

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

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Appeal from the Eighth Judicial
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Nevada

JOINT APPENDIX – VOLUME XII

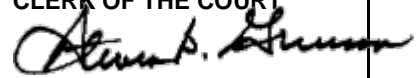
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DOCUMENTS		
DESCRIPTION	VOLUME	PAGE
Answer to Amended Complaint	I	8
Answer to Counterclaim	I	38
Appendix of Exhibits to Motion for Summary Judgment Pursuant to N.R.C.P. 56	IV-V	697
Appendix of Exhibits to Opposition to Motion for Summary Judgment on 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
TRANSCRIPTS		
DESCRIPTION	VOLUME	PAGE
Transcript - August 17, 2017	XII	2481
Transcript - July 11, 2017	XII	2353
Transcript - March 16, 2017	I	217



1 **TRAN**

2 **EIGHTH JUDICIAL DISTRICT COURT**
3 **CIVIL/CRIMINAL DIVISION**
4 **CLARK COUNTY, NEVADA**

5 ASHLEIGH PARK, et al,) CASE NO. A-14-709372
6 Plaintiffs,) DEPT. NO. XXXI
7 vs.)
8 CRAZY HORSE III GENTLEMAN'S CLUB)
9 AT THE PLAYGROUND, et al,)
10 Defendants.)

11 BEFORE THE HONORABLE NANCY SAITTA, SENIOR JUDGE

12 TUESDAY, JULY 11, 2017

13 **TRANSCRIPT RE:**

14 DEFENDANT/COUNTERCLAIMANT RUSSELL ROAD FOOD AND
15 BEVERAGE, LLC'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT
16 PURSUANT TO NRCP 12(b)(1) AND NRCP 12(h)(3)

17 PLAINTIFFS' RENEWED MOTION FOR CLASS CERTIFICATION

18 DEFENDANT/COUNTERCLAIMANT RUSSELL ROAD FOOD AND
19 BEVERAGE, LLC'S MOTION TO STRIKE PLAINTIFFS' RENEWED MOTION
20 FOR CLASS CERTIFICATION AND MOTION TO STRIKE PLAINTIFFS'
21 DECLARATIONS ON ORDER SHORTENING TIME

22 **APPEARANCES:**

23 For the Plaintiffs: LAUREN D. CALVERT, ESQ.

24 For Defendant/Counterclaimant
Russell Road Food and Beverage, LLC: JEFFREY A. BENDAVID, ESQ.
STEPHANIE J. SMITH, ESQ.

RECORDED BY: Sandra Harrell, Court Recorder

1 LAS VEGAS, NEVADA, TUESDAY, JULY 11, 2017, 10:31 A.M.

2 * * * * *

3 THE COURT: Franklin versus Russell Road Food and Beverage; 709372.

4 THE CLERK: I'm sorry, what was the case, Your Honor?

5 THE COURT: Franklin versus Russell, page 1 of the 9:30 calendar. Is that
6 correct?

7 MR. BENDAVID: That's correct, Your Honor.

8 THE COURT: Wait. I called it with the wrong caption, so the case is actually
9 Ashleigh Park versus Crazy Horse. Does that help?

10 THE CLERK: Yes, Your Honor.

11 THE COURT: Nonetheless, we do know that the matter is before us here
12 on what appears to be a motion to dismiss under 12(b)(1) and the Rules of Civil
13 Procedure 12(h)(3).

14 Counsel, appearances for the record, please.

15 MS. CALVERT: Thank you, Your Honor. Lauren Calvert for plaintiffs.

16 MR. BENDAVID: Good morning, Your Honor. Jeff Bendavid on behalf of
17 defendant Russell Road.

18 THE COURT: Good morning.

19 MR. BENDAVID: Good morning.

20 MS. SMITH: Good morning, Your Honor. Stephanie Smith also on behalf
21 of Russell Road.

22 THE COURT: Good morning. Counsel, brief argument. This has to do
23 with an alleged failure to pay certain minimum wage under the Nevada Minimum
24 Wage Law or Act.

1 MS. CALVERT: Correct, Your Honor. I'm sorry, we're going to start with --
2 we have a couple motions.

3 THE COURT: They're all the same. Just --

4 MS. CALVERT: Just go ahead and tell you the brief?

5 THE COURT: Yeah.

6 MR. BENDAVID: Who's going? Which one are we doing? Which motion
7 are we doing first?

8 MS. CALVERT: Yeah, I guess --

9 THE COURT: Your choice. I'm ready on all of them.

10 MS. CALVERT: You can do the dismiss first since it's dispositive, I guess.
11 It's probably the easiest one.

12 THE COURT: That probably makes sense.

13 MS. CALVERT: That probably makes sense.

14 MR. BENDAVID: Okay. We'll do the motion to dismiss, then, Your Honor.

15 THE COURT: Okay.

16 MR. BENDAVID: Thank you, Your Honor. Your Honor, under -- I'll keep
17 it brief. We obviously briefed it well. Your Honor, a couple facts. One is this case
18 was denied certification back in March. You know, it was actually almost pretty
19 much a year process and it came down in March and the Court denied certification.
20 As a result, there was two months remaining in discovery. No discovery occurred
21 in that two months. Discovery is closed. Dispositive motion deadlines have passed.
22 We're at the end here. Trial, I believe, is set for September. We filed the motion
23 to dismiss because individually, Your Honor, they don't meet the jurisdictional limit
24 of \$10,000 to be in district court.

1 THE COURT: For each individual claimant?

2 MR. BENDAVID: Correct. But on top of that, Your Honor, let me get to
3 NRCP 8(a)(2), which requires that the third party complaint that was filed almost
4 two years ago must state that the damages are in excess of \$10,000. It does not.
5 They concede that. Not much of an issue; it doesn't say it. Their counter argument
6 to that is that their original complaint did say that but somehow it dropped off by
7 the time it got to the third amended complaint. Nevada law is very clear, you file
8 an amended complaint, it supersedes and eliminates the prior complaint. It stands
9 on its own. It doesn't refer back. It doesn't get incorporated in. It stands on its
10 own. The third party complaint on its own. They have no allegation for damages.
11 So the only way this Court can look past the complaint is the legal certainty test,
12 right? And the legal certainty test would have to have damages to draw off to get
13 to original jurisdiction.

14 Subject matter jurisdiction, Your Honor, is required by statute in
15 Nevada. There's no statute which is -- I'll jump to an argument they made, which
16 is, well, this is still a purported class action because they have a renewed motion
17 for class certification, which is on the calendar for today as well. Because of that
18 renewed motion for class certification, they say, well, we're still a purported class
19 action. Well, in actuality, Your Honor, there is no statute in Nevada that says if
20 you're a purported class action you have original jurisdiction in Nevada. They don't.

21 THE COURT: Still have to meet the jurisdictional amount.

22 MR. BENDAVID: Still have to meet the jurisdictional amount, Your Honor.
23 The fact that they have not alleged the jurisdictional amount within that complaint
24 is dispositive of this case. We don't really need to do anything further. However,

1 if the Court does want to, which we did do, is we did examine those damages and
2 those damages are close. They concede that those are their wages that they would
3 be seeking if this Court -- and there's motions for summary judgment set for weeks
4 later as to whether they're employees or not. Right now they're independent
5 contractors. We contend they're still independent contractors.

6 THE COURT: A non-certified class of independent contractors.

7 MR. BENDAVID: Correct. And so they're individuals. Now, you could take
8 their discovery at face value and say if they were to win out on these eight remaining
9 plaintiffs, right -- it's really six and two of them were granted summary judgment on
10 their first claim, denied summary judgment on their second claim -- but if you took
11 a look at the eight you would have to look at their individual damages they could
12 be seeking. Your Honor, the amount of hours that they performed at the club are
13 documented, are in discovery, not in dispute. What those wages would be at the
14 minimum wage rate we've demonstrated on page 14 of our complaint. If you took
15 a look at claim one, which is their Minimum Wage Amendment claim, under that
16 claim none of the plaintiffs on their own can meet the \$10,000 threshold.

17 THE COURT: And let me stop you there just for a second.

18 Counsel, how do you respond to just that particular argument?

19 Because it's key to everything else that is before us.

20 MS. CALVERT: Sure. Thank you, Your Honor. I think just two really brief
21 points. One is that the Court pretty much has heard all these arguments already.
22 They were presented in defendant's motion for summary judgment as to Michaela
23 Moore and Stacie Allen, I believe, and that motion for summary judgment was
24 denied. And the damages for plaintiff Stacie Allen and for Michaela Moore were

1 very, very, very small. So these have already been -- these arguments have already
2 been heard. They've already been decided by the Court at our motion for summary
3 judgment.

4 THE COURT: The standard for summary disposition and jurisdictional
5 requirements on a motion to dismiss are two very different things.

6 MS. CALVERT: It was the jurisdictional -- same jurisdictional argument in
7 the motion for summary judgment, that they could not meet the \$10,000 threshold,
8 so it's the same argument. We just didn't have the ruling on that motion when this
9 instant motion to dismiss was filed. So we pretty much took the same opposition
10 we filed in the prior motion, cut and pasted it onto here, realizing that probably one
11 was going to set -- kind of set the tenor for what would happen. But these same
12 arguments as to the jurisdictional threshold have already been decided by the Court.
13 They were decided after we did the full briefing already on this motion.

14 THE COURT: But they were decided, again, unless I'm mistaken, on the
15 motion for --

16 MS. CALVERT: Summary judgment standard.

17 THE COURT: -- summary judgment standard, which is genuine issue of
18 material fact.

19 MS. CALVERT: Correct, Your Honor. I just wanted to make that clear,
20 though, that some of these arguments, they do intertwine because it is looking at
21 how are we going to calculate these damages for purposes of meeting the \$10,000
22 threshold, and that's the only place I was really going with that.

23 THE COURT: Okay. So you have nothing to add to the little place that
24 I stopped Mr. Bendavid and said what do you say to that, do you dispute that?

1 MS. CALVERT: We do, and let me find it in here and make sure I have it
2 right. We do have one plaintiff whose hours they conveniently didn't include, and
3 that would be for Jaqueline Franklin. And she independently meets the \$10,000
4 jurisdictional threshold.

5 THE COURT: Okay. You may continue, Mr. --

6 MS. CALVERT: Oh, sorry, I just found it here. She clocked in for -- I have
7 the actual numbers here somewhere -- yeah, her unjust enrichment claim solely for
8 house and stage fees are over \$10,000 and her Minimum Wage Amendment claim
9 without the unjust enrichment claim is almost \$11,000. So we do meet the \$10,000
10 jurisdictional threshold as to her.

11 THE COURT: With respect to one plaintiff.

12 MS. CALVERT: With respect to one. If we look to, I believe it's Ashleigh
13 Park, if we look at her minimum wage claim and her unjust enrichment claim --
14 no, I'm sorry, Strelkova. If we look at her wage claim and her unjust enrichment
15 claim, they together exceed \$13,000. So we've got two of them here undeniably.

16 THE COURT: Give me the names again.

17 MS. CALVERT: I'm sorry. Karina Strelkova and Jaqueline Franklin.

18 THE COURT: Strelkova and Franklin, correct?

19 MS. CALVERT: Yes, Your Honor.

20 THE COURT: Okay. And I didn't mean to interrupt your argument, counsel.
21 Please proceed.

22 MR. BENDAVID: No, it's fine, Your Honor.

23 THE COURT: Unless you want to respond to those two particular --

24 MR. BENDAVID: I do.

1 THE COURT: -- plaintiffs.

2 MR. BENDAVID: I do. First of all, Your Honor, they obviously concede
3 that they didn't make the allegation of \$10,000. There's really not much you could
4 say about it. It's either in the third party complaint or it's not. It's not. So they have
5 to concede that point.

6 THE COURT: I think they did.

7 MR. BENDAVID: Right. I think they did, Your Honor.

8 And second of all, Your Honor, with regards to those, what they're
9 doing is is they're combining their claim on one plaintiff in terms of Count 1 and
10 combining that same plaintiff with Count 2. They have not provided any law that
11 they can combine those two damages to then reach the jurisdictional limit. Now,
12 Your Honor, they have repeatedly, repeatedly for two years argued that the MWA
13 claim, the Minimum Wage Amendment claim and their unjust enrichment claim are
14 separate and distinct claims. And in fact, the Court granted summary judgment
15 for two of the plaintiffs on their last hearing with regards to Count 1 because they
16 were outside the statute of limitations. She denied it as to Count 2 under unjust
17 enrichment based on their argument that those are separate and distinct claims,
18 that those are seeking separate damages that are not within the MWA claim.

19 THE COURT: And now they're trying to combine them into --

20 MR. BENDAVID: Now they're trying to combine them for jurisdictional
21 purposes individually, if you take a look at those two claims. Now, the other
22 plaintiffs, there's really no issue. They conceded, we conceded the facts are the
23 facts. They -- even if you combine the two, it wouldn't matter. None of them reach
24 the \$10,000 threshold.

1 THE COURT: Except potentially or arguably --
2 MR. BENDAVID: Potentially those two.
3 THE COURT: -- those two.
4 MR. BENDAVID: Correct. If you combine those two, then they would reach
5 \$10,000. She's correct.
6 THE COURT: Counsel, didn't I hear you say that each independently have --
7 MS. CALVERT: Correct, Your Honor.
8 MR. BENDAVID: Absolutely.
9 THE COURT: -- eleven and thirteen?
10 MR. BENDAVID: Uh-huh. They do.
11 MS. CALVERT: Correct. So we have plaintiff Strelkova -- and let me just
12 pull it here real quick -- so she -- or I'm sorry, plaintiff Franklin, she worked -- she
13 had clocked in for, let's see, 1,086.59 hours. We multiplied that by the minimum
14 wage. Oh, no, I'm sorry, Franklin is the one that's combined. Oh, I may be wrong
15 here.
16 MR. BENDAVID: Your Honor, if you take a look at page 20.
17 MS. CALVERT: Oh, I read that -- oh, plus the penalty. Okay.
18 THE COURT: I'm sorry, page --
19 MR. BENDAVID: Page 20 of our opposition, we put a summary there
20 together, even combining them.
21 MS. CALVERT: It doesn't have plaintiff Franklin on there. That's on
22 page 10 of my opposition.
23 MR. BENDAVID: No, it's there.
24 MS. CALVERT: Is it?

1 MR. BENDAVID: Yeah. It's subsection D, page 21.

2 THE COURT: Franklin looks like 8274.

3 MS. CALVERT: And that does not -- let's see here. I have -- why am I not
4 finding the page here? So I have for our calculations her --

5 MR. BENDAVID: And that would --

6 THE COURT: House fees --

7 MS. CALVERT: -- minimum wage would be 89 -- I'm sorry, \$8,964.37,
8 plus the penalty fee, which is \$1,980. And that, unless my math is really bad, gets
9 us over 10,000.

10 MR. BENDAVID: Well, let me address that, Your Honor. I know we're
11 getting confusing in damages. I'll address Franklin, just that point of the \$1,980.

