defendant who performed "work" for Defendant at  
25 Defendant's Crazy Horse III club. All of the Plaintiffs named in this matter were  
26 independent contractors who performed erotic dances at Crazy Horse III. None of the  
27  
28



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 Plaintiff's named in this matter were employees of Defendant who were subject to any  
2 "work rules, regulations, restrictions, and the like." Accordingly, Defendant objects to  
3 this Interrogatory and the phrase, "work rules, regulations, restrictions, and the like"  
4 to the extent that either characterizes or implies that Plaintiff was an employee of  
5 Defendant subject to such "work rules, regulations, restrictions, and the like" as a  
6 result of any alleged employment with Defendant.  
7

8 Without waiving the above objections, please reference Crazy Horse III  
9 Gentleman's Club Entertainer Guidelines, which Defendant has previously disclosed to  
10 Plaintiff as part of Defendant's Initial List of Documents and Witnesses previously  
11 served on Plaintiff pursuant to N.R.C.P. 16.1, bate stamped as RR0048 through  
12 RR0054.  
13

14 Please also reference the Documents posted in work place areas, which  
15 Defendant has previously disclosed to Plaintiff as part of Defendant's First Supplement  
16 to its Initial List of Documents and Witnesses, bate stamped as RR0122 through  
17 RR0139.  
18

19 Since Discovery is ongoing, Defendant reserves the right to supplement its  
20 response to this Interrogatory.

21 **INTERROGATORY NO. 3:**

22 Describe in detail how violations of the work rules described in the immediately  
23 preceding interrogatory were enforced, e.g. were fines levied, lay-offs, etc. To the extent  
24 there were changes in how work rules were enforced over time, describe how work rules  
25 were enforced over time, describe how work rules were enforced.  
26



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 **ANSWER TO INTERROGATORY NO. 3:**

2 Defendant objects to this Interrogatory to the extent that Plaintiff seeks  
3 information concerning how alleged violations of Defendant's "work rules" were  
4 enforced against Dancers that are not a named party in this action or for a class of  
5 similarly situated Dancers that does not exist, that Plaintiff has not moved to certify,  
6 and has not been certified by the Court. At the time of Plaintiff's Interrogatory,  
7 Plaintiff consists of eleven (11) individually named Plaintiffs who allegedly were  
8 formerly performed at Defendant's Crazy Horse III club. As such, Plaintiff's  
9 Interrogatory is premature and Plaintiff is not entitled to the discovery of such  
10 information at this time.  
11

12  
13 Defendant further objects to this Interrogatory as overbroad as to time and  
14 scope since Plaintiff's Interrogatory seeks information from Defendant beyond the two  
15 (2) year applicable statute of limitation. Pursuant to the Court's Order filed on June  
16 25, 2015, Plaintiff's claim for unpaid wages pursuant to Nevada's Minimum Wage  
17 Amendment is subject to the two (2) year statute of limitation prescribed by NRS  
18 608.260. *See* Order Granting in Part and Denying Part Defendant's Motion to Dismiss  
19 and Granting Defendant's Motion to Strike Prayer for Exemplary and Punitive  
20 Damages dated June 25, 2015. Plaintiff filed a Complaint on November 4, 2014.  
21 However, Plaintiff's Interrogatory seeks information from Defendant beginning from  
22 November 4, 2010. As such, Plaintiff's Interrogatory seeks information far outside the  
23 prescribed two (2) year statute of limitation. Accordingly, Plaintiff's Interrogatory is  
24 overbroad to the extent Plaintiff's Interrogatory seeks information beginning from  
25 November 4, 2010, which is beyond the applicable two (2) year statute of limitation.  
26  
27  
28



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 Defendant further objects to this Interrogatory as irrelevant to the extent that  
2 Plaintiff's Interrogatory seeks information from Defendant outside the applicable two  
3 (2) year statute of limitation. As already stated above, Plaintiff's Interrogatory seeks  
4 information regarding Defendant's work rules, regulations, and restrictions  
5 commencing from November 4, 2010, which is well beyond the parameters of the  
6 applicable two (2) year statute of limitation. Any information outside the applicable  
7 two (2) year statute of limitation is irrelevant as such information regarding  
8 Defendant's rules, regulations, and restrictions could not lead to the discovery of  
9 actual, admissible evidence.  
10

11 Defendant further objects to this Interrogatory to the extent that the phrase  
12 "work rules" characterizes or implies that Plaintiff was subject to such "work rules"  
13 because they were employees of Defendant who performed "work" for Defendant at  
14 Defendant's Crazy Horse III club. All of the Plaintiffs named in this matter were  
15 independent contractors who performed erotic dances at Crazy Horse III. None of the  
16 Plaintiff's named in this matter were employees of Defendant who were subject to any  
17 "work rules." Accordingly, Defendant objects to this Interrogatory and the phrase,  
18 "work rules" to the extent that either characterizes or implies that Plaintiff was an  
19 employee of Defendant subject to such "work rules" as a result of any alleged  
20 employment with Defendant.  
21

22 Without waiving the above objections, please reference Crazy Horse III  
23 Gentleman's Club Entertainer Guidelines previously provided as part of Defendant's  
24 Initial List of Documents and Witnesses previously served on Plaintiff pursuant to  
25 N.R.C.P. 16.1, bated stamped as RR0048 through RR0054. These guidelines speak for  
26  
27  
28



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 themselves as to the manner in which any violations of described in the immediately  
2 preceding interrogatory.

3 Since Discovery is ongoing, Defendant reserves the right to supplement its  
4 response to this Interrogatory.  
5

6 **INTERROGATORY NO. 4:**

7 Describe in detail and by specific Dancer, what fees, fines, and other payments were  
8 charged by YOU to Dancers during the relevant time period. To the extent any of these fees  
9 changed over time, describe which fees were in effect for which period of time.

10 **RESPONSE TO INTERROGATORY NO. 4:**

11 Defendant objects to this Interrogatory to the extent that Plaintiff seeks  
12 information concerning "what fees, fines, and other payments" were charged to  
13 Dancers that are not a named party in this action or for a class of similarly situated  
14 Dancers that does not exist, that Plaintiff has not moved to certify, and has not been  
15 certified by the Court. At the time of Plaintiff's Interrogatory, Plaintiff consists of  
16 eleven (11) individually named Plaintiffs who allegedly were formerly at Defendant's  
17 Crazy Horse III club. As such, Plaintiff's Interrogatory is premature and Plaintiff is  
18 not entitled to the discovery of such information at this time.  
19  
20

21 Defendant further objects as this Interrogatory and the information sought  
22 constitute an invasion of privacy of the individuals identified in this Interrogatory who  
23 are not party to this action. Plaintiff has failed to demonstrate a compelling need for  
24 the discovery of such information that outweighs the privacy rights of the individuals  
25 not party to this action. *See e.g., Sargant v. HG Staffing, LLC*, 2014 U.S. Dist. LEXIS  
26



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 56580 \*9-10 (D. Nev. April 22, 2014) (citing *Artis v. Deere & Co.*, 276 F.R.D. 348, 352  
2 (N.D. Cal 2011) (quotation omitted)).

3 Defendant further objects to Plaintiff's Interrogatory as an invasion of privacy  
4 to the extent that Plaintiff's request demands the disclosure of confidential and  
5 sensitive financial and tax information of individuals not party to this action. The  
6 production of such confidential and sensitive financial and tax information constitutes  
7 an improper invasion of privacy after balancing Plaintiff's need for information  
8 against the asserted privacy interest of such individuals. *See Id. See also, e.g., Nguyen*  
9 *v. Baxter Healthcare Corporation*, 275 F.R.D. 503, 512-13, 2011 U.S. Dist. LEXIS 64134  
10 \*33-34 (C. D. Cal. 2011).

11  
12  
13 Defendant further objects to this Interrogatory as overbroad as to time and  
14 scope since Plaintiff's Interrogatory seeks information from Defendant concerning  
15 Plaintiff beyond the two (2) year applicable statute of limitation. Pursuant to the  
16 Court's Order filed on June 25, 2015, Plaintiff's claim for unpaid wages pursuant to  
17 Nevada's Minimum Wage Amendment is subject to the two (2) year statute of  
18 limitation prescribed by NRS 608.260. *See Order Granting in Part and Denying Part*  
19 *Defendant's Motion to Dismiss and Granting Defendant's Motion to Strike Prayer for*  
20 *Exemplary and Punitive Damages* dated June 25, 2015. Plaintiff filed a Complaint on  
21 November 4, 2014. However, Plaintiff's Interrogatory seeks information from  
22 Defendant beginning from November 4, 2010. As such, Plaintiff's Interrogatory seeks  
23 information far outside the prescribed two (2) year statute of limitation. Accordingly,  
24 Plaintiff's Interrogatory is overbroad to the extent Plaintiff's Interrogatory seeks  
25  
26  
27  
28



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 information beginning from November 4, 2010, which is beyond the applicable two (2)  
2 year statute of limitation.

3 Defendant further objects to this Interrogatory as irrelevant to the extent that  
4 Plaintiff's Interrogatory seeks information from Defendant outside the applicable two  
5 (2) year statute of limitation. As already stated above, Plaintiff's Interrogatory seeks  
6 information regarding "what fees, fines, and other payments," were charged by  
7 Defendant to Plaintiff commencing from November 4, 2010, which is well beyond the  
8 parameters of the applicable two (2) year statute of limitation. Any information  
9 outside the applicable two (2) year statute of limitation is irrelevant as such  
10 information regarding "what fees, fines, and other payments," were charged by  
11 Defendant to Plaintiff could not lead to the discovery of actual, admissible evidence.  
12

13  
14 Without waiving the above objections, Defendant charges each performer a  
15 "house fee" to perform at its Crazy Horse III club, which is assessed and paid by each  
16 dancer who intends to perform on each respective day. Defendant also charges each  
17 dancer a fee if an individual dancer elects to be removed from the stage dance rotation.  
18

19 Defendant does not assess any fines against the dancers, except that dancers  
20 may be subject to a fine for failing to check out properly as stated per the document  
21 posted in dancers "dressing room" and/or "back stage" area, previously disclosed to  
22 Plaintiff as part of Defendant's First Supplement to Defendant's Initial List of  
23 Documents and Witnesses, and bated stamped as RR0128. Further, Defendant has  
24 assessed a fee to those individual dancers for their failure to appear and perform their  
25 obligated stage dance.  
26



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568



1           In addition, Defendant has previously disclosed to Plaintiff the total fees  
2 assessed each individual Plaintiff as part of Defendant's Initial List of Documents and  
3 Witnesses previously served on Plaintiff pursuant to N.R.C.P. 16.1, as follows:

4           1.       Entertainer Jacqueline S. Franklin's Profile, Charge Summary and  
5 Dance Dollar Report, and bate stamped at RR0055 through RR0068;

6           2.       Entertainer Ashleigh M. Park's Profile, Charge Summary and Dance  
7 Dollar Report, and bate stamped RR0069 through RR0075;

8           3.       Entertainer Lily C. Shepard's Profile, Charge Summary and Dance  
9 Dollar Report, and bate stamped RR0076 through RR0082;

10          4.       Entertainer Stacie Allen's Profile, Charge Summary and Dance Dollar  
11 Report, and bate stamped RR0083 through RR0088;

12          5.       Entertainer Veronika T. Woodsen's Profile, Charge Summary and  
13 Dance Dollar Report, and bate stamped RR0089 through RR0095;

14          6.       Entertainer Samantha F. Jones' Profile and Charge Summary, bate  
15 stamped RR0096 through RR0098;

16          7.       Entertainer Karina Strelkova's Profile, Charge Summary and Dance  
17 Dollar Report, and bate stamped RR0099 through RR0108;

18          8.       Entertainer Lashonda Stewart's Profile, Charge Summary and Dance  
19 Dollar Report, and bate stamped RR0109 through RR0112 ; and

20          9.       Entertainer Danielle L. Lamar's Profile, Charge Summary and Dance  
21 Dollar Report, and bate stamped RR0113 through RR0120.