12 THE COURT: Okay.

13 MR. BENDAVID: We made that argument to the Court and said if they
14 were to perform, if the Court later on was to find employees, and we're making --
15 both sides are agreeing we're making this argument to show if the Court wanted to
16 go beyond the face of the complaint -- if it did and go beyond that and say, okay, if
17 you were to win out and they became employees at some point later down at trial or
18 at summary judgment next month, even if you took that, that somehow they would
19 still get a penalty of \$1,980. Right?

20 THE COURT: I'm not sure I understand that penalty part.

21 MR. BENDAVID: Under NRS 608.2 --

22 MS. CALVERT: 40?

23 MR. BENDAVID: 40, I think. We have it here, Your Honor. I apologize.

24 THE COURT: That's okay.

1 MR. BENDAVID: There's a penalty. It says on your last day of employment
2 if you're not paid your wages you're owed 30 more days of wages that you would
3 have worked. The difference here is, Your Honor, none of them worked schedules.
4 So in other words, you would have to then take some kind of average of what they
5 worked to figure out what that penalty was. We're nowhere near that. What we
6 did --

7 THE COURT: That would have to be determined by facts in evidence.

8 MR. BENDAVID: Correct.

9 THE COURT: Right. Okay.

10 MR. BENDAVID: As to how many hours. In other words, they didn't work
11 40-hour week. None of them. They didn't work 10-hour weeks. You know, they
12 would work for one month and show back up six months later. So there's no real
13 schedule there to identify. What we did just to show that they can't meet the
14 jurisdictional limit is we used the same argument they did to say, look, even if some
15 miracle you could protract out 40 hours a week for 30 days, the most they would
16 receive is an additional penalty of \$1,980.

17 MS. CALVERT: Yeah.

18 MR. BENDAVID: So that's where the one thousand. Your Honor, on
19 Franklin if you use that, they do exceed the \$10,000 on the Minimum Wage
20 Amendment claim alone; just on that claim. So if you were to apply that penalty,
21 she would exceed that \$10,000 -- if you apply a penalty. On her unjust enrichment
22 claim she does not on that. She gets to \$8,300.

23 THE COURT: Which plaintiff has represented are separate and distinct
24 causes of action.

1 MR. BENDAVID: Correct.

2 THE COURT: Okay. And Strelkova is way under the amount, at least
3 according to page 22.

4 MR. BENDAVID: Correct, Your Honor. And if you take a look at page 24,
5 starting on page 24, Your Honor, we gave you the summary of each one for Count 1
6 and Count 2.

7 THE COURT: Does the summary beginning on page 24 include the
8 penalties, the rather amorphous at this point --

9 MR. BENDAVID: Correct.

10 THE COURT: -- penalties?

11 MR. BENDAVID: Correct. So, Franklin is not in there because Franklin
12 exceeds that --

13 THE COURT: Without it.

14 MR. BENDAVID: -- Franklin exceeds that \$10,000 if you add up her --
15 if you add up her amount. So this is if the Court was to combine both damages,
16 even though we've argued you can't. You can actually take a look at damages from
17 Count 1, the recovery of damages from Count 2, and then you could even add them
18 up and see that most of them, with the exception of Franklin and --

19 MS. CALVERT: Strelkova.

20 MR. BENDAVID: -- Strelkova, if you combine those two then they would
21 exceed \$10,000. If you don't combine them, then only Franklin's MWA claim would
22 exceed \$10,000.

23 THE COURT: So on what legal basis, counsel, would I be able to combine
24 the two claims and get you to that jurisdictional amount?

1 MS. CALVERT: Your Honor, just our -- I think we've cited, or God, I hope
2 we have cited in here that we aren't aware that there's anything prohibiting this Court
3 from doing so. They come -- it's not -- yes, they're distinct claims. The tip outs that
4 dancers --

5 THE COURT: So each one has to meet the jurisdictional amount?

6 MS. CALVERT: That's not our understanding and not from the case law that
7 we've cited, and not from cases we've cited which actually look at either aggregation
8 of claims or look at aggregation of plaintiffs when you do have a singular principle or
9 policy that you're challenging.

10 THE COURT: But that goes -- but that almost goes into the class action
11 because I don't know how we can aggregate these claims unless of course they
12 qualify for a class.

13 MS. CALVERT: And I guess that's going to be the next motion you'll be
14 deciding, maybe, is whether or not they are going to be certified for class. Certainly
15 this was -- this has always been maintained as a putative class action. It makes no
16 sense for us to really proceed with claims of this nature because they are so small
17 and because the costs of, you know, bringing a suit of this magnitude could not be
18 done if it is for such small amounts. The whole reason we're able to bring this suit
19 to the point it's at is because it is a putative class action. Otherwise, I don't think
20 any of these dancers -- their claims ever see the light of day. That's kind of the
21 whole point of it.

22 THE COURT: And these cases have been around --

23 MS. CALVERT: A long time.

24 THE COURT: -- for a very long time because I actually had one when I was

1 still a member of this court. So --

2 MS. CALVERT: Terry v. Sapphire, which --

3 THE COURT: Yeah, I'm not sure that the issues are what we might refer
4 to as well settled.

5 Anything else in opposition to the basic argument, knowing that I
6 interrupted you, Mr. Bendavid, with your argument?

7 MR. BENDAVID: A couple things, Your Honor. One is they are arguing
8 this uniting of claims and saying you can take all the plaintiffs together.

9 THE COURT: Aggregate.

10 MR. BENDAVID: Right. Your Honor, there is the case that we cited in our
11 reply brief which is the Ninth Circuit case of Urbino. In that case the court ruled,
12 the Ninth Circuit says, "Unite to enforce a single title or right in which they have a
13 common interest." That was a wage and hour case. In that case the court held,
14 "The rights of the plaintiffs are held individually. Each alleged employee suffers
15 a unique injury that can be addressed without the involvement of others," and ruled
16 that they individually had to meet the jurisdictional amount under a wage and hour
17 case. So they tried to combine a number of wage and hour cases to meet the
18 jurisdictional amount and the court denied it, based on -- setting the rule, here it is,
19 and a wage and hour case can't meet it because those are individual rights and
20 individual damages that they are seeking. And that's the Ninth Circuit case that
21 we cited, Your Honor, and we think that's the most on point to the argument that's
22 made that says you should be able to pool them together and unite those damages.

23 MS. CALVERT: I think the only other thing I have to add, Your Honor, and
24 I'm sorry, I forgot to bring it up when we first started talking about this -- I just argued

1 the same motion a few days earlier so my mind is a little jumbled -- but one of the
2 things is that when we look under the legal certainty test we assume that the plaintiff
3 is going to prevail for all purposes. Now, I'll go with defendant's non-aggregation,
4 hey, we're just going to look at one single plaintiff. Well, even if we assume that
5 one single plaintiff prevails on their MWA claim, they're entitled to attorney's fees.
6 They're mandatory under NRS 608 -- you're well -- or I'm sorry, under the actual,
7 the constitutional provision they're entitled to attorney's fees.

8 THE COURT: If we get that far.

9 MS. CALVERT: If we get that far. But we're assuming that they prevail on
10 all their claims for a legal certainty under the legal certainty test. So if they prevail
11 they're entitled to attorney's fees. I will represent to this Court they exceed \$10,000
12 per plaintiff. But that is, it's a mandatory award that would be given if they prevail,
13 and again, that's the standard we're using for legal certainty.

14 MR. BENDAVID: Your Honor, I'll address that, if I may.

15 THE COURT: Sure.

16 MR. BENDAVID: NRS 4.370 limits jurisdiction to damages. The Nevada
17 Supreme Court has ruled that attorney's fees cannot be included to determine
18 jurisdictional limits because attorney's fees are not damages. That's the Royal
19 Insurance case.

20 THE COURT: I know that well.

21 MS. CALVERT: Except in two situations.

22 MR. BENDAVID: Yes, unless it's provided by a statute. But those aren't
23 damages here.

24 THE COURT: Right.

1 MR. BENDAVID: They're not alleged as damages here, Your Honor. And
2 if you take a look at the third amended complaint, they don't allege attorney's fees
3 as damages.

4 THE COURT: And that is the issue. We come full circle with respect to
5 the document that is being tested by the motion, and that's the third amended
6 complaint. So if I look specifically at that complaint to determine whether or not
7 there is an adequate suggestion of jurisdictional amounts, it appears to me that the
8 third amended complaint does not allege damages in excess of \$10,000 except
9 with respect to Franklin.

10 So absent a request to amend the complaint, I'm going to grant the
11 motion to dismiss without prejudice. And Mr. Bendavid, if you would please prepare
12 the order. And this is going to be with respect to all of the causes that are before
13 the Court right now. So if you would prepare that order, run it by counsel, I would
14 appreciate it.

15 MR. BENDAVID: Yes, Your Honor.

16 THE COURT: We do have the renewed motion for class cert also on today;
17 709372.

18 MS. CALVERT: Yes.

19 MR. BENDAVID: And there's also a motion to strike their renewed motion.

20 THE COURT: Thank you. Okay. The motion, the renewed motion, and
21 please correct me, counsel, if I'm wrong, the renewed motion for class cert is
22 basically the same as the prior motion. Is that correct?

23 MS. CALVERT: That is pretty correct, Your Honor.

24 THE COURT: Okay. And so knowing how that went and what I've reviewed

1 in the file, I'm going to look, frankly, to the opposition first or the motion to dismiss.

2 Mr. Bendavid, if you would.

3 MR. BENDAVID: Thank you. Your Honor, I have the motion to strike.
4 Do you want us to discuss the motion to strike? We filed a motion to strike based
5 on two grounds. I can cover those really quickly.

6 THE COURT: I think I would start you there.

7 MR. BENDAVID: Okay. Your Honor, in terms of backtracking, this Court
8 heard argument in January on the original motion for class certification that was filed
9 back in June of 2016. That hearing took place in January. There was a follow-up
10 supplemental briefing and then another hearing in March. The Court held two
11 extensive hearings on certification, multiple briefings and supplemental briefings and
12 denied class certification. Before I get to the Court denying class certification and
13 where we are today, what happened is March left us with two months of discovery.
14 Based on that, Your Honor -- let me pull my class certification -- plaintiffs had an
15 opportunity to file because the Court did deny it without prejudice. They waited --
16 call it two months and filed this renewed motion.

17 Now, Your Honor, under EDCR there's two points we made in our
18 motion to strike. EDCR 2.24(a) prohibits the renewal or rehearing of any already
19 ruled-upon motion by a court.

20 THE COURT: That's why I asked the question that I asked.

21 MR. BENDAVID: Yes. You're correct, Your Honor. They did not seek
22 leave to re-file their exact motion. Now, Your Honor, you're asking if they filed pretty
23 much the same motion. They actually filed the same motion. What they did is
24 they filed a page and a half argument about saying let's make them two subclasses,

1 and then incorporated and said we hereby incorporate our entire motion for class
2 certification and then attached it, so then they re-filed that exact denied motion.
3 We're arguing under 2.24(a) that they can't do that. That's already been ruled on.
4 That portion has to strike. So the only thing remaining is that page and a half
5 argument they made on their renewed motion. But the part that they tried to renew
6 without leave of court that was already denied has to be struck pursuant to 2.24(a).

7 In addition to that, Your Honor, 2.24(b) addresses motions for
8 reconsideration or rehearing, which gives you 10 days to file a motion for
9 reconsideration. It's been two months and then they filed it. It's literally that
10 motion. They just attached it and then said see those arguments for these two
11 new subclasses. That motion has been denied and you can't bring it back on
12 reconsideration if 10 days has already passed.

13 THE COURT: So let me again stop you there.

14 Counsel, how do we get around the fact that it appears as if the filing
15 the renewed motion -- and I apologize, I'm probably making the record-keeping here
16 crazy, going back and forth between motions, but these are so closely tied to one
17 another. How do we get around the motion to dismiss with respect to the rules that
18 apply either to the motion to reconsider, which is 10 days, and/or the fact that once
19 denied I can't reconsider, and by that same motion, by your own words, it's the
20 same motion?

21 MS. CALVERT: It's not the same. They're very similar. It's attaching --
22 there are differences.

23 THE COURT: Can I consider the one that's attached if it's already been
24 denied?

1 MS. CALVERT: I mean, the analysis that is done under NRCP 23, the
2 factors that our first motion considered, the law hasn't changed. The --

3 THE COURT: This is a procedural question.

4 MS. CALVERT: Yeah. Oh, yes, I believe you can. I believe by attaching
5 it and saying, hey, we're not going to just cut and paste these same Rule 23
6 arguments verbatim back in here, you can see our first motion because to the
7 extent we analyzed, you know, certain of the rule --

8 THE COURT: But it was denied.

9 MS. CALVERT: Yes. And so what we did to address the Court's concerns,
10 because again, we have plaintiffs, as we just discussed, who were going to have
11 Minimum Wage Amendment claims and unjust enrichment claims, some that would
12 have just have unjust enrichment claims, although I suppose not at this juncture
13 since we only have Franklin, we had representative plaintiffs that weren't going to
14 adequately represent the entire class because some of them didn't have MWA
15 claims because of the statute of limitations. The division of the subclass took care
16 of the concern of the Court, in our opinion, that, hey, we've got people here that
17 aren't going to qualify for all the claims and you're trying to, you know, have them as
18 class representatives. So to the extent we now have a class and a subclass, that
19 is a fairly large difference because it takes care of one of the concerns of the Court.

20 The other factors in looking at whether or not they had a schedule,
21 whether or not they had Social Security numbers, whether or not they filed taxes,
22 those things aren't going to change and they can't. They've already testified as
23 to those things. You know, they can't now perjure themselves and say something
24 different. So to the extent that our initial motion for class certification examined

1 and evaluated those things, they are the same, and it did make sense to us to
2 just re-put it into the motion. The other part was we then added affidavits, which
3 I know that is also part of their motion to strike because it didn't have some specific
4 language which was -- there was some screaming at the office over that, I can
5 tell you, and we put in the magic language and had them re-execute. It was an
6 oversight and a very anger-inciting oversight.

7 But that's kind of where we get to where, yes, I believe that the Court
8 can look at the motion that was previously denied that's been attached as an exhibit.
9 To the extent that we would just be making those same arguments again as to the
10 factors of NRS 608.0155, you know, we maintain that you don't have to do a merits-
11 based analysis to get to the class certification decision.

12 THE COURT: I'm more concerned about the procedural posture of this
13 case and the rules relating thereto, and that's why I think it makes sense, frankly,
14 to take this first because if I take the attachment, let's just call it an attachment, and
15 strike that from the pleadings that are before the Court in the motion for class cert,
16 I'm not sure there's enough. And if I apply the procedural rules, as Mr. Bendavid
17 urges with respect to the motion to dismiss, as much as I understand and would
18 like to give legal weight to not cutting and pasting and just dropping some of the
19 requirements, one of the things, the beauty of the law is that it does have rules that
20 require us to do things in a certain way.

21 So what I'm hearing in opposition to the motion to strike is primarily
22 we attached the first complaint or the first legal filing that had to do with class cert
23 that was denied, admittedly was denied by this Court back in April, we attached that
24 because it had information in it that we would have otherwise put into this renewed

1 motion. But it's the same thing, it's been denied and the rules for reconsideration
2 apply; we're long since past the 10 days. Am I summarizing the argument properly?