22           In addition, Defendant has performed an extensive search of Defendant's  
23 available records and has not found any records demonstrating that Plaintiff, Michaela  
24



25  
26  
27  
28  
MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 Divine and Plaintiff, Dirubin Tamayo auditioned or performed at Defendant's Crazy  
2 Horse III club at any time after November 4, 2012.

3 Since Discovery is ongoing, Defendant reserves the right to supplement its  
4 response to this Interrogatory.  
5

6 **INTERROGATORY NO. 5:**

7 Describe in detail who set Dancers' work schedules at Crazy Horse and how  
8 schedules were set.

9 **ANSWER TO INTERROGATORY NO. 5:**

10 Defendant objects to this Interrogatory to the extent that Plaintiff seeks  
11 information concerning the setting of "work schedules" of Dancers that are not a  
12 named party in this action or for a class of similarly situated Dancers that does not  
13 exist, that Plaintiff has not moved to certify, and has not been certified by the Court.  
14 At the time of Plaintiff's Interrogatory, Plaintiff consists of eleven (11) individually  
15 named Plaintiffs who allegedly performed at Defendant's Crazy Horse III club. As  
16 such, Plaintiff's Interrogatory is premature and Plaintiff is not entitled to the discovery  
17 of such information at this time.  
18  
19

20 Defendant further objects to this Interrogatory as this Interrogatory is  
21 compound and contains multiple subparts constituting additional individual  
22 Interrogatories.

23 Defendant further objects to this Interrogatory to the extent that the phrase  
24 "work schedule" characterizes or implies that Plaintiff was subject to a "work  
25 schedule" because they were employees of Defendant who performed "work" for  
26 Defendant at Defendant's Crazy Horse III club. All of the Plaintiffs named in this  
27  
28



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 matter were independent contractors who performed erotic dances at Crazy Horse III.  
2 None of the Plaintiff's named in this matter were employees of Defendant who were  
3 subject to any "work schedule." Accordingly, Defendant objects to this Interrogatory  
4 and the phrase, "work schedule" to the extent that either characterizes or implies that  
5 Plaintiff was an employee of Defendant subject to any "work schedule" as a result of  
6 any alleged employment with Defendant.  
7

8 Defendant also objects to this Interrogatory as overbroad as to time and scope  
9 since Plaintiff's Interrogatory seeks information from Defendant concerning Plaintiff  
10 beyond the two (2) year applicable statute of limitation as stated in Instruction No. 1 of  
11 Plaintiff's First Set of Interrogatories. Pursuant to the Court's Order filed on June 25,  
12 2015, Plaintiff's claim for unpaid wages pursuant to Nevada's Minimum Wage  
13 Amendment is subject to the two (2) year statute of limitation prescribed by NRS  
14 608.260. *See* Order Granting in Part and Denying Part Defendant's Motion to Dismiss  
15 and Granting Defendant's Motion to Strike Prayer for Exemplary and Punitive  
16 Damages dated June 25, 2015. Plaintiff filed a Complaint on November 4, 2014.  
17 However, Plaintiff's Interrogatory seeks information from Defendant beginning from  
18 November 4, 2010. As such, Plaintiff's Interrogatory seeks information far outside the  
19 prescribed two (2) year statute of limitation. Accordingly, Plaintiff's Interrogatory is  
20 overbroad to the extent Plaintiff's Interrogatory seeks information beginning from  
21 November 4, 2010, which is beyond the applicable two (2) year statute of limitation.  
22  
23  
24

25 Defendant further objects to this Interrogatory as irrelevant to the extent that  
26 Plaintiff's Interrogatory seeks information from Defendant outside the applicable two  
27 (2) year statute of limitation. As already stated above, Plaintiff's Interrogatory seeks  
28



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 information as to who set the "work schedule" of Plaintiff since November 4, 2010,  
2 which is well beyond the parameters of the applicable two (2) year statute of limitation.  
3 Any information outside the applicable two (2) year statute of limitation is irrelevant  
4 as such information concerning who set the "work schedule," Plaintiff could not lead to  
5 the discovery of actual, admissible evidence.  
6

7 Without waiving the above objections, the management of the Crazy Horse III  
8 club, on behalf of the Crazy Horse III club, contracts with all dancers for all shifts  
9 available. A potential dancer auditions for a manager(s) on shift during the time that  
10 the potential dancer auditions. If the potential dancer's audition is successful and the  
11 Crazy Horse III club's manager agrees to enter into a contract with the potential  
12 dancer to perform at the Crazy Horse III club, one of the managers assigns a shift for  
13 the dancer to perform.  
14

15 Since Discovery is ongoing, Defendant reserves the right to supplement its  
16 response to this Interrogatory.  
17

18 **INTERROGATORY NO. 6:**

19 Describe in detail any dress code or grooming/hygiene guidelines that were  
20 applicable to Dancers during the relevant time period. To the extent any of these guidelines  
21 changed over time, describe which regulations were in effect for which period of time.  
22

23 **ANSWER TO INTERROGATORY NO. 6:**

24 Defendant objects to this Interrogatory to the extent that Plaintiff seeks  
25 information concerning "any dress code or grooming/hygiene guidelines" applicable to  
26 Dancers that are not a named party in this action or for a class of similarly situated  
27 Dancers that does not exist, that Plaintiff has not moved to certify, and has not been  
28



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 certified by the Court. At the time of Plaintiff's Interrogatory, Plaintiff consists of  
2 eleven (11) individually named Plaintiffs who allegedly performed at Defendant's  
3 Crazy Horse III club. As such, Plaintiff's Interrogatory is premature and Plaintiff is  
4 not entitled to the discovery of such information at this time.  
5

6 Defendant objects to this Interrogatory as overbroad as to time and scope since  
7 Plaintiff's Interrogatory seeks information from Defendant concerning Plaintiff  
8 beyond the two (2) year applicable statute of limitation. Pursuant to the Court's Order  
9 filed on June 25, 2015, Plaintiff's claim for unpaid wages pursuant to Nevada's  
10 Minimum Wage Amendment is subject to the two (2) year statute of limitation  
11 prescribed by NRS 608.260. See Order Granting in Part and Denying Part  
12 Defendant's Motion to Dismiss and Granting Defendant's Motion to Strike Prayer for  
13 Exemplary and Punitive Damages dated June 25, 2015. Plaintiff filed a Complaint on  
14 November 4, 2014. However, Plaintiff's Interrogatory seeks information from  
15 Defendant beginning from November 4, 2010. As such, Plaintiff's Interrogatory seeks  
16 information far outside the prescribed two (2) year statute of limitation. Accordingly,  
17 Plaintiff's Interrogatory is overbroad to the extent Plaintiff's Interrogatory seeks  
18 information beginning from November 4, 2010, which is beyond the applicable two (2)  
19 year statute of limitation.  
20  
21

22 Defendant further objects to this Interrogatory as irrelevant to the extent that  
23 Plaintiff's Interrogatory seeks information from Defendant outside the applicable two  
24 (2) year statute of limitation. As already stated above, Plaintiff's Interrogatory seeks  
25 information regarding "any dress code or grooming/hygiene guidelines," applicable  
26 since November 4, 2010, which is well beyond the parameters of the applicable two (2)  
27  
28



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 year statute of limitation. Any information outside the applicable two (2) year statute  
2 of limitation is irrelevant as such information regarding "any dress code or  
3 grooming/hygiene guidelines," could not lead to the discovery of actual, admissible  
4 evidence.

5  
6 Without waiving the above objections, please reference Crazy Horse III  
7 Gentleman's Club Entertainer Guidelines bated stamped as RR0048 through RR0054  
8 previously disclosed and served on Plaintiff as part of Defendant's Initial List of  
9 Documents and Witnesses previously pursuant to N.R.C.P. 16.1. These guidelines  
10 speak for themselves regarding any dress code or grooming/hygiene requirements.

11  
12 Since Discovery is ongoing, Defendant reserves the right to supplement its  
13 response to this Interrogatory.

14 **INTERROGATORY NO. 7:**

15 Describe in detail how music for stage dances performed by Dancers at Crazy Horse  
16 was selected during the relevant time period.

17 **ANSWER TO INTERROGATORY NO. 7:**

18  
19 Defendant objects to this Interrogatory to the extent that Plaintiff seeks  
20 information concerning "how music for stage dancers" was selected for Dancers that  
21 are not a named party in this action or for a class of similarly situated Dancers that  
22 does not exist, that Plaintiff has not moved to certify, and has not been certified by the  
23 Court. At the time of Plaintiff's Interrogatory, Plaintiff consists of eleven (11)  
24 individually named Plaintiffs who allegedly performed at Defendant's Crazy Horse III  
25 club. As such, Plaintiff's Interrogatory is premature and Plaintiff is not entitled to the  
26 discovery of such information at this time.



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 Defendant objects to this Interrogatory as overbroad as to time and scope since  
2 Plaintiff's Interrogatory seeks information from Defendant concerning Plaintiff  
3 beyond the two (2) year applicable statute of limitation. Pursuant to the Court's Order  
4 filed on June 25, 2015, Plaintiff's claim for unpaid wages pursuant to Nevada's  
5 Minimum Wage Amendment is subject to the two (2) year statute of limitation  
6 prescribed by NRS 608.260. See Order Granting in Part and Denying Part  
7 Defendant's Motion to Dismiss and Granting Defendant's Motion to Strike Prayer for  
8 Exemplary and Punitive Damages dated June 25, 2015. Plaintiff filed a Complaint on  
9 November 4, 2014. However, Plaintiff's Interrogatory seeks information from  
10 Defendant beginning from November 4, 2010. As such, Plaintiff's Interrogatory seeks  
11 information far outside the prescribed two (2) year statute of limitation. Accordingly,  
12 Plaintiff's Interrogatory is overbroad to the extent Plaintiff's Interrogatory seeks  
13 information beginning from November 4, 2010, which is beyond the applicable two (2)  
14 year statute of limitation.

15 Defendant further objects to this Interrogatory as irrelevant to the extent that  
16 Plaintiff's Interrogatory seeks information from Defendant outside the applicable two  
17 (2) year statute of limitation. As already stated above, Plaintiff's Interrogatory seeks  
18 information regarding "how music for stage dances," was selected since November 4,  
19 2010, which is well beyond the parameters of the applicable two (2) year statute of  
20 limitation. Any information outside the applicable two (2) year statute of limitation is  
21 irrelevant as such information regarding the manner of music selection for stage  
22 dances could not lead to the discovery of actual, admissible evidence.



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 Defendant further objects to this Interrogatory as irrelevant as the information  
2 sought by this Interrogatory could not possibly lead to the discovery of actual,  
3 admissible evidence. Plaintiff's Interrogatory seeks information regarding how music  
4 for stage dances was selected. Plaintiff's Complaint consists only of the asserted claim  
5 that Plaintiff was an employee of Defendant that was not paid Nevada's Minimum  
6 Wage. No information regarding the manner of music selection for stage dances could  
7 in any way reasonably lead to any actual, admissible evidence to establish Plaintiff's  
8 claim against Defendant. Further, Plaintiff's Third Amended Complaint fails to assert  
9 any allegations that the manner of music selection demonstrates an employment  
10 relationship between Plaintiff and Defendant. As such, Plaintiff's Interrogatory is  
11 irrelevant and no information disclosed regarding the music selection for stage dances  
12 reasonably could lead to the discovery of actual, admissible evidence in this matter.  
13

14  
15 Without waiving the above objections, the management of Crazy Horse III  
16 selects the music for stage dances performed by dancers. Dancers may request music to  
17 be played during their respective stage dances. However, the management of Crazy  
18 Horse III makes the final decision concerning music played for stage dancers to ensure  
19 that certain music formats and genres are in accordance with the Crazy Horse III  
20 club's desired scope.  
21

22 Since Discovery is ongoing, Defendant reserves the right to supplement its  
23 response to this Interrogatory.  
24

25 **INTERROGATORY NO. 8:**

26 Describe in detail how YOU kept records or otherwise tracked how many shifts or  
27 hours each Dancer performed at Crazy Horse.  
28



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568



1           Since Discovery is ongoing, Defendant reserves the right supplement its  
2 Response to this Interrogatory.

3           DATED this 2<sup>nd</sup> day of May 2016.

4                                   **MORAN BRANDON BENDAVID MORAN**

5  
6                                   /s/ Jeffery A. Bendavid, Esq.

7                                   **JEFFERY A. BENDAVID, ESQ.**

8                                   Nevada Bar No. 6220

9                                   630 South 4th Street

10                                  Las Vegas, Nevada 89101

11                                  (702) 384-8424

12                                  **KAMER ZUCKER ABBOTT**

13                                  /s/ Gregory J. Kamer, Esq.

14                                  **GREGORY J. KAMER, ESQ.**

15                                  Nevada Bar No. 0270

16                                  **KAITLIN H. ZIEGLER, ESQ.**

17                                  Nevada Bar No. 013625

18                                  3000 W. Charleston Blvd., #3

19                                  Las Vegas, Nevada 89102

20                                  (702) 259-8640

21                                  Attorneys for Defendant



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

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

**VERIFICATION**

STATE OF NEVADA       )  
                                  ) ss.  
COUNTY OF CLARK       )

COMES NOW affiant, NANDO SOSTILIO, having been duly sworn, deposes and says:

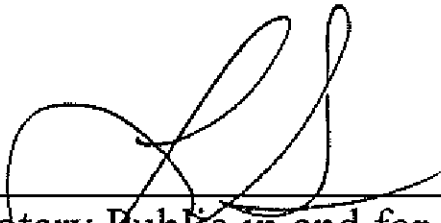
1. I am a manager of Defendant RUSSELL ROAD FOOD AND BEVERAGE, LLC, a Nevada limited liability, dba CRAZY HORSE III GENTLEMEN'S CLUB. As such, I am authorized to execute this verification on behalf of Defendant RUSSELL ROAD FOOD AND BEVERAGE, LLC.

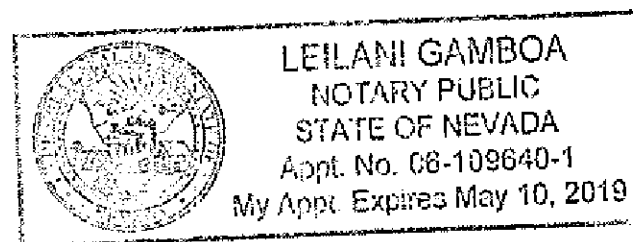
2. I have read the above and foregoing **DEFENDANT, RUSSELL ROAD FOOD AND BEVERAGE, LLC'S RESPONSES AND OBJECTIONS TO PLAINTIFFS' FIRST SET OF INTERROGATORIES** and the information set forth therein is personally known to me, or was provided to me by employees and/or agents of Defendant with such personal knowledge and as to those matters I believe them to be true.

Further affiant sayeth naught.

  
\_\_\_\_\_  
**NANDO SOSTILIO**

Subscribed and sworn to before me  
this 2nd day of May, 2016.

  
\_\_\_\_\_  
Notary Public in and for said  
County and State



MORAN BRANDON  
BEN DAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

# **The Crazy Horse III Gentleman's Club**

## **Entertainer Guidelines**

In order to protect our license to serve alcohol and to conduct business as an entertainer venue it is critically important to follow the guidelines below. It is everyone's responsibility to ensure that our privilege to operate and earn our income is safeguarded. Any entertainer, bartender, server, valet, host, hostess, showgirl, manager, etc. that jeopardizes this privilege by committing or allowing the commission of an interaction of the below guidelines will be asked of our team and hospitality professionals.

### **GUIDELINES AND VIOLATIONS:**

#### **I. LEWD AND LASCIVIOUS BEHAVIOR**

This definition varies from one court to the next, but refers to the manner in which the entertainer's interact with the guests of the club. It is your responsibility to learn what is permissible and what is not, however, as a general guideline,

#### **DO NOT**

Do Not touch your breasts, nipples, buttocks or genital area. This may be construed as a lewd and lascivious act as well as potentially an act of prostitution.

Do Not let the guest touch your breasts, nipples, buttock or genital areas. This may be construed as a lewd and lascivious act as well as an act of prostitution.

Do Not pull your T- strap. You can adjust it, but you cannot pull on it to expose anything. Showing of pubic hair or your genitalia is illegal.

Do Not place anything in your mouth in a manner which could be described as simulated oral sex.

Do Not permit guests to place tips anywhere except in the side of your T- strap. \* Reminder: hold out your T- strap on the side while holding down the front of your T- strap. Never allow the guest to pull out your T- strap to tip for any reason. Never allow the guests hand to touch you while tipping.

Do Not touch the guests anywhere below the shoulders and only use the guests shoulders to keep your distance.

INITIAL: \_\_\_\_\_

RR0048

Always keep at least one (1) of your feet on the floor at all times.

Do Not let anyone (male or female) touch you in a sexual way at any time.

## **NO GRINDING**

Do Not have any contact at anytime and for any reason between yourself and another entertainer or guest of the club, whereby there is contact between either, your or their anatomically sexual areas. In other words, your breast may never touch any part of a guest's body. Your knee may not come in contact with a guest's genital area. This includes body slides.

Do Not simulate any sex act.

Do Not dance together with another girl in a sexually graphic manner. For example, do not put your head in another entertainer's lap area as though you are performing cunnilingus. This is strictly prohibited and illegal.

## **II. PROSTITUTION**

Prostitution is defines as any SEXUAL ACT performed for any VALUABLE CONSIDERATION (a valuable consideration may be money, drugs, a car, trip, etc.). If a guest is allowed to touch your buttocks during a dance you may be arrested for prostitution. Rubbing your buttocks does qualify as a sexual act and you are being paid for this act, valuable consideration, hence potential for prostitution charge.

## **III. SOLICITATION OF PROSTITUTION**

Solicitation of prostitution is defines as OFFERING a sexual act for any valuable consideration. Remember, INTENT is not relevant. It does not matter that you did not intend to actually commit an act of prostitution in order to be charged and convicted of the crime.

## **IV. ASSIGNATION OF PROSTITUTION**

This is the PROMISE OR AGREEMENT of meeting someone at a later time to perform a sexual act for valuable consideration, again, regardless of intent to actually meet the individual(s).

INITIAL: \_\_\_\_\_

## **V. ALLOWING NARCOTIC USE BY PATRON**

Please understand that the club may lose its liquor license for allowing or for not policing narcotic use by patrons of the club. This includes allowing patrons to arrange for transaction of controlled substances on or off premises, or to knowingly allow patrons or entertainers to engage in conversations about the subject (of narcotics). Please, immediately advise the manager on duty of the suspicion of these transactions.

## **USE POSSESSION, OR BEING UNDER THE INFLUENCE OF A NARCOTIC OR COMPARABLE SUBSTANCES**

You may not be under the influences of, possess, distribute, dispense or use any controlled substance on your way to the club, in the club or on company premises (which includes, but is not limited to, the parking lot and the surrounding buildings whether you are dancing that shift or not).

## **PRESCRIPTION DRUGS**

If you are taking prescription medication and you must take it at work, you must inform the club manager upon arrival at the club.

Anyone who is using prescription or over the counter medication may bring such medication to work with them if the medications are in the original container and the container is clearly labeled as to the contents. Prescription and over the counter medication must not be mixed together. Each medication must be in its original container. Remember: use of medication by anyone other than the person it was prescribed for is illegal.

## **VI. RUDENESS TO ANY GUEST**

If a problem arises, it is your responsibility to notify the manager on duty immediately. We expect the entertainers and the staff to treat our guests with respect and courtesy.

Therefore, we can expect the same treatment from our guests. However, should a problem arise, it must be reported to a manager. At no time will anyone attempt to deal with a disorderly or rude guest on their own.

## **DISHONESTY**

Theft of money or property from the company, the guests, the fellow entertainers or employees is strictly prohibited. This includes the giving away of merchants without prior consent of management, taking money off of the guest's table, or the overcharging of a guest.

INITIAL \_\_\_\_\_

RR0050

## FIGHTING

Fighting or willful acts that may result in injury to others is strictly prohibited (inside the club, on company premises, or on company business). Likewise, harassment, arguing, or fighting among the staff is also prohibited.

No guns, firearms, or any other weapons are permitted on any company property, at anytime and for any reason. It is everybody's responsibility to enforce this policy throughout the club. If you have any knowledge or suspect that an individual possesses a firearm, please inform management immediately. Some may tell you that they are licensed to carry a firearm, or that they are law enforcement, nevertheless, they may not drink alcohol and carry a firearm. Please note that everyone is on notice and to always fully cooperate with any Law Enforcement Agency.

## VII. HUSTLING (VIOLATION) DEFINITIONS

1. To dance for a guest without asking him/her if he would like you to dance or fail to inform him/her that each dance is for a \$20.00 fee prior to dancing.
2. To tell a guest that he owes you for more than the set fee's for each dance or that you performed more dances than you did.
3. To charge a fee anytime other than a dance charge, etc. Such as "We have to pay the Champagne Host \$20.00 to leave us alone".
4. To insist or imply that a guest must tip you or another entertainer or employee.
5. To insist a guest must pay for any service or product other than those which are clearly authorized by the club.