3 MR. BENDAVID: That is correct, Your Honor.

4 THE COURT: Okay.

5 MR. BENDAVID: That's on the motion to strike, and then I have obviously
6 different arguments, additional arguments with regards to opposition to that motion.

7 THE COURT: Okay. I'm going to grant the motion to strike.

8 MR. BENDAVID: Thank you.

9 THE COURT: Now, next argument.

10 MS. CALVERT: And, Your Honor, I just wanted to clarify on the granting
11 of the motion to strike. Is the Court finding that you cannot incorporate by reference
12 an exhibit?

13 THE COURT: Was the language of incorporation by reference a part of
14 the pleading?

15 MS. CALVERT: I'm going to -- I hope Andrew put that in.

16 THE COURT: And if so, does that get around the prohibition for
17 reconsideration? And I don't believe that that was briefed.

18 MS. CALVERT: I don't think it would have been -- I don't think it was raised.
19 I'm not sure.

20 THE COURT: In fact, to expedite matters for the rest of the courtroom,
21 let's me make the grant of the motion to strike without prejudice and then if there is
22 something that -- either legal authority that was argued in response to the motion to
23 strike that says that they can be considered together, and/or that there's a legal basis
24 upon which to ignore the motion for reconsideration time requirements, then it can

1 still come back before the Court.

2 MS. CALVERT: Yeah, because I think we do have in here incorporate
3 by reference the original class certification motion attached hereto as Exhibit B.
4 So I just want to make sure I'm understanding you correctly.

5 THE COURT: Then I would have to show -- I would have to be shown some
6 legal authority that says that that meets the legal requirement for getting around the
7 time frame for a motion for reconsideration of the exact same motion.

8 MR. BENDAVID: Your Honor, let me add there, in addition to that, Your
9 Honor, the Court could still deny their renewed motion as well because -- and I'll
10 address that right now if the Court wants because we did file -- we do have an
11 opposition. They have that renewed motion. If the Court was to strike that renewed
12 -- the previous motion, right, then all that's left standing in theory would then be their
13 page and a half motion that they filed.

14 THE COURT: Right.

15 MR. BENDAVID: And so -- right? Correct?

16 MS. CALVERT: Oh, yeah. No, you're right. Yeah, that's it.

17 THE COURT: And I think that's why it may have been convenient for me
18 to mix the motions, but I mean, that's really where we come out is if this, then that,
19 is the analysis. And I'm not sure how we would get around, once again, the previous
20 denial of the motion for certification. And I guess that's where we are now.

21 MR. BENDAVID: Yep.

22 MS. CALVERT: I think you're right, and looking at the calendar today, we
23 were actually talking out in the hall about what order we're going to get these done
24 in because --

1 THE COURT: So your motion to renew -- the renewed motion for
2 certification, what do you want to tell me about that that isn't already before the
3 Court?

4 MS. CALVERT: I don't think there's anything I can tell you. If the exhibits
5 are not going to be considered, there's really nothing to tell this Court.

6 THE COURT: Mr. Bendavid, anything in response?

7 MR. BENDAVID: Yes, Your Honor. What they've done is in their renewed
8 motion what they did is they said, okay, for some reason whatever happened at
9 the two large hearings and all that briefing, they took from that that if they were to
10 separate them into two subclasses, one a 2-year subclass of individuals with Social
11 Security numbers and one a 4-year subclass with Social Security numbers, somehow
12 that cured the deficiencies that they identified they couldn't even meet.

13 THE COURT: But that's not the Rule 23 analysis.

14 MR. BENDAVID: And that's correct, Your Honor. Under Rule 23 this
15 renewed motion has to stand on its own. And those individual two subclasses now
16 must meet Rule 23 and its four requirements and factors to determine whether they
17 did. They didn't do any of that analysis. And in fact, their attached motion, their
18 original motion for class certification didn't do that analysis. And this Court already
19 denied certification based on the fact that they couldn't adequately represent a class,
20 not because they didn't identify whether they had Social Security numbers or whether
21 it was two years or four years, but they simply couldn't.

22 Your Honor, in fact, in the Court's order -- I even quoted from the
23 transcript. The Court said, "We're looking at SB224, which is now 608.0155, in the
24 totality of the pleadings and the Court would find that based on their own potential

1 class representatives' own statement they in themselves would not meet the
2 standards for the class representatives. The Court further said, "Now, I appreciate
3 the part of an oral argument was the fact that the Court shouldn't consider how
4 someone treats their taxes for purposes of analysis." That was an argument they
5 made. "This Court is not looking at how they treat their taxes. The Court is looking
6 at whether or not these individuals are considering for their own purposes that they
7 would be similarly situated to the very class they are seeking to represent, and the
8 information provided in the undisputed deposition testimony shows that they would
9 not."

10 THE COURT: And that is the essence of class certification.

11 MR. BENDAVID: It is, Your Honor.

12 THE COURT: You have to first meet the requirements of the rule.

13 MR. BENDAVID: Correct. And they didn't. Not only did they not, they
14 couldn't show it in that motion. Now, the Court denied it without prejudice.

15 THE COURT: Or they didn't show it.

16 MR. BENDAVID: They did not.

17 THE COURT: They didn't do an analysis.

18 MR. BENDAVID: That's correct, Your Honor. And in fact, when that was
19 denied in March of 2017, they had two months left of discovery. The Court denied it
20 without prejudice, saying obviously we have two months left of discovery, if you can
21 somehow in discovery change my mind and come in with evidence that says that --
22 well, they did no discovery. There's no depositions. They concede that. There's no
23 issue. No one did any discovery for -- actually, we had a motion to compel discovery
24 but that was it. And so there's been no new discovery, no evidence, no anything

1 attached. It's the same. So if the Court was saying analyze it, even if the Court
2 was not to strike it, even if the Court was to take it, you're taking the already denied
3 and analyzed by this Court deposition testimony, statements whether they could
4 adequately represent, and they're just saying look at it again, which this Court
5 can't.

6 THE COURT: And I think that the issue here for me, which makes it much
7 simpler than it was certainly for Judge Kishner, and that is that hearing and all the
8 findings of that hearing bind me with respect to whether it's reconsideration, but
9 certainly I would have to look at the motion that seeks once again to certify the class
10 to see whether or not the Rule 23 requirements are met. They're not even analyzed
11 because I can't use the document that was stricken. And even if I could, by the very
12 findings of this Court that was inadequate for class cert. So without anything being
13 added to it with the proper analysis of Rule 23, it would be extraordinarily difficult
14 and I think legally incorrect for me to grant certification at this time, and that would
15 be my order.

16 MR. BENDAVID: Thank you, Your Honor.

17 THE COURT: So that takes care of the -- and again, I apologize to the
18 staff for messing up the order of these motions, but let me be clear. The plaintiff's
19 renewed motion for class cert is denied. The defendant's motion to strike the
20 renewed motion for class cert is granted. And I think the other motion was
21 dismissed. The motion to dismiss was granted, except with respect to Franklin.

22 So, Mr. Bendavid, would you please lay out each of those separately --

23 MR. BENDAVID: Yes.

24 THE COURT: -- in the order?

1 MR. BENDAVID: Yes.

2 MS. CALVERT: And just to make a record here --

3 THE COURT: Of course.

4 MS. CALVERT: -- the statements regarding the transcript of the hearing
5 are not necessarily what are -- not necessarily what is embodied in the written order.
6 And in the order itself it doesn't find that the plaintiffs have not met the requirements
7 under Rule 23 for when we look at things like commonality, typicality. What the
8 order finds is that -- let's see, finds here "based on provided undisputed deposition
9 testimony of some of the actual lead currently-named plaintiffs, the representatives
10 of the potential class do not establish that they are already in the category in which
11 they are seeking to represent." That is the basis of the order, not the other factors.

12 THE COURT: Which means they don't meet the requirement under the
13 rule for representation.

14 MS. CALVERT: Correct, and not as to the other factors in NRCP 23.

15 THE COURT: I make no findings with respect to that. That was done
16 previously. The simple fact that the matter before me currently with respect to the
17 renewed motion for certification does not in any way meet the requirements of
18 Rule 23, period.

19 MS. CALVERT: And I understand, Your Honor. I just wanted to make it
20 clear because I know I'm going to have to answer some questions when I get back
21 to the office.

22 THE COURT: Of course. I understand. And, you know, one of the things
23 that I really appreciate is, you know, and we've said this -- the supreme court has
24 said this repeatedly, make your record. Make it no matter what. Make the record.

1 So you did exactly the right thing.

2 So, thank you both.

3 MR. BENDAVID: Thank you, Your Honor.

4 MS. CALVERT: Thank you, Your Honor.

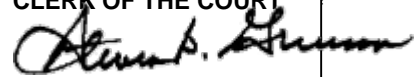
5 THE COURT: Thank you.

6 (PROCEEDINGS CONCLUDED AT 11:11 A.M.)

7 * * * * *

8
9 ATTEST: I do hereby certify that I have truly and correctly transcribed the
10 audio/video proceedings in the above-entitled case to the best of my ability.

11 
12 Liz Garcia, Transcriber
13 LGM Transcription Service
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19 **DISTRICT COURT**
20 **CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

AND RELATED COUNTERCLAIMS

Case No.: A-14-709372-C
Dept. No.: 31

**NOTICE OF ENTRY OF
FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT ON
DEFENDANT'S COUNTERCLAIMS
and DEFENDANTS MOTION FOR
SUMMARY JUDGMENT AGAINST
PLAINTIFFS STACIE ALLEN AND
MICHAELA MOORE**



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1 Please take notice that the FINDINGS OF FACT AND CONCLUSIONS OF LAW
2 ON PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON DEFENDANT'S
3 COUNTERCLAIMS and DEFENDANTS MOTION FOR SUMMARY JUDGMENT
4 AGAINST PLAINTIFFS STACIE ALLEN AND MICHAELA MOORE was entered in the
5 above entitled case by the Honorable Joanna S. Kishner on the 1st day of August, 2017.
6

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

8 DATED this 3rd day of August, 2017.

9 **MORAN BRANDON BENDAVID MORAN**

10
11 /s/ Jeffery A. Bendavid

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19 /s/ Gregory J. Kamer

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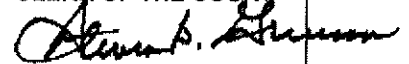
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13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

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

21 Plaintiffs,

22 vs.

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

28 Defendants.

AND RELATED COUNTERCLAIMS

Case No.: A-14-709372-C
Dept. No.: 31

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

AND

**DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AGAINST
PLAINTIFFS STACIE ALLEN AND
MICHAELA MOORE**



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1 Plaintiffs, JACQUELINE FRANKLIN, ASHLEIGH PARK, LILY SHEPARD,
2 STACIE ALLEN, MICHAELA DEVINE, KARINA STRELKOVA, AND DANIELLE
3 LAMAR, and JACQUELINE FRANKLIN, individually and on behalf of all persons
4 similarly situated, (the "Plaintiffs") Motion for Summary Judgment on Defendant's
5 Counterclaims, with LAUREN CALVERT, ESQ. of MORRIS//ANDERSON, appearing on
6 behalf of Plaintiffs, and Defendant, RUSSELL ROAD FOOD AND BEVERAGE LLC'S
7 ("Defendant") Motion for Summary Judgment Against Stacie Allen and Michaela Moore,
8 with JEFFERY A. BENDAVID, ESQ. and STEPHANIE J. SMITH, ESQ. of MORAN
9 BRANDON BENDAVID MORAN, appearing for Defendant, came on for hearing and on
10 June 1, 2017, in Department 31 of the above-titled Court, with the Honorable Judge Joanna
11 Kishner presiding. The Court having considered the pleadings, papers, and supplements
12 thereto, and the arguments of counsel, and good cause appearing finds and orders as follows:

13
14
15 **FINDINGS OF FACT**

- 16 1. Plaintiffs Michaela Devine aka Moore and Stacie Allen made wage claims pursuant
17 to NEV. CONST Article XV, Sect. 16 ("MWA").
18
19 2. Plaintiffs Michaela Devine aka Moore and Stacie Allen performed at Defendant's
20 venue more than two years prior to filing their wage claims pursuant to the MWA.
21
22 3. The Court finds that there could be material issues of fact as to unjust enrichment
23 damages Plaintiffs, Stacie Allen and Michaela Moore could assert.
24
25 4. Defendant owned and operated a gentlemen's club that Plaintiffs performed exotic
26 dances in.
27
28 5. There are material issues of fact as to the parties' respective rights due to Plaintiffs'
allegations and the affirmative defenses of the Parties.



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- 1 6. Defendant's allegations for its claim for conversion do not demonstrate wrongful
2 dominion over the property of Defendant.

3 CONCLUSIONS OF LAW

- 4 1. Since the applicable statute of limitations on claims for wages pursuant to the MWA
5 is two years, Plaintiffs Michaela Devine aka Moore and Stacie Allen fall outside the
6 applicable statute of limitations to assert claims pursuant to the MWA.
7
8 2. As there are material issues of fact as to the unjust enrichment damages Plaintiffs
9 could assert, summary judgment cannot be granted as to Plaintiffs, Michaela
10 Devine aka Moore and Stacie Allen's claims for unjust enrichment at this juncture.
11
12 3. Since there are material issues of fact as to the parties' respective rights, summary
13 judgment cannot be granted as to Defendant's claim for breach of contract (offset), at
14 this juncture.
15
16 4. Defendant's claim for breach of good faith and fair dealing would be premised on
17 Plaintiffs' breach by an operation of law, which is not permitted in this matter, and
18 this claim fails as a matter of law and summary judgment is appropriate.
19
20 5. A claim for conversion must show wrongful dominion over the property of the
21 claiming party, and Defendant did not sufficiently allege wrongful dominion, and
22 therefore summary judgment is appropriate.
23
24 6. Material issues of fact remain regarding Defendant's claim for unjust enrichment,
25 therefore summary judgment is not appropriate at this juncture.
26
27 7. ^{There is not sufficient evidence to determine}
~~The Court has not decided~~ whether Plaintiffs are employees or independent
28 contractors, therefore summary judgment on Defendant's declaratory judgment claim
is not appropriate at this juncture.



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1 **IT IS HEREBY ORDERED** that Plaintiffs' Motion for Summary Judgment is
2 GRANTED as to Defendant's Claims for Breach of Implied Covenant of Good Faith and
3 Fair Dealing and Conversion, only.

4 **IT IS FURTHER ORDERED** that Plaintiffs' Motion for Summary Judgment is
5 DENIED, without Prejudice, as to Defendant's claims for Breach of Contract (Offset),
6 Unjust Enrichments, and Declaratory Judgment.
7

8 **THE COURT FURTHER ORDERS** that Defendant's Motion for Summary Judgment
9 is GRANTED as to Plaintiffs, Stacie Allen and Michaela Moore's first claim for relief for
10 unpaid wages pursuant to the Minimum Wage Amendment of the Nevada Constitution.
11

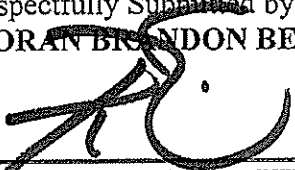
12 **THE COURT FURTHER ORDERS** that Defendant's Motion for Summary Judgment
13 is DENIED, without Prejudice, as to Plaintiffs, Stacie Allen and Michaela Moore's claim for
14 unjust enrichment.