When [performing as a Crazy Horse III Entertainer], you will be expected to conduct yourself in a professional, mature manner at all times.

Your sincere courtesy, friendliness and businesslike attitude will create the type of positive atmosphere in which our guests can relax and enjoy themselves and that will make them want to return again and again. We should cooperate together as a TEAM to achieve our individual goals.

Your performance is not over until you've personally thanked everyone, invited them back, and said goodbye. Intercept your guests when they are leaving, try not to let anybody you've danced for get out the door without a final thank you and smile.

Your entertainment should have been attentive and intelligent, polished, polite, watchful, prompt, efficient, thoughtful, devoted, sophisticated, friendly, and helpful.

INITIAL \_\_\_\_\_

If you were gracious, personable, adaptable, diplomatic, tactful, cheerful, courteous, sensitive, considerate, and poised then you will get and be able to keep "regular" guests forever.

## VIP

When going into VIP areas it is mandatory that you discuss with the guest IN ADVANCE. If your guest has agreed to an hourly rate then the VIP host must be informed of the agreed upon rate IN ADVANCE. Hustling guests by not setting the rate IN ADVANCE will not be tolerated and will result in your termination.

Entertaining guests by talking to them and making them feel comfortable is every bit important as entertaining them by dancing for them. A well rounded entertainer stimulates a guests mind as well as his or her senses. This way you establish a relationship with the guest that keeps him from feeling hustled and makes him want to come back.

## NON DISCLOSURE

Is an important house policy. At no time are you permitted to disclose any personal information regarding any employee or entertainer to a guest. If a guests asks a specific question, such as , " Is she married? " or "Where does she live? " you should always "play stupid". The appropriate answer would be " I don't know". Disclosing personal information is grounds for immediate termination and other serious ramifications such as a personal lawsuit.

INITIAL \_\_\_\_\_

RR0052

## THE CRAZY HORSE III ENTERTAINER RULES

1. Make your stages... Do not be late. Wait for your replacement before leaving the stage. You must go down to G- string on stage after first song and leave it off for every song after that.
2. The only ways that you can miss your stage are:
  - a. if you are in the VIP room. You WILL get called off stage. Alert a Floor Host or Manager if you hear your name being called.
  - b. If you pay to go off stage.
3. Hose fees are to be paid before your shift starts.
4. All entertainers must show their Non-Gaming Sheriff's card when they work.
5. All entertainers must sign in and out.
6. **NO GUM.** If you chew gum and stick it under the table or on the floor you will be terminated.
7. No cell phones or pagers.
8. Dress code:
  - a. Your butt must be covered.
  - b. Large tattoos must be covered.
9. Drinking by the entertainers is allowed. Being drunk is not. Pace yourself.
10. Please do not turn down a drink; it does not have to be alcohol. Order something-water. Never discourage bottle sales or you will be terminated.
11. Do not walk around with a cigarette or cell phone.
12. When going into the VIP Room, always check in with a Floor Host or Manager. No entertainer may enter VIP without a host escorting you.
13. Hustling will not be tolerated, all charges must be legitimate. Do not run tabs on dances. Get paid after every song to avoid confusion.
14. Customer service is our top priority. All interaction with guests must be friendly and positive. Rudeness is acceptable. If a guest is rude, be polite and excuse yourself, let a manager know. The manager will handle it for you.
15. Booths on the main floor all have minimums. Do not seat guests yourself.
16. Dance dollars can be redeemed for cash at the front desk. There is a 10% redemption fee. Redemption fee and internal club policies are not to be discussed with guests. **DO NOT** ask guests to reimburse you for the 10% redemption fee.
17. No glitter and no oil.
18. No smoking in the dressing room or in VIP reception.
19. No drinking glasses in the dressing room.
20. Never be rude or disrespectful to any staff member.
21. If solicited for any kind of sexual act, always say **NO**. Do not jokingly say yes. Inform a manager immediately.
22. Do not complain about club or employees in front of guests. Be supportive of staff at all times. If you have complaints find a manager.
23. Respect the instructions of the Floor Hosts. Especially when they correct your dancing. Non-compliance may lead to suspension or termination of your contract.
24. **DO NOT** ever leave the club in a customer's vehicle. **DO NOT** follow a customer off the property. **DO NOT** ever meet a customer off the premises. You will be terminated. If your boyfriend or girlfriend is to pick you up be sure to alert VALET and Backdoor personnel of your shift.



INITIAL: \_\_\_\_\_

## PRICING

### GUESTS

Cover Charge:

Nevada Residents with a local Driver's License/Identification Card - Free

Out of State: Men and Woman - \$30.00 if they arrive by taxi or limo

## ENTERTAINMENT

### MAIN FLOOR

1 lap dance/song \$20.00

#### VIP:

3 dances for \$100.00

\* One drink minimum

### VIP BOOTHS- 1/2 HOUR

30 minutes/ entertainer \$200.00

\*One drink minimum

### VIP BOOTHS- 1 HOUR

1 hour/entertainer \$400.00

\* 1 drink(s) per hour

### VIP SUITES - 1 HOUR

1 hour/entertainer \$500.00

Guest MUST purchase a bottle (Liquor, Wine, or Champagne) or \$300.00 drink tab

INITIAL \_\_\_\_\_

RR0054

**ALL ENTERTAINERS**  
**MUST HAVE THEIR**  
**TOPS ON AT ALL TIMES**  
**UNLESS THEY ARE**

- DANCING IN VIP
- DOING A FLOOR DANCE
- OR ON STAGE

**NO EXCEPTIONS!**

**CH3 MANAGEMENT**

DO NOT

USE

SIRRY-TTAN

INLUCK

WRE!!! EVER!

RR0123

NO  
SMOKING  
IN  
LOCKER  
ROOM

RR0124

ALL MUSIC  
NEEDS TO BE  
PLAYED  
THROUGH  
HEADPHONES  
ONLY  
NO  
EXCEPTIONS

# **FREE HOUSE FEES**

## **\$75 CREDIT FOR SIGNING UP TO GET EVENTS AUTOMATICALLY POSTED TO YOUR SOCIAL MEDIA!**

Follow these steps to sign up and receive your \$75 credit:

1. Go to [promohp.com/crazy-horse-3](http://promohp.com/crazy-horse-3)
2. Check the box to Agree to Terms and Conditions
3. Click Log in with Facebook button
4. Enter your facebook login information
5. Accept the permissions to allow access
6. Click Log in with Twitter button
7. Enter your twitter login information and press Authorize app button
8. Accept the permissions to allow access
9. Bring your checkin ticket and show screenshot of your dashboard completed to a manager to receive \$75 credit.

Crazy Horse 3 events will automatically post to your social media every few days. To opt out go to your account settings in both facebook and twitter and then go to app settings and revoke access to promohp.

## **GET A \$75 FEE CREDIT FOR ADDING A PROFILE TO OUR WEBSITE!!**

Follow these steps to sign up and receive your additional credit:

1. Go to [mych3.com](http://mych3.com)
2. Create a profile and fill out all information
3. Use ONLY a professional photo when creating your profile..go to [crazyhorse3.com](http://crazyhorse3.com) CH3Girls page for examples
4. Check [crazyhorse3.com](http://crazyhorse3.com) CH3Girls page to see if your profile approved
5. Once approved bring your check-in ticket to management for your extra \$75 fee credit

Your profile will be public and on our website. Personal information will not be displayed.

## **GET A \$50 FEE CREDIT FOR REFERRING GROUPS TO THE CLUB!!**

Get paid to bring your customers to the club and receive \$50 credit for every group:

We will give your customers FREE ride in our limo, FREE entry, and either their first round of drinks or \$100 off bottle service. You will get a \$50 fee credit for referring your group! You must pre-book the group with management to receive credit, and your guests MUST use our limo to receive the free ride, entry, and drinks! If they arrive by taxi or limo they will NOT receive the free ride, cover OR drinks! Any questions always ask management.

## **GET A \$75 MINIMUM FEE CREDIT FOR ATTENDING CLUB PROMOS!!**

Get paid to promote the club and network and meet potential customers. Club promotions include nightclubs, steakhouse, conventions, golf outings, and many other outlets that we promote to bring in customers. Some promotions are even paid cash in addition to house fee credits. Some include dinner and drinks etc as well. These are always a way to meet customers and bring them in immediately to make \$\$ from them and the club.

Sign up on the promotions sheet with your stage name and cell number, or send a text to Justin at 7025720269, Reggie at 7027388888, and Mike at 7025028840 with your stage name and that you are interested in promotions. Any questions ask management.

NO  
ENTERTAINERS  
IN DRESSING  
ROOM  
WITHOUT  
CHECKING IN  
AT THE HUB  
FIRST

RR0127

# **Attention Entertainers:**

**All entertainers must have a complete check out slip in order to clock out. It must be signed by DJ, Manager, House mom, and turned into the HUB .**

**All entertainers that do not check out properly are subject to fines, being placed on inactive status, and termination.**



**Absolutely No  
Glasses In The  
Dressing Room, Use  
Styrofoam Cups If  
you Bring Your  
Drink In The Back-  
Thank You  
HSEMOM**

**ATTENTION  
ENTERTAINERS:  
YOU HAVE 30 MIN  
FROM CHECK IN TO  
GET READY AND GET  
ON THE FLOOR,  
MISSING A STAGE  
WILL INCUR A  
MISSED STAGE FEE,  
BE COURTEOUS TO  
THE GIRL THAT YOU  
ARE RELIEVING!**

**ATTENTION ENTERTAINERS,  
JUST A REMINDER THAT  
DANCE DOLLARS CAN BE  
CASHED DURING THE TIMES  
2AM, 4AM, 6AM, AND 8AM. IF  
YOU'RE UNABLE TO MAKE  
THESE TIMES YOU'LL HAVE TO  
CASH THEM DURING YOUR  
NEXT SHIFT. DANCE DOLLARS  
WILL NOT BE CASHED DURING  
THE DAY, AND A MANAGER  
WILL NOT BE CALLED.  
THANK YOU,  
MGMT**

RR0131

ATTENTION **ALL** ENTERTAINERS

EVERY ENTERTAINER MUST ATTEND AN ORIENTATION BEING HELD BY  
MANAGEMENT ON **FRIDAY** OR **TUESDAY @ 8PM**

**AGAIN, THIS IS FOR ALL ENTERTAINERS, EVEN  
GIRLS THAT HAVE BEEN HERE SINCE DAY 1!!! IF  
YOU DO NOT ATTEND ON ONE THE DAYS, YOU  
WILL NOT BE ABLE TO WORK UNTIL YOU  
COMPLETE THE ORIENTATION!!!**

**PLEASE SIGN UP WITH THE HOUSE MOM**

**ATTENTION ENTERTAINERS,  
JUST A REMINDER THAT  
DANCE DOLLARS CAN BE  
CASHED DURING THE TIMES  
2AM, 4AM, 6AM, AND 8AM. IF  
YOU'RE UNABLE TO MAKE  
THESE TIMES YOU'LL HAVE TO  
CASH THEM DURING YOUR  
NEXT SHIFT. DANCE DOLLARS  
WILL NOT BE CASHED DURING  
THE DAY, AND A MANAGER  
WILL NOT BE CALLED.  
THANK YOU,  
MGMT**

RR0133

## **REQUIREMENTS FOR PROSPECTIVE DANCERS**

**Government Issue ID With Photo And Birth date**  
(Drivers License or Passport)

### **Sheriffs Card**

(Birth Certificate Required if Under 25 years old)

Referral needed-\$45.00

Mon-Fri 8Am-4PM

Fingerprint Bureau

5580 Cameron St Las Vegas NV 89118

Phone # (702)-828-3271

### **NEVADA BUSINESS LISENCE**

\$200.00 per year

Mon-Fri 8Am-4PM

Nevada Secretary Of State

Grant Sawyer Building

555 E Washington Ave Las Vegas NV 89101

**-OR-**

**[www.nvsilverflume.gov](http://www.nvsilverflume.gov)**

Type Of License NT-7 "Sole Proprietor"

Phone # (702)-486-2880

# ATTENTION

3-8-14

ALL ENTERTAINERS HAVE  
5 MINUTES TO LEAVE THE  
FLOOR AFTER CHECKING OUT  
WITH THE DJ. IF YOU STAY AND  
KEEP WORKING, YOU WILL BE  
CHANGED A MISSED STAGE  
FEE!!!..... PER MGMNT

RR0135

# **ATTENTION ALL ENTERTAINERS**

**MUST HAVE CHECKOUT SLIP  
SIGNED BY THE DJ  
SIGNED BY A MANAGER  
AND SIGNED BY THE HOUSE  
MOM  
THEN TURNED IN 'BY YOU' TO  
THE HUB  
THERE WILL BE ABSOLUTELY NO  
EXCEPTIONS  
PER MANAGEMENT  
FAILURE TO DO SO WILL RESULT IN  
DEACTIVATION  
UNTIL RESOLVED BY A MEMBER OF  
MANAGEMENT**



MUST PAY  
HOUSE FEE  
UPFRONT TO  
CLOCK IN NO  
EXCEPTIONS



Do not take photos or  
video recordings in the  
locker room.

This  
includes FaceTime,  
SnapChat, Instagram,  
Vine, YouTube, etc.

# ENTERTAINERS

You are now able to sell suites in VIP for bar tabs, as well as allow customers to transfer their bottles purchased on the floor with a \$150 VIP transfer fee. These rooms will be the suites in VIP2 and there will be no curtain on the rooms. If the customer wants a completely private suite with curtain closed they will have to do the normal bottle minimum in VIP1. The bar tabs for these rooms will be set at \$250 and the dancer will receive \$400 hourly rate but if there are any questions please ask for a manager. **NEVER** leave a suite without asking the host to ask a manager to talk to your customer and try and work something out so that both you and the club make money!

We will also be changing the checkout process. Entertainers will now receive their checkout slips from management instead of the djs. You will then go to the DJ to have the DJ check you out and remove you from rotation. Finally you will check out with the house mom and drop your slip at the checkout window to be clocked out.

We will also be enforcing a ZERO exception policy on expired business licenses beginning August 1st. All Entertainers must have current licenses by this day. Any questions or assistance needed please ask a manager.

We are also incentivizing our entertainer for bringing their customers to the club. We will give your customers FREE ride in our limo, FREE entry, and either their first round of drinks or \$100 off bottle service. You will also get a \$50 fee credit for referring your group! You must prebook the group with management to receive credit, and your guests **MUST** use our limo to receive the free ride, entry, and drinks! If they arrive by taxi or limo they will **NOT** receive the free ride, cover OR drinks! Any questions always ask management.

Thanks!

Crazy Horse 3 Management

RR0139

# EXHIBIT “2”

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**RESP**  
**JEFFERY A. BENDAVID, ESQ.**  
Nevada Bar No. 6220  
**MORAN BRANDON BENDAVID MORAN**  
630 South 4<sup>th</sup> Street  
Las Vegas, Nevada 89101  
(702) 384-8424  
  
**GREGORY J. KAMER, ESQ.**  
Nevada Bar No. 0270  
**KAITLIN H. ZIEGLER, ESQ.**  
Nevada Bar No. 013625  
**KAMER ZUCKER ABBOTT**  
3000 W. Charleston Blvd., #3  
Las Vegas, Nevada 89102  
(702) 259-8640  
*Attorneys for Russell Road Food and Beverage, LLC*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JACQUELINE FRANKLIN, ASHLEIGH	)	
PARK, LILY SHEPARD, STACIE ALLEN,	)	Case No.: A-14-709372-C
MICHAELA DIVINE, VERONICA VAN	)	
WOODSEN, SAMANTHA JONES,	)	Dept. No.: 31
KARINA STRELKOVA, LASHONDA,	)	
STEWART, DANIELLE LAMAR, and	)	
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	)	
HORSE III GENTLEMEN'S CLUB),	)	
DOE CLUB OWNER, I-X,	)	
ROE CLUB OWNER, I-X, and	)	
ROE EMPLOYER, I-X,	)	
	)	
Defendants.	)	
	)	
AND RELATED COUNTERCLAIMS	)	
	)	



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1       **DEFENDANT, RUSSELL ROAD FOOD AND BEVERAGE, LLC'S RESPONSES**  
2       **AND OBJECTIONS TO PLAINTIFFS' FIRST SET OF REQUESTS FOR THE**  
3       **PRODUCTION OF DOCUMENTS**

4       TO: Plaintiffs, Jacqueline Franklin, Ashleigh Park, Lily Shepard, Stacie Allen, Michaela  
5       Divine, Veronica Van Woodsen, Samantha Jones, Karina Strelkova, Lashonda  
6       Stewart, Danielle Lamar, and Dirubin Tamayo (collectively, the "Plaintiff"); and

7       TO: Ryan M. Anderson, Esq., and Daniel R. Price, Esq., Morris//Anderson, Attorneys  
8       for Plaintiffs.

9       COMES NOW, Defendant, RUSSELL ROAD FOOD AND BEVERAGE, LLC, a  
10      Nevada limited liability, dba CRAZY HORSE III GENTLEMEN'S CLUB (the  
11      "Defendant"), by and through its attorneys of record, JEFFERY A. BENDAVID, ESQ., of  
12      MORAN BRANDON BENDAVID MORAN, GREGORY J. KAMER, ESQ., and  
13      KAITLIN H. ZIELGER, ESQ., of KAMER ZUCKER ABBOTT, and hereby submits  
14      pursuant to N.R.C.P. 34, DEFENDANT'S RESPONSES AND OBJECTIONS TO  
15      PLAINTIFFS' FIRST SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS.

16      **GENERAL OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS**

17      1.      Defendant objects to the instructions and definitions accompanying  
18      Plaintiff's Requests for the Production of Documents to the extent they seek to expand or  
19      modify Defendant's obligations under the Nevada Rules of Civil Procedure.

20      2.      Defendant objects to Plaintiff's definition of and instructions regarding the  
21      terms "You" and "Your" as it pertains to the pursuit of information that is privileged from  
22      discovery by the attorney-client communications privilege, the attorney work product  
23      doctrine, and the consulting-only expert privilege.

24      3.      Defendant objects to Plaintiff's definition of and instructions regarding the  
25      terms "You" and "Your" as it pertains to the pursuit of information concerning the owners  
26      and principals of Defendant, who are not named Defendants in this matter and as a matter of  
27      28



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 Nevada law cannot be liable to Plaintiff for the claims asserted by Plaintiff in Plaintiff's  
2 Complaint against Defendant.

3 4. Defendant objects to Plaintiff's definition of and instructions regarding the  
4 term "Dancer," as it pertains to any individual who performed at Defendant's Crazy Horse  
5 III club as an erotic dancer who is not a named party to this action. The information  
6 provided by Defendant in response to Plaintiff's Requests shall only involve those  
7 "Dancers" who performed at Defendant's Crazy Horse III club as an exotic dancer who are  
8 individually named as a Plaintiff in this matter.  
9

10 5. Defendant objects to the Requests for the Production of Documents to the  
11 extent they seek information protected, privileged, or otherwise exempt from discovery  
12 pursuant to applicable state statutes, the Nevada Rules of Civil Procedure, or any other  
13 applicable rule, decision, or law. Specifically and without limitation, Defendant objects to  
14 the disclosure of any information protected by the attorney-client privilege, work product  
15 doctrine, consulting-only expert privilege, trade secret privilege, or any other applicable  
16 privilege, doctrine, or exemption that would make the information immune or exempt from  
17 discovery. Nothing contained in these objections is intended to be nor should be considered  
18 a waiver of the attorney-client privilege, the work product doctrine, consulting-only expert  
19 privilege, trade secret privilege, or any other applicable privilege or doctrine, and to the  
20 extent that any Request for the Production of Documents may be construed as calling for  
21 disclosure of information and the identity of documents protected by such privileges or  
22 doctrines, a continuing objection to each and every Request for the Production of  
23 Documents is hereby made.  
24  
25  
26



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1           6. Defendant objects to the Requests for the Production of Documents to the  
2 extent they are irrelevant, immaterial, not reasonably calculated to lead to the discovery of  
3 relevant and admissible evidence, and are unduly burdensome and oppressive because they  
4 seek information on matters unrelated to the subject matter of the present lawsuit.  
5

6           7. Defendant objects to the Requests for the Production of Documents to the  
7 extent they seek information available from public sources and, as such, subject Defendant  
8 to undue burden and oppression.

9           8. Defendant objects to the Requests for the Production of Documents to the  
10 extent they seek disclosure of confidential commercial, financial, and/or proprietary  
11 information without establishing the relevancy of such information to the issues raised in  
12 this litigation.  
13

14           9. Defendant objects to the phrase "relevant time period," to the extent that  
15 Plaintiff's pursuit of information within the time period of November 4, 2010 to present as  
16 specified in Plaintiff's Definition AND Instruction No. 1. Specifically, Defendant objects to  
17 the Requests for the Production of Documents to the extent they seek the disclosure of  
18 information outside the two (2) year statute of limitation prescribed by NRS 608.260, which  
19 the Court previously has deemed applicable in its Order filed on June 25, 2015. The  
20 information provided by Defendant in response to Plaintiff's Requests for the Production of  
21 Documents shall only involve those events, actions, instances, times, and dates occurring  
22 within the prescribed two (2) year statute of limitation.  
23  
24

25           10. Defendant objects, as irrelevant, to the Requests to the extent that Plaintiff  
26 seeks information from Defendant on behalf of those similarly situated as Plaintiff's Third  
27 Amended Complaint fails to make a prima facie showing in her Third Amended Complaint  
28



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568



1 of the prerequisites of N.R.C.P. 23, and therefore has failed to meet her initial burden to  
2 demonstrate that the discovery sought are likely to produce persuasive information  
3 substantiating her class action allegations.