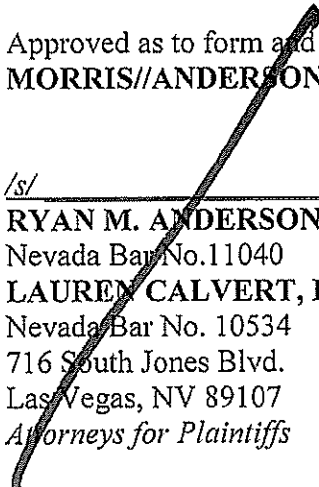
15
16 DATED this 26 day of July, 2017.

17  JOANNA S. KISHNER
18 HONORABLE JOANNA S. KISHNER
19 DISTRICT COURT JUDGE, DEPT. XXXI

20 Respectfully Submitted by:
21 **MORAN BRANDON BENDAVID MORAN**

Approved as to form and content:
MORRIS//ANDERSON

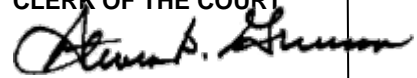
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DISTRICT COURT

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

REPLY IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT ON EMPLOYEE STATUS

1 **REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON**
2 **EMPLOYEE STATUS**

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

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

7 DATED this 9th day of August, 2017.

8 **MORRIS ANDERSON**

9
10 By: /s/ Lauren Calvert

11 **LAUREN CALVERT, ESQ.**

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14 Las Vegas, Nevada 89107

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20 *Attorneys for Plaintiffs*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is an employee misclassification case. Defendant (the “Club”) makes all of its dancers sign an “Entertainers Agreement” which purports to characterize dancers as licensees who must pay to rent space in the club to conduct their own allegedly independent business with their “clients” (the Club’s “patrons”). *See, e.g., Reich v. Circle C. Investments, Inc.*, 998 F.2d 324, 329 (5th Cir. 1993) (“We reject the defendants’ creative argument that the dancers are mere tenants who rent stages, lights, dressing rooms, and music from [the club]”). But the undisputed facts here show the Club is not a landlord leasing space to independent businesswomen in a facility the Club just happens to license and run as a strip club; nor are they providing services to the Club as independent contractors. Rather, Defendant treats its dancers as employees pursuant to either/both NRS 608.0155 and/or the economic realities test.

II. ARUMENT

In its opposition, Defendant argues that Plaintiff Franklin agreed to and behaved as an independent contractor. Plaintiff herein corrects Defendant as to both of these assertions, as shown by the deposition testimony of Plaintiff and Defendant’s Rule 30(b)(6) designee and the discovery produced by both parties. Defendant also maintains that the rules of the Club were not *actually* enforced. However, it is not disputed that these rules and policies could have been enforced, that they were in fact enforced—albeit in a sloppy fashion— and that they are plainly written in the Entertainer Agreement, in its rules and policies, and in multiple fliers posted throughout the work area of the dancers. Defendant has no basis for its assertion other than the testimony of its own absentee manger and the parsing of words of dancers in deposition without regard for a layperson’s usage or vernacular of common words.

1 Defendant had the ability to enforce its rules and guidelines whenever it chose and it in fact
2 enforced them against Plaintiff multiple times in a manner inconsistent with a principal-independent
3 contractor relationship. That on occasion certain managers did not enforce the rules and guidelines
4 against favored dancers, or demanded a tip-out in lieu of enforcement, only supports Plaintiff's
5 position.
6

7 **A. Defendant's Mischaracterization of the Deposition Testimony of Plaintiff**
8 **Franklin**

9 Plaintiffs find it necessary to correct Defendant's version of Plaintiff Franklin's testimony at
10 deposition. Contrary to Defendant's assertions, Plaintiff Franklin (the sole remaining Plaintiff not
11 dismissed) testified during deposition that Defendant exercised control to a degree more than
12 sufficient to establish her status as an employee and not an independent contractor.¹ Plaintiff
13 testified that she could not determine her outfits or manner of her performances. *See* Depo. of
14 Franklin, attached hereto as "**Exhibit 1**," at 40:1-23 (had to be on stage "at your time and only your
15 time" and requests otherwise denied at Club's discretion). The Club enforced a specific dance
16 routine: two stage rotations were to be performed consecutively, for 4 songs each, and failure to
17 comply would subject Dancers to fines or would require additional tip-outs to be excused from the
18 obligation. *Id.* at 64:14-66:21. A dancer could not leave the stage until the next dancer arrived to
19 take over her position. Plaintiff Franklin also testified that if the house mom or other personnel at
20 the Club did not like a dancer's outfit, hair or make-up, the dancer would be told so and asked to
21 change. *Id.* at 28:15-29:18. This testimony was based on her personal observations and experiences.
22 That she personally was not reprimanded for the dress code does not mean that it was not a rule or
23 enforced; it simply means that she complied with that rule.
24
25
26

27 ¹ Because Plaintiffs' Motion for Class Certification was denied and all Plaintiffs except for Franklin
28 have been dismissed involuntarily, the relevance of the non-parties' testimony to the claim of
Franklin is questionable, especially where Defendant maintains that each dancer's status as an
employee or independent contractor must be determined on an individual basis.

1 Plaintiff Franklin also testified that she was subjected to fees and fines and explained how
2 the elective off-stage fees strewn throughout her Entertainer Charge Summary were in fact
3 fines/penalties for missed stage calls, because she did not pay to go off stage on the dates listed. *Id.*
4 at 62:21-64:13; 89:1-90:18 (“missed stage” penalty showed up as same \$40 charge as pre-paid “off-
5 stage” fee, but on the following day). Plaintiff Franklin also testified about offenses for which she
6 was told she could be fired or for which she observed other dancers fired. *Id.* at 79-81: 83:9-23
7 (dancers would be fired and blackballed if they didn’t tip VIP hosts and management enough money,
8 which happened to Franklin; dancers fired for “stealing” from the Club by refusing to perform
9 “services,” refusing dance dollars or charging patron’s credit cards). Plaintiff Franklin filed her
10 supplemental and amended interrogatory responses on July 21, 2017, attached hereto as “**Exhibit**
11 **2,**” pursuant to the Order Compelling Discovery Responses of Plaintiff, which confirms each date
12 she was fined. Plaintiff Franklin testified about other repercussions for not following the Club’s
13 rules. *See* Ex. 1 at 48:3-24 (assaulted and physically shoved out VIP repeatedly by hosts as retaliation
14 for not tipping); *Id.* at 124:4-19 (knocked to ground by host when trying to approach incoming
15 guests).

16 Defendant states Plaintiff had a “very large ability” to negotiate prices for dances. *Oppo.* to
17 MSJ at 10:12-15. Plaintiff Franklin unequivocally testified that the Club set all of the price schedules
18 for lap dances and VIP times and that under no condition could she ever alter the prices set by the
19 Club. *Id.* 36:2-23. The VIP hosts would enforce compliance with the set prices, and Plaintiff obeyed
20 the rules regarding set prices out of fear of being reprimanded. *Id.* at 33:1-34:12; *Id.* at 32:6-34:12
21 (pricing enforced by management; negotiation of prices prohibited by written rules). This testimony
22 is confirmed by the Club’s written policy at VII of the Entertainer Guidelines concerning “Hustling,”
23 a term intended to shade Plaintiff as an unscrupulous gold-digger, but which merely denoted
24 compliance to the strict pricing schedule.

1 Defendant undisputedly monitored and tracked Dance Dollars issued to patrons and Dance
2 Dollars redeemed by dancers through its ClubTrax software system. Plaintiff Franklin also testified
3 that VIP hosts expected to be told the amounts Dancers made in VIP so that hosts could calculate
4 the tip out to demand of Dancers. *Id.* at 59:2-21. These tip-outs were not “optional” in any sense of
5 the word. *Id.* at 48:3-24 (“expected” in the sense that if she did not tip out as directed to, she was
6 threatened, assaulted and battered by hosts as retaliation). As to the Dance Dollars, Plaintiff could
7 refuse them only if she wanted to perform for free. *Id.* at 39:9-25 (refusal of dance dollars meant not
8 getting paid at all). Plaintiff testified there was not an alternative to the Club’s enforcement of the
9 Dance Dollar skimming scheme. *Id.* at 79:2-81:12 (dancers could not use their PayPal or Square
10 readers to run patrons’ credit cards; would be terminated even though other independent contractors
11 frequently use).

14 Plaintiff Franklin did not work at any other gentlemen’s clubs during the time she danced at
15 the Crazy Horse III. *Id.* at 14:5-9. Whether or not she could have done so is speculative and
16 hypothetical. Defendant, contrary to assertions otherwise, clearly did not care whether or not its
17 dancers had prior experience dancing or if they could even dance at all: Plaintiff Franklin testified
18 she did not have to audition before she began working for Defendant. *Id.* at 16:5-16:12. Plaintiff
19 Franklin also testified she never promoted herself as a dancer—instead she assisted the general
20 manager in advertising and promoting the Club by handing out his business card. *Id.* 26:17-27:7.
21 Plaintiff Franklin also did not expend much (or anything) on make-up or hair and used clothing she
22 already had for costumes. *Id.* 71:10-22. She did testify to purchasing new dance shoes, which were
23 specific to the Club’s dress code although not necessary in order to perform a dance, every few
24 months.

27 Plaintiff Franklin testified that she could not leave whenever she wanted and was prevented
28 from leaving early when she requested to do so. *Id.* at 50:15-51:15. Additionally, for Defendant to

1 cast Plaintiff's departure from the Club as voluntary or as a result of being too sensitive to rudeness
2 is unwarranted. Plaintiff testified she was blackballed from the VIP areas and prevented from making
3 money by the Club's personnel. *Id.* at 73:6-13.

4
5 Plaintiff Franklin testified that she did not know the differences between an independent
6 contractor and employee; she merely signed whatever paperwork she was given in order to begin
7 performing; and she assumed it was just an industry standard of Clubs in Las Vegas. *Id.* at 16:8-
8 18:14. Thus, even if one could contract away his or her employee status or rights to a minimum
9 wage, Plaintiff Franklin certainly did not do so and could not have done so under Nevada law given
10 her misunderstanding of fact and law and Defendant's knowing exploitation of such. *See Home*
11 *Savers, Inc. v. United Sec. Co.*, 103 Nev. 357, 358-59, 741 P.2d 1355, 1356-57 (1987) (adopting
12 Restatement (Second) of Contracts § 153 (1981)).
13

14 **B. Defendant's Contract Exceeds Basic Legal Obligations Encompassing Erotic**
15 **Dance Establishments**

16 Plaintiff appreciates that Defendant operates a highly regulated business, selling liquor and
17 exotic dances. *See* Clark County Code §§ 6.160.030, 6.160.050² and 6.160.110.³ Plaintiff has never
18 contended that an independent contractor (or any worker or any employee) should not abide by any
19 laws, rules or guidelines. The regulations and laws applicable to those working in Defendant's club
20 applies equally to all of those within the confines of the establishment, whether the worker is an
21 employee or something else, and whether or not the person is a patron or even an owner. *See* CCC
22

23
24 ² Which states at (a) "No person, firm, partnership, corporation or other entity shall publicly display or expose
25 or suffer the public display or exposure, with less than a full opaque covering, of any portion of a person's
26 genitals, pubic area or buttocks in a lewd and obscene fashion."

27 ³ For example: Dancers shall not appear in any public area of the licensed location while topless or in the
28 nude unless dancing; patrons must remain in a vertical position from the waist up at all times; Dancers shall
not mingle with the patrons while in an unclothed state; a Dancer may not permit her buttocks to make contact
with the face, hands, anus, genitals or female breasts of any other person; and a Dancer may not permit any
part of her body to make contact with the anus, pubic region, genitals, or female breasts of any other person.
However, the clothed anus, pubic region, and genitals of a dancer may touch the leg(s) of a patron and a
dancer may touch her own clothed or unclothed breasts. There is also no "one foot on the floor" rule.

1 6.160.110. However, Defendant's rules go far beyond the legal strictures of the Clark County Code,
2 State or Federal law to a degree that evidences Plaintiff's employee status.

3 There is no legal requirement that commands erotic dancers must perform on stage. There is
4 no legal requirement that if on stage, dancers remove all clothing but a G-string on the first song and
5 leave their clothing off for every song on stage thereafter. *See* Defendant's Response to Interrogatory
6 No. 2 and document RR0053 at ¶¶1 and 23. There are no legal requirements forbidding the running
7 of a tab or preventing a dancer from asking a patron to cover the mandatory tip-outs and dance dollar
8 redemption fees she would have to otherwise pay. Response to Interrogatory No. 2 and document
9 RR0053 at ¶¶ 13 and 16. There is no legal requirement that mandates a dancer can never turn down
10 a drink from a patron or that she must charge a set price of \$20 per lap dance. *See* document RR0054.
11 Defendant's assertion that the rules simply confirmed existing legal obligations is nonsense.
12

13
14 Defendant also maintains that even though the contract did not require explicitly for dancers
15 to hold and maintain business licenses and sheriff's cards, nothing prevented an oral agreement or
16 oral amendment to the written contract. Defendant seems to have forgotten Clause 12 of the
17 Agreement, which states that no addition or amendment to the contract is valid unless in writing and
18 signed by the parties. Defendant's imaginary oral side-agreement is therefore ineffective.
19

20 **C. Defendant Does Not Dispute That Dancers Meet the Economic Realities Test—and**
21 **Thus the Factors of NRS 608.0155**

22 Defendant's opposition does not contend that Plaintiff Franklin cannot meet the economic
23 realities test. Rather, Defendant states Plaintiff does not establish that she is an employee.
24 Defendant's posturing of the contested legal issue is a fallacy. Under NRS 608.0155, Plaintiff can
25 never prove she is an employee. Even if she does not meet the statute's criteria, Defendant maintains
26 she will still not conclusively be an employee. Defendant does not state what the Court would assess
27 if and when the criteria of NRS 608.0155 are not met. There is no logical conclusion other than the
28

1 economic realities test, which Plaintiff continues to maintain is the appropriate test under the MWA.
2 Plaintiff will not rehash those arguments with which the Court is now well-acquainted.