4 11. Defendant objects to Plaintiff's Requests for the Production of Documents to  
5 the extent that Plaintiff seeks information that would invade the privacy of any individual or  
6 entity not a party to this action.

7  
8 **OBJECTIONS AND RESPONSES TO SPECIFIC REQUESTS**

9 **REQUEST NO. 1:**

10 Produce all documents relating in any way to terms and conditions of the transfer of  
11 ownership and license(s) for Crazy Horse since November 4, 2010 (including any other  
12 name by which the club was known during the time period).

13  
14 **RESPONSE TO REQUEST NO. 1:**

15 Defendant objects to this Request as overbroad and unduly burdensome as  
16 Plaintiff's Request constitutes a blockbuster Request for the Production of Documents  
17 seeking all "documents relating in any way to terms and conditions of the transfer of  
18 ownership and license(s)" for Defendant's Crazy Horse III club. As a matter of law,  
19 such a blockbuster Request for the Production of Documents as served by Plaintiff is  
20 overbroad and imposes an undue burden on Defendant. *See e.g., In re Datacom Sys.,*  
21 *2014 Bankr. Lexis 5348 \*43 (D. Nev. Bkr. July 25, 2014) (citing Bat v. A.G. Edwards &*  
22 *Sons, Inc., 2005 U.S. Dist. LEXIS 47995 \*11 (D. Colo. Nov. 18, 2005); and Hilt v. SFC,*  
23 *Inc., 170 F.R.D. 182, 186-87 (D. Kan. 1997).*

24  
25  
26 Defendant further objects to this Request as irrelevant and not likely to lead to  
27 the discovery of actual, admissible evidence. Plaintiff's Request seeks information  
28



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1           **9. Entertainer Danielle L. Lamar's Profile, Charge Summary and Dance**  
2 **Dollar Report bated stamped as RR0113.**

3           **In addition, Defendant has performed an extensive search of Defendant's**  
4 **available records and has not found any records demonstrating that Plaintiff, Michaela**  
5 **Divine and Plaintiff, Dirubin Tamayo auditioned or performed at Defendant's Crazy**  
6 **Horse III club at any time after November 4, 2012.**

7  
8           **Further, Defendant still is compiling a list with of dancers who performed at its**  
9 **Crazy Horse III club since November 4, 2012. Extensive time is required to compile**  
10 **such a list and upon completion will be disclosed to Plaintiff and any Responses to**  
11 **Plaintiff's First Set of Requests for Production of Documents affected by this**  
12 **supplemental disclosure will be supplemented upon completion.**

13  
14           **Since Discovery is ongoing, Defendant reserves the right to supplement its**  
15 **response to this Request.**

16 **REQUEST NO. 5:**

17  
18           **All documents provided by You, for any purpose to Dancers during the relevant time**  
19 **period, including, but not limited to contracts, agreements, correspondence, fliers, work**  
20 **rules or guidelines, and work schedules.**

21 **RESPONSE TO REQUEST NO. 5:**

22           **Defendant objects to this Request as overbroad and unduly burdensome as**  
23 **Plaintiff's Request constitutes a blockbuster Request for the Production of Documents**  
24 **seeking "all documents" provided by Defendant for any purpose to the Dancers who**  
25 **performed at Defendant's Crazy Horse III club. As a matter of law, such a**  
26 **blockbuster Request for the Production of Documents as served by Plaintiff is**



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 overbroad and imposes an undue burden on Defendant. *See e.g., In re Datacom Sys.,*  
2 2014 Bankr. Lexis 5348 \*43 (D. Nev. Bkr. July 25, 2014) (*citing Bat v. A.G. Edwards &*  
3 *Sons, Inc., 2005 U.S. Dist. LEXIS 47995 \*11 (D. Colo. Nov. 18, 2005); and Hilt v. SFC,*  
4 *Inc., 170 F.R.D. 182, 186-87 (D. Kan. 1997).*

5  
6 Defendant further objects to this Request as overbroad as to time and scope  
7 since Plaintiff's Request seeks the production of documents from Defendant beyond  
8 the two (2) year applicable statute of limitation. Pursuant to the Court's Order filed  
9 on June 25, 2015, Plaintiff's claim for unpaid wages pursuant to Nevada's Minimum  
10 Wage Amendment is subject to the two (2) year statute of limitation prescribed by  
11 NRS 608.260. *See Order Granting in Part and Denying Part Defendant's Motion to*  
12 *Dismiss and Granting Defendant's Motion to Strike Prayer for Exemplary and*  
13 *Punitive Damages dated June 25, 2015.* Plaintiff filed a Complaint on November 4,  
14 2014, which establishes a two (2) year statute of limitation on or after November 4,  
15 2012. However, Plaintiff's Request seeks the production of documents from Defendant  
16 beginning from November 4, 2010. As such, Plaintiff's Request seeks the production of  
17 documents far outside the prescribed two (2) year statute of limitation. Accordingly,  
18 Plaintiff's Request is overbroad to the extent Plaintiff's Request seeks information  
19 beginning from November 4, 2010, which is beyond the applicable two (2) year statute  
20 of limitation.

21  
22  
23 Defendant further objects to this Request as irrelevant to the extent that  
24 Plaintiff's Request seeks the production of documents from Defendant outside the  
25 applicable two (2) year statute of limitation. As already stated above, Plaintiff's  
26 Request seeks the production of "all documents" provided by Defendant for any  
27  
28



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 purpose to the Dancers who performed at Defendant's Crazy Horse III club  
2 commencing from November 4, 2010, which is well beyond the parameters of the  
3 applicable two (2) year statute of limitation. Any information outside the applicable  
4 two (2) year statute of limitation is irrelevant as such information regarding  
5 Defendant's ownership could not lead to the discovery of actual, admissible evidence.  
6

7 Without waiving the above objections, please reference Defendant's Initial  
8 Disclosures to Its List of Documents and Witnesses previously served on Plaintiff  
9 pursuant to N.R.C.P. 16.1 as follows:  
10

- 11 1. Entertainers Agreement, bate stamped as RR0043 through RR0047; and
- 12 2. The Crazy Horse III Gentleman's Club Entertainer Guidelines, bate  
13 stamped as RR0048 through RR0054;

14 Without waiving the above objections, please also reference Defendant's First  
15 Supplement to its Initial List of Documents and Witnesses previously served on  
16 Plaintiff pursuant to N.R.C.P. 16.1 as follows:  
17

- 18 1. Documents posted in work place areas, including, but not limited to dancer  
19 "dressing rooms" and other "back stage" areas, bate stamped as RR0122 through  
20 RR0139.

21 Since Discovery is ongoing, Defendant reserves the right to supplement its  
22 response to this Request.  
23

24 **REQUEST NO. 6:**

25 All documents posted in any work place area at Crazy Horse during the relevant time  
26 period, including, but not limited to dancer dressing rooms and other "back stage" areas.  
27



28 MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 **RESPONSE TO REQUEST NO. 35:**

2 **Please refer to Defendant's Response to Request No. 32.**

3 DATED this 2<sup>nd</sup> day of May 2016.

4 **MORAN BRANDON BENDAVID MORAN**

5  
6 /s/ Jeffery A. Bendavid, Esq.

7 **JEFFERY A. BENDAVID, ESQ.**

8 Nevada Bar No. 6220

9 630 South 4th Street

10 Las Vegas, Nevada 89101

11 (702) 384-8424

12 **KAMER ZUCKER ABBOTT**

13 /s/ Gregory J. Kamer, Esq.

14 **GREGORY J. KAMER, ESQ.**

15 Nevada Bar No. 0270

16 **KAITLIN H. ZIEGLER, ESQ.**

17 Nevada Bar No. 013625

18 3000 W. Charleston Blvd., #3

19 Las Vegas, Nevada 89102

20 (702) 259-8640

21 *Attorneys for Defendant*



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

## Entertainers Agreement

THIS ENTERTAINMENT AGREEMENT is made and entered into on the date noted on page five (5) of this document, by and between The Crazy Horse III, and the ENTERTAINER below designated and as signatory to this agreement (herein referred to as "Entertainer")

### WITNESSETH

WHEREAS, The Crazy Horse III is engaged in business in the County of Clark, State of Nevada;

WHEREAS, Entertainer desired to utilize the facilities of The Crazy Horse III for the purpose(s) of providing for Entertainer's benefit lawful entertainment for persons who are present at The Crazy Horse III facility; and

WHEREAS, The Crazy Horse III agrees to permit to perform Entertainer's act(s) at The Crazy Horse III facility on the terms and conditions hereinafter set forth.

1. **LEGAL RELATIONSHIP.** The parties intend that the relationship created hereunder will be only that of The Crazy Horse III and Entertainer and not only any other legal relationship of any type or kind. It has been represented, and Entertainer agrees and acknowledges, that The Crazy Horse III is only providing the use of its facilities to enable Entertainer a location for the performance of Entertainer's act(s). Entertainer acknowledges and agrees that he or she is not an employee or agent of The Crazy Horse III and is not entitled to receive by law or by terms of this agreement any of the benefits or privileges which The Crazy Horse III of Las Vegas may otherwise provide for employees or agents of The Crazy Horse III.
2. **NON-EXCLUSIVITY.** Entertainer acknowledges that The Crazy Horse III expressly reserves the right to engage and schedule other Entertainers who may also perform his or her act(s) on the same day(s) as Entertainer performs. Similarly, The Crazy Horse III acknowledges that Entertainer may perform at other establishments at any time Entertainer is not scheduled to perform at The Crazy Horse III.
3. **LIABILITIES AND RISKS.** Entertainer acknowledges, agrees and understands, and so states, that the act(s) to be performed by Entertainer under this agreement shall be performed entirely at Entertainer's risk. Entertainer acknowledges and agrees that Entertainer assumes, without exception, all responsibility and costs for all consequences and/or damages resulting from the act(s) performed by Entertainer under this agreement at the business address of The Crazy Horse III. Further, Entertainer is under a continuing obligation to hold The Crazy Horse III entirely harmless from any and all obligations and/or damages resulting from or caused by Entertainer, the Entertainer assumes all responsibility and cost(s) for the providing of costumes and/or clothing and for the operation of all equipment apparatus or devices used by the Entertainer in the performance of his or her act(s).
4. **DURATION.** The parties understand and agree that this agreement is made effective as of the first day Entertainer performs at The Crazy Horse III facility, even if prior to the execution of this agreement, and all rights and liabilities accruing hereunder shall be effective as of that date. This agreement, and all rights and liabilities accruing hereunder shall be effective as of that date. This agreement shall remain in force for a period of one (1)

week only, but shall be automatically renewed for successive seven (7) day terms unless either party communicates, verbally or in writing, with or without cause, to the other party that termination is requested, and, in such event, termination of this agreement shall be effective immediately up the date such notice is received. Upon execution of this agreement(s), which cover the subject matter herein.