3 Nevertheless, it is sufficient to say that the Nevada legislature did not presume or intend to
4 usurp federal law. If the economic realities test is undisputedly met, then so must too NRS 608.0155.
5 Such is easily accomplished. While Defendant “wins” the first factor because Plaintiff has a social
6 security number, Defendant cannot prove the second factor, that the contract requires state business
7 license registration or local licensing, bonding or insurance. The next section of factors, in essence,
8 have been analyzed by the economic realities’ analysis laid out previously *ad nauseum*. To briefly
9 recap:
10

11 The first sub-factor asks whether the putative contractor has “control and discretion over the
12 means and manner of the performance of any work and the result of the work, rather than the means
13 or manner by which the work is performed, is the primary element bargained for by the principal in
14 the contract.” NRS 608.0155(1)(c)(1). The Club exerts significant control over its dancers while
15 they are on the job by, for example, enforcing guidelines and rules by assessing fines against dancers
16 and/or firing them, setting up one or more stages and implementing a rotation system whereby
17 dancers would be called up to perform on stage and establishing and controlling access to a
18 designated “VIP” room. As outlined above, this has all been testified upon by Plaintiff Franklin.
19 Additionally, Dancers could not go in other various areas of the Club unless they possessed a favored
20 status with management. *See* Ex. 1 at 37:14-38:5.
21

22 Defendant instructed Plaintiffs how to dance and enforced requirements over the style of
23 dance they could perform. *See* Ex. 1 at 40:1-23 (stage dance requirements); *id.* at 64:14-66:21 (stage
24 dance rotation requirements). All dancers were required to attend an orientation that reinforced these
25 requirements. *See* RR0132. While Defendant can claim that dancers are free to perform in whatever
26 style they prefer, the Club requires dancers to remove all clothing but a G-string on the first song on
27
28

1 stage and to leave their clothing off for every song on stage thereafter. Response to Interrogatory
2 No. 2 and document RR0053 at ¶¶1 and 23. This limits the style of dance to adult exotic dancing
3 and prohibits by its terms other styles of dancing more commonly performed (e.g., ballet, line
4 dancing, folk, jazz, ballroom or tap).

5
6 The second part of NRS 608.0155(1)(c)(1) requires that “the result of the work, rather than
7 the means or manner by which the work is performed, is the primary element bargained for by the
8 principal in the contract.” Regardless of the extent of control, this sub-factor clearly cannot be met
9 because, according to the contract the Club drafted and made its dancers sign, the dancers do not
10 perform any work for the Club but merely lease space in which to perform their own independent
11 business. The primary element bargained for in the contract, as characterized by Defendant, could
12 not be dancing and could not be making money from dancing because the contract didn’t require a
13 number or quota of dances to be performed or money to be earned. Plaintiff, per Defendant, could
14 perform zero dances if she wished to, and she could perform zero lap dances, stage dances or VIP
15 dances if she preferred—she could simply pay to come in the Club and lounge about.⁴
16

17 The second sub-factor asks whether “the person has control over the time the work is
18 performed.” NRS 608.0155(1)(c)(2). This sub-factor cannot be met because dancers perform no
19 work for the Club and, in any event, this provision expressly states it does not apply “if the work
20 contracted for is entertainment.” NRS 608.0155(1)(c)(2). Even if the Club had contracted with its
21 dancers to provide dancing services, section (c)(2) in that case simply would not apply.
22
23
24
25

26 ⁴ To be clear, the Club makes money from the sale of liquor, food, tobacco and entrance fees of patrons who come to
27 the strip club to see dancers. *See* Depo of Ragano, attached to Plaintiff’s Motion and Oppo. to Defendant’s MSJ at 66
28 (“A. Well, when the guys come in and purchase alcohol, food, retail, tobacco, the money’s all made on alcohol, food and
beverage. Q. How does that relate to the entertainer, though? Does it relate to the entertainer’s work? A. To her work?
No, no. No. The more they go to VIP, the more the drinks are, the more money the club makes. The more people in the
building, the more money the club makes.”). This is of course in addition to the monies extracted from dancers.

1 Assuming, *arguendo*, the section applies, the Club controls the time the work is performed,
2 including the length of time for which dances were performed patrons. Time for dances to be
3 performed by Dancers in order to receive \$100 was similarly measured (the length of 3 songs), and
4 time in VIP was measured in 30-minute increments. Patrons knew of VIP pricing as related to time
5 allotments specifically because it was explained to them by the host at the VIP podium, not by the
6 dancers. Depo. of Ragano, at p. 30. Time spent in VIP rooms by dancers was admittedly tracked by
7 the Club, and performances were stopped by managers based upon the time allotment. Depo. of
8 Ragano at 47:20-21.

10 The fourth sub-factor asks whether the dancers are “free to hire employees to assist with the
11 work.” NRS 608.0155(1)(c)(4). The Entertainer Agreement clearly states that dancers “may not
12 assign or delegate any of his or her rights of [sic] obligations hereunder without first obtaining the
13 prior written consent of The Crazy Horse III.” Franklin did not hire anyone to assist her with
14 **dancing**. If a dancer desired someone to assist her with the work of dancing, such as a dance partner,
15 that person would have to be granted access to the Club by management, obtain the requisite licenses,
16 audition and abide by the Club’s rules as well. *See* Ex. 1 at 71:20-72:7 (could not bring someone to
17 help her with hair or make-up inside of the Club).

20 The fifth sub-factor asks whether the dancers contribute “a substantial investment of capital
21 in the business of the person.” NRS 608.0155(1)(c)(5). Here, it is undisputed that dancers are
22 required to make no capital investment in the Club facilities, rent, advertising, maintenance, food,
23 beverage, other inventory or staffing efforts (all of which is provided by the Club). Plaintiff testified
24 she used her own existing outfits and make-up, and little to nothing was spent on these items for her
25 work at Crazy Horse III. Ex. 1 at 71:10-22.

27 Contrary to the Club’s assertion, dancers could not bring into the Club their own base of
28 customers. This is because the Club required patrons to pay an entrance fee, purchase dance dollars

1 if the patron did not have cash, and check-in with security before entering the premises. None
2 therefore invested in cultivating a customer base or expended money in maintaining such. Indeed,
3 Plaintiff Franklin expended time handing out business cards which promoted the club and its general
4 manager, not herself as a dancer, and she maintained not even a social media presence to advertise
5 her dancing.
6

7 The investment of Dancers in “obtaining of... other permission from the principal to access
8 any work space of the principal” and/or the “[l]ease of any work space from the principal,” according
9 to Defendant’s own representations, was marginal because Plaintiff could access the Club during
10 times for which no stage fee was levied or a reduced fee was charged. While Plaintiff disputes that
11 she didn’t have to pay stage fees and fines as a condition of work, for purposes of this motion,
12 Defendant has already denied the amount was substantial. The lease of work space also includes
13 “the lease of ordinary tools, materials and equipment” because the work space contained the staging,
14 poles, lighting equipment and sound equipment utilized by Plaintiffs in dancing.
15

16 **III. CONCLUSION**

17 The Club’s owners have made **a lot** of money off its dancers by treating them as independent
18 businesswomen who “choose” to rent space in its facility, which just happens to be set up and heavily
19 marketed as a strip club. It is a lucrative business model, but it is illegal and exploitative. NRS
20 608.0155 does not apply to MWA claims and, even if it did, the outcome would not change. Plaintiff
21 is entitled to judgment as a matter of law as to their employee status because the undisputed facts in
22 the record clearly establish that the economic reality of the relationship between the Club and its
23 dancers is identical to the economic reality of dependence conclusively identified in so many other
24 dancer misclassification cases.
25

26
27 ///

28 ///

1 DATED this 9th day of August, 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 _____ day of July, 2017, I served the foregoing ***REPLY IN***
4 ***SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON EMPLOYEE***
5 ***STATUS*** as follows:
6

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

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

11 ☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile
12 number(s) shown below and in the confirmation sheet filed herewith. Consent to
13 service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by
14 facsimile transmission is made in writing and sent to the sender via facsimile within
15 24 hours of receipt of this Certificate of Service.

16 Gregory J. Kamer, Esq.
17 KAMER ZUCKER ABBOTT
18 3000 W. Charleston Blvd., Suite 3
19 Las Vegas, Nevada 89102

20 Jeffery A. Bendavid, Esq.
21 MORAN BRANDON BENDAVID MORAN
22 630 S. 4th Street
23 Las Vegas, Nevada 89101

24 *Attorneys for Defendants*

25 _____
26 /s/ Erickson Finch
27 An employee/agent of **MORRIS//ANDERSON**
28

EXHIBIT 1



Transcript of the Testimony of

Jacqueline Franklin

Date Taken: January 10, 2017

Case: JACQUELINE FRANKLIN v. RUSSELL ROAD
FOOD AND BEVERAGE, LLC, et al.

Case No.: A-14-709372-C

Las Vegas Reporting
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Franklin
January 10, 2017

Page 1	Page 3
<p>DISTRICT COURT CLARK COUNTY, NEVADA</p> <p>JACQUELINE FRANKLIN,) ASHLEIGH PARK, LILY) SHEPARD, STACIE ALLEN,)CASE NO.: A-14-709372-C MICHAELA DIVINE, VERONICA)DEPT NO.: 31 VAN WOODSEN, SAMANTHA) JONES, 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)</p> <p>DEPOSITION OF JACQUELINE FRANKLIN Taken at Moran Brandon Bendavid Moran on Tuesday, January 10, 2017 at 1:30 p.m. at 630 South Fourth Street Las Vegas, Nevada 89101</p> <p>Reported by: Trina K. Sanchez, CCR No. 933, RPR</p>	<p>1 LAS VEGAS, NEVADA, TUESDAY, JANUARY 10, 2017; 2 1:30 P.M. 3 -000- 4 5 (In an off-the-record discussion held prior to the 6 commencement of the deposition proceedings, counsel 7 agreed to waive the court reporter requirements 8 under Rule 30(b)(4) of the Nevada Rules of Civil 9 Procedure.) 10 11 Whereupon, 12 13 JACQUELINE FRANKLIN, 14 having been first duly sworn to testify to the 15 truth, the whole truth and nothing but the truth, 16 was examined and testified as follows: 17 18 EXAMINATION 19 BY MS. SMITH: 20 Q. All right. Ms. Franklin, we just met off 21 the record, but my name is Stephanie Smith. I'm 22 here representing Defendant Russell Road Food and 23 Beverage, LLC, doing business as Crazy Horse III 24 Gentlemen's Club. Throughout the deposition, I'll 25 most likely just be using the term "Crazy Horse," and that's to mean defendant and/or the club</p>
Page 2	Page 4
<p>1 APPEARANCES: 2 3 For the Plaintiffs: 4 5 LAUREN CALVERT, ESQ. 6 MORRIS ANDERSON LAW 7 716 South Jones Boulevard 8 Las Vegas, Nevada 89107 9 10 For the Defendants: 11 12 STEPHANIE J. SMITH, ESQ. 13 MORAN BRANDON BENDAVID MORAN 14 630 South Fourth Street 15 Las Vegas, Nevada 89101 16 17 I N D E X 18 19 WITNESS: PAGE 20 JACQUELINE FRANKLIN 21 Examination by Ms. Stephanie Smith 3 22 Examination by Ms. Lauren Calvert 123 23 Examination by Ms. Stephanie Smith 125 24 25 E X H I B I T S 26 27 EXHIBITS DESCRIPTION PAGE 28 EXHIBIT A Entainer Login by Date 85 29 EXHIBIT B Entainer Charge Summary 86 30 EXHIBIT C Answers to Interrogatories 99 31 EXHIBIT D Responses to Defendant's Requests 99 32 for Production of Documents</p>	<p>1 itself. 2 Does that make sense? 3 A. Okay. Yes, it does. 4 Q. All right. You were just sworn in by the 5 court reporter. That oath is the same oath that 6 you would take in a court of law and carries with 7 it the penalties of perjury should you not tell the 8 truth here today; all right? 9 A. Okay. 10 Q. After the deposition ends, at some point 11 you will be sent a copy or likely your counsel will 12 be sent a copy of your deposition transcript that's 13 going to reflect everything that we say here today. 14 You'll have the opportunity to make minor 15 corrections, or in some cases, there might be a 16 space for someone's last name or a precise year, 17 where you lived somewhere, for example. You can 18 make those changes, and then, you know, counsel 19 will be able to review them. I'll see the changes 20 that you make. If you change something 21 substantive, such as a "yes" to a "no" or you start 22 filling in more facts to a question, something like 23 that, then I'll most likely be able to recall you 24 in here and question you about those changes. 25 Does that make sense?</p>

1 (Pages 1 to 4)

Page 5	Page 7
<p>1 A. Okay. Yes.</p> <p>2 Q. Have you consumed any drugs or alcohol in</p> <p>3 the last 12 hours?</p> <p>4 A. No, I haven't.</p> <p>5 Q. Okay. So is there any reason that we</p> <p>6 cannot move forward today and take your best</p> <p>7 testimony?</p> <p>8 A. No.</p> <p>9 Q. Any medications?</p> <p>10 A. No.</p> <p>11 Q. Okay. So since the court reporter is</p> <p>12 taking down everything we're saying, you're doing a</p> <p>13 good job of it already, but it's important to try</p> <p>14 to answer with "yes" or "no" or "okay," just clear</p> <p>15 responses. "Uh-huh," stuff like that, nodding, it</p> <p>16 just makes it difficult for the court reporter to</p> <p>17 take down the actual response. I'm going to try to</p> <p>18 ask you clear questions. That might not always</p> <p>19 happen. So if you have a question about what I've</p> <p>20 asked you, let me know if you need a clarification</p> <p>21 or you're confused about what I've asked.</p> <p>22 A. Okay.</p> <p>23 Q. I will try to wait until you're finished</p> <p>24 answering a question before I start my next</p> <p>25 question, and I would just ask that you try to do</p>	<p>1 If I asked you how tall my mom was, you</p> <p>2 would completely be guessing, right?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. Perfect.</p> <p>5 You can take a break whenever you would</p> <p>6 like. I know that you mentioned a situation with</p> <p>7 your friend, so if you have to take a phone call or</p> <p>8 use the restroom, it's perfectly fine. I would</p> <p>9 just ask that if I have a question pending, that</p> <p>10 you wait until after you respond to the question</p> <p>11 and then we can go ahead and take a break; okay?</p> <p>12 A. Okay.</p> <p>13 Q. Can you go ahead and state your full name</p> <p>14 and spell it for the record, please.</p> <p>15 A. Jacqueline, J-a-c-q-u-e-l-i-n-e,</p> <p>16 Franklin, F-r-a-n-k-l-i-n.</p> <p>17 Q. All right. Have you had your deposition</p> <p>18 taken before?</p> <p>19 A. No.</p> <p>20 Q. We'll try to make this painless.</p> <p>21 Are you currently involved in any other</p> <p>22 litigation in Nevada?</p> <p>23 A. No.</p> <p>24 Q. What about in any other states?</p> <p>25 A. No.</p>
Page 6	Page 8
<p>1 the same. A lot of times, it's natural to sort of</p> <p>2 jump in or you might anticipate what I'm asking and</p> <p>3 already have the answer. Just, again, it makes it</p> <p>4 hard for the court reporter to record two people</p> <p>5 talking at the same time.</p> <p>6 From time to time after a question, your</p> <p>7 attorney might have an objection. So try to pause</p> <p>8 before you respond to a question so that she can</p> <p>9 make her objection clear for the record. Sometimes</p> <p>10 that doesn't happen. That's perfectly natural.</p> <p>11 It's okay. We would just pause and let Ms. Calvert</p> <p>12 make her objection. However, you will have to go</p> <p>13 ahead and answer that question after her objection</p> <p>14 unless she specifically instructs you not to.</p> <p>15 A. Okay.</p> <p>16 Q. Okay. Now, going forward, I am entitled</p> <p>17 to your best estimate. However, I do not want you</p> <p>18 guessing.</p> <p>19 Do you know the difference between a</p> <p>20 guess and an estimate?</p> <p>21 A. Yes.</p> <p>22 Q. What's your understanding of an estimate</p> <p>23 versus a guess?</p> <p>24 A. An estimate is more educated.</p> <p>25 Q. Okay. Perfect. Right.</p>	<p>1 Q. Have you ever been part of a class in</p> <p>2 Nevada, in a class action lawsuit?</p> <p>3 A. No.</p> <p>4 Q. Okay. Do you understand that you are a</p> <p>5 named plaintiff in this current lawsuit?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And you understand that you're</p> <p>8 bringing claims against my client, Russell Road</p> <p>9 Food and Beverage?</p> <p>10 A. Yes, I do.</p> <p>11 Q. Okay. What's the highest level of</p> <p>12 education you've received?</p> <p>13 A. I have an EMT certification and a high</p> <p>14 school diploma.</p> <p>15 Q. Where did you go to high school?</p> <p>16 A. West Virginia.</p> <p>17 Q. What year did you graduate?</p> <p>18 A. 2004.</p> <p>19 Q. And when did you get your EMT</p> <p>20 certification?</p> <p>21 A. December of 2016, last month.</p> <p>22 Q. Congratulations.</p> <p>23 A. Thank you.</p> <p>24 Q. That is quite an accomplishment.</p> <p>25 A. (Witness nods head.)</p>