5. **DUTY OF LEGAL PERFORMANCES.** Entertainer agrees not to misrepresent any service of The Crazy Horse III; not to knowingly make any false or misleading statement to anyone. Entertainer acknowledges that said entertainer is aware that "Solicitation or the Act of Solicitation" is a crime. That any form of solicitation or prostitution either initiated by the Entertainer, the customer, or any person whosoever constitutes a crime. That these actions ~~EXCEPTION WHEREAS THE STATE OF NEVADA THE COUNTY OF CLARK, AND IT'S~~ of the facilities of The Crazy Horse III. Entertainer agrees to comply in all respects with the applicable laws, rules and regulations of the United States, the State of Nevada and the County of Clark in order to protect the name, liability, and good public reputation of The Crazy Horse III. Except, as expressly set forth above, The Crazy Horse III shall have no right or authority to determine the nature of the Entertainer's performance; all artistic aspects of the performance to be at the sole discretion of the Entertainer.
6. **RIGHT OF MONITORING AND INSPECTION.** The Crazy Horse III reserves the right
7. **UTILIZATION OF THE CRAZY HORSE III OF LAS VEGAS FACILITIES.** Entertainer will pay The Crazy Horse III a fee to be determined by The Crazy Horse III as compensation to The Crazy Horse III for Entertainer's use of any and all facilities of The Crazy Horse III utilized by Entertainer during performance of Entertainer's act(s) pursuant to this agreement.
8. **INDEMNITIES AND ASSUMPTION OF RISK.** Entertainer hereby releases holds harmless and indemnities The Crazy Horse III from and against any and all liabilities, cost, damage and expense and attorney's fees resulting from or attributable to any and all acts or omissions of acts of any type of nature by Entertainer hereunder while performing pursuant to this agreement. Further, Entertainer assumes all risk of damages to his or her person and equipment and any other person(s) that result or may result to Entertainer or any other part. This obligation by Entertainer regardless of when damages occur or claims for said damages are made.
9. **BINDING EFFECT.** This agreement shall be binding upon and shall insure to the benefit of the parties and their respective spouses, heirs, permitted assigns, successors, representatives and agents. This agreement shall constitute the only binding agreement between the parties, and all prior and contemporaneous verbal and or written agreements, correspondence and conversations shall be void.
10. **PRIOR EXPERIENCE.** Since the ability and quality of the act(s) performed by Entertainer is essential to the economic success of The Crazy Horse III, Entertainer covenants and warrant that he or she is an experienced entertainer who has performed successfully at other entertainment facilities.
11. **ASSIGNMENT PROHIBITED.** This agreement is personal to each of the parties hereto, and Entertainer may not assign or delegate any of his or her rights or obligations hereunder without first obtaining the prior written consent of The Crazy Horse III.

12. **AMMENDMENTS.** No amendments or additions to this agreement shall be binding unless in writing and signed by each of the parties hereto.
13. **NOTICES.** Any written notice required or permitted to be given hereunder shall be sufficient if in writing and if said notice(s) is sent by first class mail, postage prepaid, to Entertainers last known mailing address or to The Crazy Horse III principal office as set forth below, or pursuant to any other notice requirement as set forth in this agreement.
14. **RECEIPT OF COPY.** The Crazy Horse III and Entertainer each hereby acknowledge that, concurrently with the execution of this agreement, a copy of the same has been received.
15. **GOVERNING LAW.** Inasmuch as the parties in the State of Nevada execute this agreement, and all services are to be performed in the State of Nevada, it is hereby agreed that any and all legal controversies hereunder shall be governed by and constructed in accordance with the laws of the State of Nevada.



## NOTICE

THIS IS TO INFORM YOU THAT THE AGREEMENT DOES NOT INCLUDE STATE  
INDUSTRIAL INSURANCE COVERAGE OR ANY OTHER BENEFITS OR PRIVATE  
INSURANCE WHATSOEVER.

IN WITNESS WHEREOF, the parties have executed this agreement

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

ENTERTAINER

SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

ADDRESS, CITY, STATE AND ZIP: \_\_\_\_\_

THE GRADY, ROBERT H.  
W RUSSELL ROAD  
LAS VEGAS, NV 89118

RR0046

## **The Crazy Horse III**

### **Release of Liability**

LEGAL NAME: \_\_\_\_\_

STAGE NAME: \_\_\_\_\_

SOCIAL SECURITY NUMBER: \_\_\_\_\_

Entertainer hereby releases, holds harmless, and indemnifies The Crazy Horse III ( herein referred to as "corporation") from and against any and all liabilities, cost, damage, expense and attorneys fee's resulting from or attributable to any and all acts or omission of acts of any type or nature by entertainer hereunder while performing pursuant to this agreement. Further, entertainer assumes all risks of damages to his or her person and equipment and to any other person(s) that results or may result to entertainer or ant other part. This obligation by entertainer to to indemnify and hold corporation harmless shall survive this agreement and shall apply to all damages resulting from act9s) by entertainer regardless of when damages occur or claims for said damages are made.

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Approved By: \_\_\_\_\_

The Crazy Horse III  
3525 W Russell Rd.  
Las Vegas, NV 89118

RR0047

# EXHIBIT “3”

DISTRICT COURT  
CLARK COUNTY, NEVADA

)  
JACQUELINE FRANKLIN, )  
ASHLEIGH PARK, LILY )  
SHEPARD, STACIE ALLEN, )  
MICHAELA DIVINE, VERONICA )  
VAN WOODSEN, SAMANTHA JONES )  
KARINA STRELKOVA, LASHONDA )  
STEWART, DANIELLE LAMAR and )  
DIRUBIN TAMAYO )  
individually, and on behalf )  
of Class of similarly )  
situated individuals, )

)  
Plaintiffs, )

)  
vs. )

CASE NO. A-14-709372-C  
DEPT. NO. XXXI

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

)  
Defendants. )  
)

VIDEOTAPED DEPOSITION OF KEITH RAGANO

WEDNESDAY, OCTOBER 5, 2016

1:00 P.M.

AT 6130 ELTON AVENUE

LAS VEGAS, NEVADA

REPORTED BY: MICHELLE R. FERREYRA, CCR No. 876

1 goes back another two years to November of 2010. And  
2 that's a legal issue. But just to let you know,  
3 we've -- we've agreed off the record -- and I will just  
4 state it for the record -- that today we're going to  
5 look at is how the club works today, going back to  
6 November of 2012. Is that okay?

7 A. Yes.

8 Q. And, again, the -- the key -- the most  
9 important thing from your point of view is to help me  
10 understand if -- if things have changed during that  
11 time or if they stayed the same with respect to  
12 whatever we're looking at. Okay?

13 A. (Witness nods.)

14 Q. Okay. So in an effort to streamline this  
15 and -- and kind of make good use of our time, I think  
16 we can -- we can safely say that during that time  
17 period, Russell Road has never treated its dancers as  
18 employees; is that correct?

19 A. Yes.

20 Q. And so, therefore, they would have never have  
21 been issued -- no W-2s would have ever been issued to a  
22 dancer for her services; right?

23 A. Correct.

24 Q. Also during that time period, November 2012  
25 through the -- the present, is it true that dancers had

1       paid a house fee each time they wished to work at the  
2       club?

3               MR. DAVIS:  Objection.  Form and foundation as  
4       to each individual named plaintiff.

5               You can answer if you know.

6               THE WITNESS:  Yes.  They pay a house fee or a  
7       lease fee to use the building that night.

8       BY MR. STERLING:

9           Q.   Do you call it a house fee or a lease fee or  
10       either?

11          A.   House fee.

12          Q.   House fee?  Okay.

13               And that's -- that house fee policy has been  
14       in place since at least the 2012 period that we are  
15       talking about?

16          A.   Yes.

17          Q.   When was the club -- was it founded in 2009;  
18       is that right -- or set up?

19          A.   The actual Crazy Horse?

20          Q.   Yeah.  The -- the -- the club as it exists  
21       today, do you know when it was set up or when it --

22          A.   I don't know the exact date.

23          Q.   Okay.

24               Well, so you -- you were hired on November 5th  
25       of 2008.  Was that --

1 A. It was Penthouse then.

2 Q. It was Penthouse then? Okay.

3 So sometime after that --

4 A. It was sometime in -- in that 2000 area.

5 Q. And so, basically, the -- the name changed and  
6 you revamped, and --

7 A. (Witness nods.)

8 Q. -- but same location?

9 A. Yes.

10 Q. Okay.

11 And I'll -- I'll refer to the relevant time  
12 period as a shorthand of -- and when I say that, again,  
13 I mean back to November of 2012 through the present.  
14 Is that okay?

15 A. Yes.

16 Q. Okay. So we established during the relevant  
17 time period no W-2s. Were there any 1099s during the  
18 relevant time period that were issued for services to  
19 the dancers?

20 A. No.

21 Q. Now, it's true to say during the relevant time  
22 period that -- that dancers would make money either in  
23 cash or I think what you called dance dollars by  
24 performing at the club; is that right?

25 A. Yes.

1 Q. During the relevant time period, is  
2 there -- was there any other way for dancers to make  
3 money at the club?

4 A. No.

5 Q. Now, we'll talk in a minute about the policies  
6 in more detail that the club has with respect to the  
7 dancers. But is it fair to say during the relevant  
8 time period that the club treats all the dancers  
9 equally and applies the policies that it has equally to  
10 all the dancers; is that a fair statement?

11 A. Yes.

12 Q. Let's -- let's talk a little bit about  
13 the -- the company itself and the business side of it  
14 before we get into the -- the -- the actual -- you  
15 know, the day-to-day operations. So I think we said  
16 already the -- the corporate entity is Russell Road  
17 Food and Beverage, LLC; right?

18 A. Yes.

19 Q. And the club's name is -- is Crazy Horse III?

20 A. Yes.

21 Q. And that's out at 3525 West Russell Road?

22 A. Yes.

23 Q. And is the -- is there another corporate  
24 office separate from that location for Russell Road,  
25 the entity, that you know of?



1 BY MR. STERLING:

2 Q. Okay. Good. That clears up that.

3 A. I think this needs to be updated.

4 Q. Okay.

5 MR. STERLING: I need to take about a  
6 two-minute break. Is that okay?

7 MR. DAVIS: Yeah.

8 MR. STERLING: Thanks.

9 VIDEOGRAPHER: The time is 2:11 p.m., and we  
10 are going off the record.

11 (Off the record.)

12 VIDEOGRAPHER: The time is 2:18 p.m., and we  
13 are back on the record.

14 BY MR. STERLING:

15 Q. I will ask you a couple more questions about  
16 these entertainer rules you have in front of you. So  
17 we -- we mentioned they might need to be updated and  
18 there's some -- some rules that may be or are no longer  
19 followed. Let's -- take -- take a look at rule No. 1  
20 there. Make your stages, do not be late. Explain to  
21 me what a -- what that means.

22 A. That means when they're called to stage, just  
23 be considerate of the person that's already up there,  
24 they want to get down.

25 Q. Okay. And by "stage," I'm -- I'm guessing

1       they're talking about a performance area?

2           A.    Yes.

3           Q.    And there's a -- a person calling the dancers  
4       up to the stage; is that right?

5           A.    Yes.

6           Q.    And is that the DJ?

7           A.    Yes.

8           Q.    Okay.  So how -- how does that -- so --  
9       calling up process, what -- what are the -- what are  
10      the rules about getting called up on stage?  How does  
11      it work?

12          A.    It just goes off the Club Tracks from when  
13      they check in.

14          Q.    Okay.  So each dancer checks in, and her name  
15      pops into the system; is that right?

16          A.    Yes.

17          Q.    And then that information would go up to the  
18      DJ?

19          A.    He has a Club Track screen also.

20          Q.    Okay.  And -- and what does the DJ do with  
21      that information?

22          A.    He just goes down the list.

23          Q.    Okay.  And talk to -- what would -- what would  
24      constitute a stage?  So once a girl is -- is -- or  
25      dancer is called up, what is -- what is her obligation

1 on the stage or what does she do on the stage?

2 MR. DAVIS: Objection. Compound. Vague and  
3 ambiguous as to obligation. Calls for legal  
4 conclusion.

5 You can answer.

6 THE WITNESS: Some girls climb the pole, some  
7 girls just stand there, some girls dance. All depends  
8 on the entertainer.

9 BY MR. STERLING:

10 Q. Is there a -- a set duration, time limit?

11 A. Depends on the time of the night.

12 Q. So let's talk then about the different time  
13 limits, then. So during -- during the course of a  
14 day -- so let me ask you this firstly. So is  
15 this -- is it fair to call it sort of a rotation  
16 schedule of the dancers who are in the club at that  
17 time?

18 A. Yes. But also other dancers can go up if  
19 asked. If a guest would like to see them, they can  
20 approach a manager or -- and we'll put them up.

21 Q. Okay. But if that doesn't happen, there's  
22 sort of like an automatic rotation that the DJ controls  
23 for dancers that are in the club?

24 A. Yes. It just goes right down Club Tracks.

25 Q. Okay.

1           A.   Club Tracks keeps track of it.

2           Q.   And is that stage process in play 20 -- 24  
3 hours of the day?

4           A.   No.

5           Q.   When is it -- when is there no -- when are  
6 there no stages?

7           A.   There's stages during the day when there's not  
8 as many entertainers. They just go up when they want  
9 to go up.

10          Q.   Is that -- does the DJ kind of play it by ear  
11 or is their a specific policy as to stage shuts down at  
12 this time and commences again?

13          A.   No. There's no set -- set times.

14          Q.   So the -- the DJ kind of makes -- makes the  
15 call?

16          A.   And then sometimes during the day, there's not  
17 a DJ there. There's just music playing.

18          Q.   So to come back to the -- the parameters of  
19 the stage performance, so you mentioned it -- it might  
20 change based on the time of day. Can you -- can you  
21 elaborate?

22          A.   It might go from three songs to two songs.  
23 And then later at night they do get split off the side  
24 stages after the main stage.

25          Q.   But if there -- if the stages -- if the system

1 is up and running and -- and women are doing these  
2 stages, it's typically the -- each stage performance  
3 would be a number of songs; is that right?

4 A. Two to three songs.

5 Q. Okay. Sometimes it's two and sometimes it's  
6 three?

7 A. Yes.

8 Q. Okay. Who -- who chooses the playlist in the  
9 club?

10 A. The entertainers.

11 Q. How does that work?

12 A. When they speak to the DJ, they tell them what  
13 type of music they like, what type of music they like  
14 to dance to.

15 Q. You mean the -- the dancer that's  
16 about -- that's about to go on stage?

17 A. When they first meet the DJ, they log them  
18 down, what type of music they like. Or individually  
19 they can go up and they might want to hear a certain  
20 song for when they're doing stage that night.

21 Q. Okay. The second sentence here back in Rule 1  
22 says: Wait for your replacement before leaving the  
23 stage. Is -- is that an expectation -- or is that  
24 accurately explain the -- how the system works?

25 A. Yes.

1                   You can answer if you know.

2                   THE WITNESS: Yeah. Some girls go  
3                   right -- right down to the G-string when they go up  
4                   now. It all depends on the entertainer's preference.  
5                   BY MR. STERLING:

6                   Q. What about the -- the requirement -- I mean,  
7                   here it says the requirement is -- as I read it, is to  
8                   get down to the G-string at some point during the  
9                   stage. Is the rule -- is there no longer a rule of  
10                  getting down to the G-string on stage?

11                  A. The girls just do it. That's how they make  
12                  money, is on the stage.

13                  Q. Okay. If you take a look at 2B there, there's  
14                  a -- it looks like there's a way to pay to go off  
15                  stage. Is -- is that a -- explain -- explain what's  
16                  meant there.

17                  A. If they don't want to be in the stage  
18                  rotation, they can pay to be off the stage rotation.

19                  Q. Is that true today?

20                  A. Yes.

21                  Q. Has that been true throughout the relevant  
22                  time period?

23                  A. Yes.

24                  Q. Do you know what the -- the -- how much they  
25                  have to pay to go off stage?

1 A. 40.

2 Q. 3, I think that's a typo. I think it means  
3 house fees; right, are paid before the shift starts?  
4 Is that -- is that how it works today?

5 MR. DAVIS: Objection. Form and foundation.  
6 You can answer.

7 THE WITNESS: Yes and no. Because if girls  
8 don't have it, we do let them work and pay it later.

9 BY MR. STERLING:

10 Q. Okay. You do require to show their Sheriff's  
11 card when they show up for work?

12 A. Yes.

13 Q. And you do require entertainers to sign in and  
14 sign out?

15 A. Yes.

16 Q. How do -- how -- what's the sign in process?  
17 Is it electronic, is there a sign-in sheet?

18 A. Electronic. It's a fingerprint.

19 Q. Same thing with sign out?

20 A. No.

21 Q. How do they sign out?

22 A. They get a slip from the DJ -- or they get a  
23 slip from the manager, and then they bring it to the  
24 DJ, and then they give it to the house mom. Then the  
25 hub -- then they take them out of rotation so we know

1                   Are references required in order to -- to  
2     dance at the club?

3           A.    No.

4           Q.    Do you require formal dance training, that  
5     the -- the dancers have -- you know, completed some  
6     formal dance training in their -- in their past?

7           A.    No.

8           Q.    Is it your -- well, have -- have you discussed  
9     the audition process with other managers so you are  
10    reasonably comfortable they're on the same page with  
11    you if -- if they're giving the audition?

12          A.    Yes.   But I can't speak for them.

13          Q.    But as General Manager, it's your -- it's your  
14    understanding that, basically, you are looking for good  
15    dancers, and everyone knows what a good dancer is,  
16    based on your experience?

17          A.    Yes.

18          Q.    Okay.   Has the club during the relevant time  
19    period ever imposed a fee or charge if -- if a dancer  
20    wants to leave early or -- pretty soon after she checks  
21    in?

22          A.    No.

23          Q.    Again, we have been talking throughout the  
24    entire day here about a time period of November 2012  
25    through to the present.   And I just want to give you an



1 walking through the club.

2 Q. We talked a little bit about this VIP. It  
3 came up in two -- there's a -- a -- a VIP I suppose  
4 areas and then -- well, let's talk about those -- those  
5 VIP areas. Is it true to say that there's a -- so  
6 there is a -- a check-in procedure to access those  
7 areas with -- with patrons and that there be a host  
8 there for that; is that right?

9 A. Yes.

10 Q. Okay. And then I think we -- we also  
11 mentioned there's other -- perhaps other booths or  
12 areas in the club that might be set aside for -- for  
13 maybe -- with dollar -- you know, bottle minimums; is  
14 that right, too?

15 A. Yes.

16 Q. And then so there would be another area that  
17 would be sort of general area where the dancers could  
18 perform those lap dances -- just the \$20-dollar lap  
19 dances?

20 A. They can perform them anywhere in the club.  
21 There's not a specific area they have to be to give a  
22 dance.

23 Q. Okay. But -- but -- well, I guess it's almost  
24 a rule that would apply to the patron, too. So  
25 the -- the patron can't just say, I want to go into the

1       VIP room and spend 20 bucks, right? There's a  
2       requirement that the VIP room is for more than just a  
3       lap dance; right?

4           A.    Yeah. We have the drinks minimums and --

5           Q.    Yeah. Okay.

6                   Are dancers involved in the hiring of  
7       employees at the club like bartenders and VIP hosts?

8           A.    No.

9           Q.    Okay. Are dancers involved in the decision to  
10       set the hours of operation of the club?

11          A.    No.

12          Q.    Do -- are dancers involved in whether to  
13       charge a cover and how much that should be?

14          A.    No.

15          Q.    Do dancers contribute to the payment of rent  
16       for the club?

17                   MR. DAVIS: Objection as to form and  
18       foundation. Calls for speculation.

19                   You can answer.

20                   THE WITNESS: Can you explain that a little  
21       bit more?

22       BY MR. STERLING:

23           Q.    Well, we talked a little bit earlier how  
24       the -- the club -- the Russell Road leases its space.  
25       And I am assuming there's a -- there's a rent payment

1 for that arrangement; right?

2 A. Uh-huh.

3 Q. Are you aware of the dancers contributing to  
4 any part of that rent payment, directly?

5 A. Directly?

6 Q. Uh-huh.

7 A. Other than house fees, no.

8 Q. Okay. Which go to the club, and then the club  
9 would pay the rent?

10 A. (Witness nods.)

11 Q. Okay. Dancers aren't directly responsible for  
12 paying wages of any employee at the club, are they?

13 A. No.

14 Q. Okay. And dancers aren't responsible for  
15 repairing or maintaining the club in its clean  
16 condition?

17 A. No.

18 Q. Okay. They aren't responsible for buying food  
19 and beverages?

20 A. No.

21 Q. Have you ever discussed with the owner  
22 treating your employees as -- as -- treating the  
23 dancers as employees?

24 MR. DAVIS: Objection as to form and  
25 foundation with regard to owner and relation to the

CERTIFICATE OF REPORTER

STATE OF NEVADA )  
COUNTY OF CLARK )

I, Michelle R. Ferreyra, a Certified Court  
Reporter licensed by the State of Nevada, do hereby  
certify: That I reported the videotaped deposition of  
KEITH RAGANO, commencing on WEDNESDAY, OCTOBER 5, 2016,  
at 1:00 p.m.

That prior to being deposed, the witness was  
duly sworn by me to testify to the truth. That I  
thereafter transcribed my said stenographic notes into  
written form, and that the typewritten transcript is a  
complete, true and accurate transcription of my said  
stenographic notes, and that a request has been made to  
review the transcript.

I further certify that I am not a relative,  
employee or independent contractor of counsel or of any  
of the parties involved in the proceeding, nor a person  
financially interested in the proceeding, nor do I have  
any other relationship that may reasonably cause my  
impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in my  
office in the County of Clark, State of Nevada, this  
19th day of October, 2016.



*Michelle R. Ferreyra*  
MICHELLE R. FERREYRA, CCR No. 876