Page 9	<p>1 Q. And is that EMT certification for here in</p> <p>2 Las Vegas?</p> <p>3 A. Yes.</p> <p>4 Q. Or the State of Nevada?</p> <p>5 A. Southern Nevada, yes.</p> <p>6 Q. Okay. I don't -- I'm not sure how the</p> <p>7 regions work. So Southern Nevada?</p> <p>8 A. Correct. Well, the certification is</p> <p>9 national, but my license to practice is given out</p> <p>10 by the Southern Nevada Health District.</p> <p>11 Q. Oh, okay. And are you currently working</p> <p>12 anywhere?</p> <p>13 A. No, I'm not.</p> <p>14 Q. Okay. Have you applied for any</p> <p>15 positions?</p> <p>16 A. No. I'm still building my resume.</p> <p>17 Q. Okay. What is your current source of</p> <p>18 income?</p> <p>19 A. I -- I work with a couple of agencies</p> <p>20 doing private entertainment in the adult industry.</p> <p>21 Q. Okay. Is that like private parties?</p> <p>22 A. Correct. Bachelor parties mostly and</p> <p>23 party buses.</p> <p>24 Q. Okay. How are you compensated doing</p> <p>25 that?</p>	Page 11	<p>1 Q. All right. And how long have you been</p> <p>2 working with these agencies?</p> <p>3 A. Some of them just this year. This past</p> <p>4 year since I stopped working in the clubs, but some</p> <p>5 of them I've been dealing with for several years</p> <p>6 picking up gigs.</p> <p>7 Q. Okay.</p> <p>8 A. In addition to this club.</p> <p>9 Q. Okay. Do you have an estimate as to when</p> <p>10 you started being, I guess, booked through the</p> <p>11 agencies?</p> <p>12 A. Like I said, some of them have been</p> <p>13 years.</p> <p>14 Q. Do you think you might have started in</p> <p>15 2012?</p> <p>16 A. Yeah. I think the -- the one I've been</p> <p>17 working with the longest might be the Party Bus</p> <p>18 Company, and that's probably about -- this summer</p> <p>19 would be my fourth.</p> <p>20 Q. Okay. All right. So maybe 2013?</p> <p>21 A. Summer of 2013, probably.</p> <p>22 Q. Okay. You said that was the Party Bus</p> <p>23 Company?</p> <p>24 A. Party Bus Company, yes. And then some</p> <p>25 party planning services --</p>
Page 10	<p>1 A. Cash.</p> <p>2 Q. Okay.</p> <p>3 A. Directly from the clients.</p> <p>4 Q. Is there a set amount or a set rate that</p> <p>5 you charge for attending a party?</p> <p>6 A. No.</p> <p>7 Q. Okay. Is that something that's set by</p> <p>8 the agency?</p> <p>9 A. The agency only charges the clients their</p> <p>10 fee, the agency fee. And then the entertainers, we</p> <p>11 work on tips.</p> <p>12 Q. Okay. Any particular agencies?</p> <p>13 A. Several. I don't know all of them by</p> <p>14 name.</p> <p>15 Q. Okay. Do you have a main couple that you</p> <p>16 try and work with?</p> <p>17 A. Yes. I know mostly the phone operators'</p> <p>18 names because that's who I deal directly with. I</p> <p>19 don't exactly know the agencies and what name</p> <p>20 they're licensed under.</p> <p>21 Q. Okay. Would you be able to get that</p> <p>22 information to your counsel?</p> <p>23 A. I may be able to.</p> <p>24 Q. Okay.</p> <p>25 A. I can't make any promises.</p>	Page 12	<p>1 Q. Okay.</p> <p>2 A. -- that have booked, like, bachelor</p> <p>3 parties. And then, like I said, others I just</p> <p>4 started this past summer.</p> <p>5 Q. Okay. When did you stop performing in</p> <p>6 gentlemen's clubs?</p> <p>7 A. February of 2016. Valentine's Day,</p> <p>8 actually. February 14th was my last day.</p> <p>9 Q. All right. Well, that's easy to</p> <p>10 remember.</p> <p>11 What was the last club you performed at?</p> <p>12 A. Hustler.</p> <p>13 Q. And about how long did you perform at</p> <p>14 Hustler?</p> <p>15 A. One year.</p> <p>16 Q. What about prior to Hustler?</p> <p>17 A. Crazy Horse III.</p> <p>18 Q. About how long did you work for Crazy</p> <p>19 Horse III?</p> <p>20 A. Just over one year. Fourteen months, I</p> <p>21 think.</p> <p>22 Q. Okay. We'll go over some documents</p> <p>23 later, so we'll go over that timeline.</p> <p>24 What about prior to Crazy Horse III?</p> <p>25 A. Spearmint Rhino.</p>

Page 13	Page 15
<p>1 Q. Okay. And about how long were you there?</p> <p>2 A. 4 1/2 years.</p> <p>3 Q. Okay. And prior to the Rhino, anywhere?</p> <p>4 A. I worked on the East Coast for an agency</p> <p>5 doing bachelor parties out of Baltimore.</p> <p>6 Q. Okay. What brought you out to Vegas?</p> <p>7 A. The recession.</p> <p>8 Q. All right. How long have you lived in</p> <p>9 Las Vegas?</p> <p>10 A. Since April of 2009.</p> <p>11 Q. And do you currently reside here?</p> <p>12 A. Yes, I do.</p> <p>13 Q. Okay. So have you continuously lived in</p> <p>14 Las Vegas from 2009 until present?</p> <p>15 A. Yes, I have.</p> <p>16 Q. Okay. Well, you stayed. So it must have</p> <p>17 worked out.</p> <p>18 When did you start dancing in gentlemen's</p> <p>19 clubs?</p> <p>20 A. June of 2004.</p> <p>21 Q. Okay. And how about in Las Vegas?</p> <p>22 A. April of 2009.</p> <p>23 Q. Okay. Now, I know we went through a few</p> <p>24 clubs sequentially. Did you perform at more than</p> <p>25 Crazy Horse during that time that you were</p>	<p>1 A. That's all.</p> <p>2 Q. All right. How would these agencies</p> <p>3 contact you? Do they reach out to you or --</p> <p>4 A. Yes.</p> <p>5 Q. -- do you reach out to them?</p> <p>6 They reach out to you?</p> <p>7 A. Yes. Almost all of them have contacted</p> <p>8 me because I've been referred by somebody else.</p> <p>9 Q. Oh, okay. Now I'm going to move on a</p> <p>10 little bit more specifically to Crazy Horse.</p> <p>11 Do you recall the first time you went</p> <p>12 into the club?</p> <p>13 A. Yes, I do.</p> <p>14 Q. And when was that?</p> <p>15 A. October of 2013. Yeah.</p> <p>16 Q. And did you go in with the intent to</p> <p>17 audition?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And did you audition at that time?</p> <p>20 A. I didn't have an audition exactly. I</p> <p>21 said I wanted to dance, and they gave me a packet</p> <p>22 to sign.</p> <p>23 Q. Okay. Fair enough.</p> <p>24 How did you first hear about Crazy Horse?</p> <p>25 A. I had been as a customer before.</p>
Page 14	Page 16
<p>1 performing at Crazy Horse?</p> <p>2 A. No.</p> <p>3 Q. Any particular reason?</p> <p>4 A. I like just doing one at a time.</p> <p>5 Q. Okay. Do you know if you could have</p> <p>6 performed at another club while you were performing</p> <p>7 at Crazy Horse?</p> <p>8 A. I believe that would have been</p> <p>9 acceptable. I choose not to.</p> <p>10 Q. Okay. But no one said that you couldn't?</p> <p>11 A. Not that I recall.</p> <p>12 Q. Okay. During the years that you were at</p> <p>13 Crazy Horse, did you have any other sources of</p> <p>14 income aside from --</p> <p>15 A. No.</p> <p>16 Q. Okay. So while you were with Crazy</p> <p>17 Horse, did you work with any of the agencies?</p> <p>18 A. I believe I did party buses.</p> <p>19 Q. The party buses maybe?</p> <p>20 A. Occasionally. Yes. I'm sorry about</p> <p>21 that.</p> <p>22 Q. No. It's fine. It's hard to remember</p> <p>23 back.</p> <p>24 A. Yeah. They just come in so rare.</p> <p>25 Q. Okay.</p>	<p>1 Q. Okay. What made you decide you wanted to</p> <p>2 go in there and dance there?</p> <p>3 A. Because I wasn't happy at Spearmint Rhino</p> <p>4 anymore.</p> <p>5 Q. Okay. Do you recall who you met with in</p> <p>6 October of 2013 when you first went in?</p> <p>7 A. Kewan, K-e-w-a-n.</p> <p>8 Q. Okay. You said you didn't audition?</p> <p>9 A. Correct.</p> <p>10 Q. Why is that?</p> <p>11 A. I can't answer that. Kewan would have to</p> <p>12 answer that.</p> <p>13 Q. Okay. Had you been referred by another</p> <p>14 dancer or manager?</p> <p>15 A. No.</p> <p>16 Q. Okay. Sounds good. Okay.</p> <p>17 So do you recall any of the -- of the</p> <p>18 paperwork that you were given?</p> <p>19 A. Vaguely. It was typical to what I had</p> <p>20 seen at other clubs.</p> <p>21 Q. Okay. At that point in time, did you</p> <p>22 agree to be an independent contractor?</p> <p>23 MS. CALVERT: Objection. Calls for a</p> <p>24 legal conclusion.</p> <p>25 You can still answer, if you know.</p>

Page 17

1 THE WITNESS: It was kind of assumed. I
2 assumed that's what I was signing up for because
3 that's generally how entertainers were able to work
4 at clubs in Las Vegas.
5 BY MS. SMITH:
6 Q. Okay. So had you previously been an
7 independent contractor?
8 MS. CALVERT: Objection. Calls for a
9 legal conclusion.
10 You can answer, if you know.
11 THE WITNESS: At Spearmint Rhino, they
12 had a lawsuit while I worked there and we went from
13 independent contractor to employee, then back to
14 independent contractor. So I was familiar with
15 that.
16 BY MS. SMITH:
17 Q. Okay. What's your understanding of any
18 differences between an independent contractor and
19 an employee?
20 MS. CALVERT: Objection. Calls for a
21 legal conclusion/expert opinion.
22 Go ahead.
23 THE WITNESS: Yeah. I can't answer that
24 exactly. I have no formal education in anything
25 having to do with that.

Page 18

1 BY MS. SMITH:
2 Q. Well, you just testified that you went
3 back and forth at the Rhino.
4 A. Right. So I was -- I understood that
5 they were two different types of -- what would you
6 call -- I understand that there's a difference
7 between an employee and an independent contractor.
8 I do not know all the details and what makes them
9 different.
10 Q. Okay. You don't know any differences?
11 A. An employee receives a wage or a salary,
12 and an independent contractor does not.
13 Q. Okay. Anything else?
14 A. Not specifically, no.
15 Q. Okay. So that first evening you went
16 into Crazy Horse -- and sometimes I might call it
17 "the club" or "the premises." I just mean that to
18 mean Crazy Horse on Russell Road; all right?
19 A. Okay.
20 Q. If you're ever unsure if I'm specifically
21 referring to Crazy Horse III, just let me know.
22 A. Okay.
23 Q. So when you went into the club in October
24 of 2013 to, I guess, possibly dance there, did you
25 dance that evening?

Page 19

1 A. I did.
2 Q. Okay. So did you have things that you
3 brought with you?
4 A. Yes.
5 Q. And do you recall what kinds of things
6 that you brought with you?
7 A. An outfit and a pair of shoes probably.
8 Q. Okay. What -- is there a particular kind
9 of outfit you would have worn?
10 A. Probably a two-piece outfit. That's
11 generally what I wore.
12 Q. Okay. At that time that you started
13 dancing, were you given any information on days of
14 the week that you could perform at the club?
15 A. I was told I could work any day I wanted.
16 Q. Okay. What about any times you could
17 be --
18 A. I was told I could come in any time.
19 Q. Okay. Did anyone tell you there was a
20 minimum amount of days that you had to perform at
21 Crazy Horse?
22 A. Only if I wanted to keep a locker.
23 Q. Okay. What -- what were you told in
24 respect to that?
25 A. If I was issued a locker, I needed to

Page 20

1 show up at least three days a week.
2 Q. Okay. Were you issued a locker?
3 A. Yes, I was.
4 Q. So then did you perform three days a
5 week?
6 A. I believe I always did or close to it, at
7 least.
8 Q. Did you have to pay any fee for that
9 locker?
10 A. I was told that I should tip the house
11 mom for it.
12 Q. Okay. Was there a specific amount you
13 were told to tip the house mom?
14 A. I don't remember.
15 Q. Okay. Was that a requirement or just
16 something that was suggested to you?
17 A. I was just told that I was supposed to
18 tip her.
19 Q. Okay. Did you think that, that was a
20 rule of the club?
21 A. I believe it was just something that was
22 expected of us, but --
23 Q. Okay.
24 A. -- that's about it.
25 Q. Did you ever not perform three days in a

Page 21	Page 23
<p>1 week?</p> <p>2 A. That I can't remember. That may have</p> <p>3 happened, but I can't say for sure.</p> <p>4 Q. Okay. Do you recall getting disciplined</p> <p>5 in any way for not performing three days in a week?</p> <p>6 A. No.</p> <p>7 Q. Okay. So no fines?</p> <p>8 A. No.</p> <p>9 Q. Okay. So aside from the three days a</p> <p>10 week for the locker, what other rules did they have</p> <p>11 about what days and times you could perform at the</p> <p>12 club?</p> <p>13 A. For me, I didn't have any.</p> <p>14 Q. Okay. So just whenever you wanted to</p> <p>15 check in?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. What about in terms of checking</p> <p>18 out, did they tell you any rules regarding checking</p> <p>19 out of a shift?</p> <p>20 A. Do you mean the process we had to go</p> <p>21 through?</p> <p>22 Q. Sure.</p> <p>23 A. We needed to obtain a slip from the DJ.</p> <p>24 Q. Okay.</p> <p>25 A. And it would state that we had been</p>	<p>1 be exact, but I think that was it.</p> <p>2 Q. So possibly the earliest they would want</p> <p>3 you on the main floor would be an hour.</p> <p>4 Is that your recollection?</p> <p>5 A. On stage anyway.</p> <p>6 Q. On stage. Okay. Okay. Sorry.</p> <p>7 So when you checked in, did you get any</p> <p>8 receipt or a slip showing that you had paid a house</p> <p>9 fee?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Did you keep any of those?</p> <p>12 A. No, I didn't.</p> <p>13 Q. Okay. So once you started your shift,</p> <p>14 what would you do?</p> <p>15 A. Try to sell dances.</p> <p>16 Q. Okay. Did you have any goal when you</p> <p>17 would start a shift, such as a number of customers</p> <p>18 you wanted to talk to or a number of lap dances you</p> <p>19 wanted to perform?</p> <p>20 A. As many as I could.</p> <p>21 Q. Okay. Did you set a -- like a dollar</p> <p>22 amount that you wanted to achieve an evening?</p> <p>23 A. No.</p> <p>24 Q. Okay. You mentioned your sheriff's card.</p> <p>25 Did you also have a business license?</p>
Page 22	Page 24
<p>1 checked in for at least five hours.</p> <p>2 Q. Okay.</p> <p>3 A. And then we had that slip signed by a</p> <p>4 manager.</p> <p>5 Q. Okay.</p> <p>6 A. And then we had that slip signed by a</p> <p>7 house mom.</p> <p>8 Q. Okay.</p> <p>9 A. And then we dropped it off at the cage at</p> <p>10 the back door.</p> <p>11 Q. Okay. So let me take you back towards</p> <p>12 the start of the shift.</p> <p>13 What would you do when you came in and</p> <p>14 wanted to perform?</p> <p>15 A. We would show our sheriff's card at the</p> <p>16 cage at the back door.</p> <p>17 Q. Okay.</p> <p>18 A. And then we had to pay our house fee.</p> <p>19 Q. Okay.</p> <p>20 A. And then we would go in the dressing room</p> <p>21 and get ready.</p> <p>22 Q. Okay. Was there a certain amount of time</p> <p>23 you could spend getting ready?</p> <p>24 A. You could be called on stage, I believe</p> <p>25 it was within an hour of checking in. That may not</p>	<p>1 A. I did.</p> <p>2 Q. Do you still have a Nevada business</p> <p>3 license?</p> <p>4 A. Not a current one, no.</p> <p>5 Q. What about your sheriff's card, is that</p> <p>6 current?</p> <p>7 A. It is.</p> <p>8 Q. Okay. So during the time that you were</p> <p>9 performing at Crazy Horse, you think you had a</p> <p>10 Nevada business license?</p> <p>11 A. I did, yes.</p> <p>12 Q. Did you understand that to be a</p> <p>13 requirement to perform at Crazy Horse?</p> <p>14 A. Yes. It was required.</p> <p>15 Q. Okay. All right. Did you need to have</p> <p>16 those items to perform at other clubs?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. I guess I wasn't very clear about</p> <p>19 items. I meant the business license and the</p> <p>20 sheriff's card.</p> <p>21 Did you file income tax with the Internal</p> <p>22 Revenue Service?</p> <p>23 A. No. I never have.</p> <p>24 Q. Not for any of the time you performed at</p> <p>25 Crazy Horse?</p>

Franklin
January 10, 2017

Page 25	Page 27
<p>1 A. No.</p> <p>2 Q. Did you keep any personal logs about how</p> <p>3 much income you made in a given year?</p> <p>4 A. No. I never did.</p> <p>5 Q. Okay. Do you have an estimate as to how</p> <p>6 much you would make per shift at Crazy Horse?</p> <p>7 A. No. I couldn't do that.</p> <p>8 Q. Okay. Do you have an estimate to the</p> <p>9 overall amount of income you earned at Crazy Horse?</p> <p>10 A. No, I don't.</p> <p>11 Q. Not even a range?</p> <p>12 A. No.</p> <p>13 Q. All right.</p> <p>14 A. No. I didn't keep track of that.</p> <p>15 Q. Okay. Did you have a bank account?</p> <p>16 A. No, I didn't.</p> <p>17 Q. Okay. Any kind of other savings account</p> <p>18 or online income tracker?</p> <p>19 A. No. I just kept cash at home.</p> <p>20 Q. Okay. Did you ever pay any taxes related</p> <p>21 to your Nevada business license?</p> <p>22 A. No.</p> <p>23 Q. Are you a U.S. citizen?</p> <p>24 A. Yes, I am.</p> <p>25 Q. Okay. Did you ever file taxes of any</p>	<p>1 specifically for Crazy Horse?</p> <p>2 A. Yes. I did those.</p> <p>3 Q. Okay. And what would that entail?</p> <p>4 A. Handing out cards for various managers</p> <p>5 and VIP hosts.</p> <p>6 Q. Okay. Did you have your own cards?</p> <p>7 A. No. We would hand out their cards.</p> <p>8 Q. Okay. Was that mandatory?</p> <p>9 A. No.</p> <p>10 Q. Okay. How would you --</p> <p>11 A. Or I'm sorry. Do you mean attending the</p> <p>12 promotions?</p> <p>13 Q. Yes.</p> <p>14 A. No. That wasn't...</p> <p>15 Q. Okay. How did you go about being able to</p> <p>16 attend the promotions?</p> <p>17 A. We would usually just ask Justin if there</p> <p>18 were any coming up and text him if we wanted to</p> <p>19 attend.</p> <p>20 Q. Okay. But there was no requirement that</p> <p>21 you do a certain number of promotional events?</p> <p>22 A. No.</p> <p>23 Q. What about events on premises? Did you</p> <p>24 do any of those? Any special events?</p> <p>25 A. Such as what?</p>
Page 26	Page 28
<p>1 kind in a state other than Nevada?</p> <p>2 A. West Virginia.</p> <p>3 Q. Okay. And was that prior to you moving</p> <p>4 to Nevada?</p> <p>5 A. Yes, it was.</p> <p>6 Q. Okay. Since you've lived in Nevada, no</p> <p>7 income tax filing?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. Did you obtain any financing</p> <p>10 during the time you performed at Crazy Horse, such</p> <p>11 as a vehicle?</p> <p>12 A. I already had a vehicle that was financed</p> <p>13 at that time, yes.</p> <p>14 Q. Okay. Did you ever do any headshots or</p> <p>15 promotional shots?</p> <p>16 A. No.</p> <p>17 Q. Did you ever independently promote</p> <p>18 yourself as a dancer/entertainer?</p> <p>19 A. No.</p> <p>20 Q. Any reason why not?</p> <p>21 A. I am not on any social media. I never</p> <p>22 had the desire to do any of that.</p> <p>23 Q. Okay. No social media whatsoever?</p> <p>24 A. No.</p> <p>25 Q. Oh, all right. What about any promotions</p>	<p>1 Q. Maybe like a New Year's party or a</p> <p>2 Christmas party, something to that affect?</p> <p>3 A. Well, the club was open 24/7 so if they</p> <p>4 were having an event like an anniversary party or a</p> <p>5 featured entertainer, it was still the same as</p> <p>6 working a normal shift.</p> <p>7 Q. Okay. All right. So there was no</p> <p>8 additional requirement that you come in for, like,</p> <p>9 holidays or special occasions that they were</p> <p>10 having?</p> <p>11 A. No.</p> <p>12 Q. Okay. So you mentioned earlier that you</p> <p>13 would typically wear a two-piece outfit?</p> <p>14 A. Correct.</p> <p>15 Q. Did Crazy Horse have any requirements on</p> <p>16 what kind of outfits you needed to wear while</p> <p>17 performing?</p> <p>18 A. I believe what was in our contract and</p> <p>19 what was enforced by the house mom was very vague.</p> <p>20 Such as neat, put together, professional. They</p> <p>21 were kind of vague words.</p> <p>22 Q. Okay. Do you remember anything specific?</p> <p>23 A. No. I was never told that I needed to</p> <p>24 change.</p> <p>25 Q. Okay. Could you have changed if you</p>

7 (Pages 25 to 28)

Page 29	Page 31
<p>1 wanted to during a shift?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. What about any requirements on</p> <p>4 your hair or makeup?</p> <p>5 A. Same thing. They would always just tell</p> <p>6 us we needed to look neat and presentable and</p> <p>7 professional.</p> <p>8 Q. Okay.</p> <p>9 A. It was usually at the discretion of the</p> <p>10 house moms.</p> <p>11 Q. Okay. Did you need to check in with or</p> <p>12 report to someone about your outfit?</p> <p>13 A. No.</p> <p>14 Q. Okay. What about hair and makeup?</p> <p>15 A. No. But if they didn't like it, they</p> <p>16 could tell you to do something about it.</p> <p>17 Q. Did that ever happen to you?</p> <p>18 A. Not to me.</p> <p>19 Q. Okay. Any other rules about what you</p> <p>20 could or couldn't wear?</p> <p>21 A. No.</p> <p>22 Q. Okay. Did you have a stage name?</p> <p>23 A. I used my middle name, Sarah.</p> <p>24 Q. Well, I don't have to ask you how you</p> <p>25 came up with that.</p>	<p>1 Q. Okay. If they said yes to a VIP room</p> <p>2 dance, then what would occur?</p> <p>3 A. I would generally give them a tour of the</p> <p>4 different rooms that we had to see which one he</p> <p>5 wanted.</p> <p>6 Q. Do you remember any pricing or was there</p> <p>7 any pricing?</p> <p>8 A. Yes. We had three songs for 100. A half</p> <p>9 hour, I believe, was 200-plus some drinks. An hour</p> <p>10 in the same room was 400-plus some drinks. And</p> <p>11 then we had private suites that were, I believe,</p> <p>12 500 --</p> <p>13 Q. Okay.</p> <p>14 A. -- for the entertainer and then a pretty</p> <p>15 substantial bar tab or bottle.</p> <p>16 Q. Okay. And how was that paid?</p> <p>17 A. Either cash from the client or if he paid</p> <p>18 with a credit card, then we got funny money or</p> <p>19 dance dollars.</p> <p>20 Q. Okay. When the client had cash, was that</p> <p>21 paid directly to you?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And then with the dance dollars,</p> <p>24 how did that work?</p> <p>25 A. He paid at the cashier cage, and the</p>
Page 30	Page 32
<p>1 Was that something that you had to get</p> <p>2 approved by anyone at Crazy Horse?</p> <p>3 A. You put it on your paperwork when you got</p> <p>4 hired.</p> <p>5 Q. Okay. So did it need to be actually</p> <p>6 approved? Like, did someone sign off on that?</p> <p>7 A. Yes. They just want to make sure that it</p> <p>8 wasn't already being used at the club.</p> <p>9 Q. Okay. So not 100 Sarahs on the floor?</p> <p>10 A. Correct.</p> <p>11 Q. Okay.</p> <p>12 A. The guy that worked the cage.</p> <p>13 Q. Okay. Were you ever required to wear any</p> <p>14 special costumes or special accessories?</p> <p>15 A. No.</p> <p>16 Q. Okay. Did you have any signature items</p> <p>17 that you would wear?</p> <p>18 A. No.</p> <p>19 Q. Did you have any signature dance moves?</p> <p>20 A. No.</p> <p>21 Q. So if you were going to approach an</p> <p>22 individual that came into the club, can you walk me</p> <p>23 through what you would do?</p> <p>24 A. Introduce myself, strike up a</p> <p>25 conversation, and then offer a dance and VIP room.</p>	<p>1 cashier printed our dance dollars for us.</p> <p>2 Q. Okay. And then you would get the dance</p> <p>3 dollars directly handed to you?</p> <p>4 A. Correct.</p> <p>5 Q. Gotcha.</p> <p>6 Did you ever negotiate for more than,</p> <p>7 say, the \$100 for three songs?</p> <p>8 A. No. We couldn't do that.</p> <p>9 Q. What do you mean when you say you</p> <p>10 couldn't do that?</p> <p>11 A. It was very clear by management and by</p> <p>12 the hosts that worked the room, we could only</p> <p>13 charge the set amount. And if the client wanted to</p> <p>14 tip, he could tip, but we couldn't tell him that he</p> <p>15 needed to give us any more than the set price.</p> <p>16 Q. Okay. So once you were in the room, did</p> <p>17 you then negotiate for more money?</p> <p>18 MS. CALVERT: Objection as to form.</p> <p>19 Contradicts prior testimony.</p> <p>20 Go ahead and answer, if you know.</p> <p>21 THE WITNESS: No. At the end we could</p> <p>22 mention, Hey, if you want to tip me, you can. But</p> <p>23 that's it.</p> <p>24 BY MS. SMITH:</p> <p>25 Q. Okay. All right.</p>

Page 33

1 A. We were never allowed to demand more
2 money from them, no.
3 Q. Okay. Do you know what a lap dance is?
4 A. On the floor, \$20.
5 Q. Okay. Did you give lap dances on the
6 floor?
7 A. Yes, I did.
8 Q. Okay. You just said \$20. Was that what
9 you charged for a lap dance?
10 A. No. That was set by the club as well.
11 Q. Okay. Did you ever try and ask for more
12 from a customer for a lap dance?
13 A. No.
14 Q. And how come?
15 A. Fear, I guess, of being reprimanded.
16 Q. Okay. So you never really tried it?
17 A. No.
18 Q. Do you know if you could have asked for
19 more?
20 MS. CALVERT: Objection. Calls for
21 speculation.
22 THE WITNESS: No. The prices were given
23 to us, and we were told we weren't supposed to
24 charge them more than what was written.
25 ////

Page 34

1 BY MS. SMITH:
2 Q. Okay. Did anyone in particular tell you
3 that?
4 A. It was in our initial packet of
5 paperwork.
6 Q. Okay. All right. Do you know what would
7 have occurred if you had asked a customer for more
8 than \$20 for a lap dance?
9 A. No.
10 Q. What about for more than the dollar
11 amounts you stated for the VIP areas?
12 A. The host wouldn't allow it.
13 Q. Okay. Okay. Were there any requirements
14 on the number of lap dances you needed to perform
15 during a shift?
16 A. No.
17 Q. What about requirements on the number of
18 individuals Crazy Horse wanted you to approach on a
19 shift?
20 A. No. There was no number.
21 Q. Okay. Were there any requirements on how
22 long you could speak with a guest?
23 A. No.
24 Q. Okay. Moves, did you ever dance on the
25 stage?

Page 35

1 A. Yes, I did.
2 Q. Do you have any particular style that you
3 dance on the stage?
4 A. I'm not sure I understand the question.
5 Q. Any particular moves or artistic style
6 that you used while on stage?
7 A. I did what was comfortable for me.
8 Q. Okay.
9 A. Yes.
10 Q. Were there any rules about how you were
11 supposed to be performing on stage?
12 A. Not other than the laws.
13 Q. Okay. What did you understand the laws
14 to be?
15 A. Things like not removing your panties or,
16 you know, touching your genitals and things like
17 that while you danced.
18 Q. Okay.
19 A. It was very simple. Just a couple of
20 things that were laws.
21 Q. Okay. So you mean like State or County
22 laws?
23 A. Correct.
24 Q. Okay. What about rules or restrictions
25 regarding lap dances?

Page 36

1 A. No. We were pretty free to lap dance how
2 we wanted.
3 Q. Okay. Maybe just the same legal
4 restrictions?
5 A. Correct.
6 Q. Okay. And who do you think would be
7 responsible for following the legal requirements on
8 dancers?
9 MS. CALVERT: Objection. Vague.
10 THE WITNESS: I'm not sure I understand.
11 BY MS. SMITH:
12 Q. I mean, do you think you personally were
13 responsible for knowing the laws that applied to
14 dancers?
15 A. I'm not sure.
16 Q. Other than the laws that you just cited
17 about dancing and touching genitals, are you aware
18 of any other laws that dancers are supposed to
19 follow?
20 A. From my time working at Spearmint Rhino,
21 yes.
22 Q. Okay. What do you mean from the time you
23 spent at Spearmint Rhino?
24 A. Because while I was at Spearmint Rhino,
25 they got in trouble by VICE, and so we had to go

Page 37	Page 39
<p>1 over most of the laws --</p> <p>2 Q. Okay.</p> <p>3 A. -- while we were there.</p> <p>4 Q. Okay. Was that the club that got in</p> <p>5 trouble?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Did you personally get a citation?</p> <p>8 A. No.</p> <p>9 Q. Okay. Have you ever personally been</p> <p>10 cited for unlawful dancing?</p> <p>11 A. No.</p> <p>12 Q. Okay. How about for solicitation?</p> <p>13 A. No.</p> <p>14 Q. Okay. So during your shift, were there</p> <p>15 requirements by Crazy Horse on where you were</p> <p>16 supposed to hang out during your shift?</p> <p>17 A. There weren't requirements where we were</p> <p>18 supposed to be, but there were parts of the club</p> <p>19 where we were not supposed to be without</p> <p>20 permission.</p> <p>21 Q. What were those areas?</p> <p>22 A. Like bottle service areas.</p> <p>23 Q. Okay. Do you know any particular reason</p> <p>24 why that might have been?</p> <p>25 MS. CALVERT: Objection. Calls for</p>	<p>1 A. No.</p> <p>2 Q. Okay. What about how long a break could</p> <p>3 be? Any rules on that?</p> <p>4 A. No. But if you got called on stage, you</p> <p>5 had to go.</p> <p>6 Q. Okay. Did you ever pay a fee to not</p> <p>7 dance on stage?</p> <p>8 A. Yes.</p> <p>9 Q. So you mentioned -- I think you called it</p> <p>10 "funny money" or "dance dollars" earlier.</p> <p>11 A. Yes.</p> <p>12 Q. Do you know if you could refuse to accept</p> <p>13 those from a customer?</p> <p>14 A. I suppose you could.</p> <p>15 Q. Did you ever?</p> <p>16 A. No, because then you wouldn't get paid.</p> <p>17 Q. Okay. Didn't -- you didn't ever ask just</p> <p>18 for cash?</p> <p>19 A. You could ask the customer to go to the</p> <p>20 ATM. But if that wasn't an option, then you had no</p> <p>21 choice but to take the funny money or not make</p> <p>22 money.</p> <p>23 Q. Okay. They would probably just find</p> <p>24 another dancer that would take the dance dollars?</p> <p>25 A. Right.</p>
Page 38	Page 40
<p>1 speculation.</p> <p>2 THE WITNESS: Yeah. There were VIP hosts</p> <p>3 that I guess you could say guarded the bottle</p> <p>4 service area, and they would only let certain girls</p> <p>5 up. And, again, it was their discretion.</p> <p>6 BY MS. SMITH:</p> <p>7 Q. Did you ever go up to those bottle</p> <p>8 service areas?</p> <p>9 A. I would occasionally.</p> <p>10 Q. Okay. Could you ever hang out by the bar</p> <p>11 inside of Crazy Horse?</p> <p>12 A. Occasionally.</p> <p>13 Q. Okay. So could you hang out there during</p> <p>14 a shift if you wanted?</p> <p>15 A. You could.</p> <p>16 Q. Okay. What about breaks? Would you --</p> <p>17 how would you decide when you wanted to take a</p> <p>18 break?</p> <p>19 A. You could take a break whenever you</p> <p>20 wanted.</p> <p>21 Q. Okay. Did you have to check out with</p> <p>22 someone?</p> <p>23 A. No.</p> <p>24 Q. Do you remember any rules about how many</p> <p>25 breaks you could take during a shift?</p>	<p>1 Q. Okay. If you had just wanted to dance on</p> <p>2 the stage during shift and not talk to customers on</p> <p>3 the floor, would you have been able to do that?</p> <p>4 A. No. There was a rotation.</p> <p>5 Q. Okay. So you could just go up at your</p> <p>6 times?</p> <p>7 A. You had to go up at your time and only at</p> <p>8 your time.</p> <p>9 Q. Okay. Could you ever ask to go on stage</p> <p>10 at a time that was not technically your slot?</p> <p>11 A. That would be up to the DJ.</p> <p>12 Q. Okay. Did you ever ask to do that?</p> <p>13 A. No.</p> <p>14 Q. How come?</p> <p>15 A. You're not compensated for going on</p> <p>16 stage.</p> <p>17 Q. What about if a customer requested to see</p> <p>18 you on stage?</p> <p>19 A. Then you could ask the DJ, I suppose.</p> <p>20 Q. Okay. You don't recall that happening to</p> <p>21 you?</p> <p>22 A. No. But there's no way to know what he</p> <p>23 would say. That's up to him.</p> <p>24 Q. Okay. When you say "no way to know," are</p> <p>25 you referring to the DJ?</p>

<p style="text-align: right;">Page 41</p> <p>1 A. Correct.</p> <p>2 Q. Okay. What about if you only wanted to</p> <p>3 give dances in the VIP area and not perform any</p> <p>4 dances in the main floor area, would you have been</p> <p>5 allowed to do that?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. So in terms of interactions that</p> <p>8 were not you on the stage, you had free reign?</p> <p>9 A. You mean who I talked to?</p> <p>10 Q. Yes.</p> <p>11 A. Like I mentioned earlier, the customers</p> <p>12 in bottle service areas were not exactly</p> <p>13 approachable all the time.</p> <p>14 Q. Other than that?</p> <p>15 A. Other than that, we were free to talk to</p> <p>16 anyone on the main floor.</p> <p>17 Q. Okay. What about if you just wanted to</p> <p>18 hang out on the main floor, could you do that?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Would you carry around, like, a</p> <p>21 little purse or a pouch with you?</p> <p>22 A. Yes.</p> <p>23 Q. All right. Would you keep your phone in</p> <p>24 that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 43</p> <p>1 been going for a little bit now. We'll just come</p> <p>2 back in about five minutes.</p> <p>3 A. Okay.</p> <p>4 (A short break was taken.)</p> <p>5 BY MS. SMITH:</p> <p>6 Q. Okay. Ms. Franklin, we are back on the</p> <p>7 record. The oath that you took earlier in the</p> <p>8 afternoon is still in effect. That will carry on</p> <p>9 throughout the depo. I'll remind you whenever we</p> <p>10 come back from a break, though.</p> <p>11 A. Okay.</p> <p>12 Q. Now, you had already testified that you</p> <p>13 believed it was expected that you tip the house mom</p> <p>14 for the locker; is that right?</p> <p>15 A. Correct.</p> <p>16 Q. What about tips to anyone else at Crazy</p> <p>17 Horse?</p> <p>18 A. Yes. It was expected of us.</p> <p>19 Q. Okay. Was it actually a rule that was</p> <p>20 required?</p> <p>21 A. It wasn't in writing.</p> <p>22 Q. Okay. Who did you believe expected tips?</p> <p>23 A. The DJ, the house mom, the valet, the VIP</p> <p>24 hosts on the floor and in the dressing rooms, the</p> <p>25 cashier, the back door guy, and managers all got</p>
<p style="text-align: right;">Page 42</p> <p>1 Q. Could you use your phone during a shift?</p> <p>2 A. It was kind of frowned upon.</p> <p>3 Q. Would you ever use your phone when you</p> <p>4 were on the main floor?</p> <p>5 A. Same thing. You could, but it was</p> <p>6 frowned upon.</p> <p>7 Q. Okay. Did you ever use your phone on the</p> <p>8 main floor?</p> <p>9 A. Yes.</p> <p>10 Q. Did you get fined for that?</p> <p>11 A. No.</p> <p>12 Q. Any other kind of discipline?</p> <p>13 A. They would mention, you know, if they saw</p> <p>14 you on it for a while to put it away.</p> <p>15 Q. Okay. What about in the backstage or</p> <p>16 dressing room area?</p> <p>17 A. We were free to use it as we wanted.</p> <p>18 Q. Okay. Could you just hang out in the</p> <p>19 dressing room area if you wanted to during a shift?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Probably not too much point in</p> <p>22 that for you, right?</p> <p>23 A. (Witness shakes head.)</p> <p>24 Q. All right. I usually like to take a</p> <p>25 couple-minute break about once an hour. So we've</p>	<p style="text-align: right;">Page 44</p> <p>1 tipped.</p> <p>2 Q. Okay. How much would you tip the DJ?</p> <p>3 A. On a typical night, I would usually tip</p> <p>4 10. If I ever asked anything of him, then I would</p> <p>5 have to tip him more.</p> <p>6 Q. What do you mean ask anything of him?</p> <p>7 A. For example, if I was up in rotation and</p> <p>8 I wanted him to push me back because I was talking</p> <p>9 to a client that I thought might spend money.</p> <p>10 Q. Okay. What about for a song request?</p> <p>11 A. No. We didn't do those.</p> <p>12 Q. Okay. So you could ask to be moved</p> <p>13 around in the -- on stage rotation?</p> <p>14 A. You could ask, but you wouldn't always</p> <p>15 get the answer you wanted.</p> <p>16 Q. Okay. So was tipping the DJ a required</p> <p>17 rule?</p> <p>18 A. No.</p> <p>19 Q. Okay.</p> <p>20 A. They just -- sorry. Like I said, it</p> <p>21 wasn't in writing. It was just expected.</p> <p>22 Q. Okay. Did you ever tip the DJ \$0?</p> <p>23 A. I believe if it was a night I didn't make</p> <p>24 money myself and I had no money to tip.</p> <p>25 Q. Okay. Would anything happen if that</p>

<p style="text-align: right;">Page 45</p> <p>1 occurred?</p> <p>2 A. Not at the time, no.</p> <p>3 Q. What do you mean "not at the time"?</p> <p>4 A. If you repeatedly went without tipping</p> <p>5 people, then there would be maybe long-term</p> <p>6 consequences. But at the time, no. If you had a</p> <p>7 bad night and you didn't make money, nothing would</p> <p>8 happen if you didn't tip.</p> <p>9 Q. Okay. Were you then required to tip more</p> <p>10 the next time you worked or performed?</p> <p>11 A. Tipping was never required.</p> <p>12 Q. Okay. How much would you tip the</p> <p>13 cashier?</p> <p>14 A. I didn't always tip the cashier.</p> <p>15 Q. Okay. Any repercussions if you didn't</p> <p>16 tip the cashier?</p> <p>17 A. No. I would usually ask the customer to</p> <p>18 tip the cashier instead.</p> <p>19 Q. Okay. When you say "cashier," where was</p> <p>20 that person located in the club?</p> <p>21 A. We had two cashier cages inside the club</p> <p>22 where the customers would run their credit cards</p> <p>23 for dance dollars.</p> <p>24 Q. Okay. So when you said the "backdoor</p> <p>25 guy," did you mean a check-in guy?</p>	<p style="text-align: right;">Page 47</p> <p>1 positioned on the main floor, some were positioned</p> <p>2 at various VIP rooms, but it's my understanding</p> <p>3 they were all employed the same way. If that makes</p> <p>4 sense.</p> <p>5 Q. Okay. I'm going to use the designation</p> <p>6 "VIP host" to refer to hosts that were stationed by</p> <p>7 the VIP areas.</p> <p>8 Does that make sense?</p> <p>9 A. Okay. Yes.</p> <p>10 Q. How much would you tip VIP hosts?</p> <p>11 A. The standard was about 10 percent of your</p> <p>12 earnings for the time you're in the VIP room if you</p> <p>13 took your own customer in there.</p> <p>14 Q. Okay.</p> <p>15 A. If they called you to the VIP room and</p> <p>16 put you on a customer, it was expected that you tip</p> <p>17 at least 20 percent.</p> <p>18 Q. Okay.</p> <p>19 A. That was pretty standard.</p> <p>20 Q. But that wasn't a rule?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. What about tipping main floor</p> <p>23 hosts? Would you tip them in that same way that</p> <p>24 you tipped VIP hosts?</p> <p>25 A. The 20 percent, if they helped you with a</p>
<p style="text-align: right;">Page 46</p> <p>1 A. Correct.</p> <p>2 Q. Okay. So the check-in guy, how much</p> <p>3 would you tip him?</p> <p>4 A. I didn't tip him.</p> <p>5 Q. You didn't? Okay.</p> <p>6 Any repercussions from not tipping the</p> <p>7 check-in guy?</p> <p>8 A. No. He didn't have a lot of affect on</p> <p>9 our money or anything.</p> <p>10 Q. Okay.</p> <p>11 A. Girls tipped him to be nice.</p> <p>12 Q. Okay. What about the valet?</p> <p>13 A. If I valeted, I would tip the valet.</p> <p>14 Q. Did you -- were you required to valet?</p> <p>15 A. No.</p> <p>16 Q. Did you think the valet was employed by</p> <p>17 Crazy Horse?</p> <p>18 A. I don't know the answer to that.</p> <p>19 Q. Okay. You also mentioned VIP hosts.</p> <p>20 A. Correct.</p> <p>21 Q. So previously I heard VIP hosts and main</p> <p>22 floor hosts. Is that how you understood them to be</p> <p>23 stationed?</p> <p>24 A. From my understanding, they're all</p> <p>25 employed the same as hosts. Some were just</p>	<p style="text-align: right;">Page 48</p> <p>1 customer, meaning they called you over and</p> <p>2 introduced you to him.</p> <p>3 Q. Okay. And, again, was that a mandatory</p> <p>4 20 percent tip?</p> <p>5 A. No. It was just expected.</p> <p>6 Q. Okay. What would happen if you didn't</p> <p>7 give a 20 percent tip on a customer that the main</p> <p>8 floor host introduced you to?</p> <p>9 A. They would threaten -- they would</p> <p>10 threaten to prevent you from making money in the</p> <p>11 future. They would say they would talk to other</p> <p>12 hosts and tell them not to help you anymore. They</p> <p>13 would not let you into bottle service areas where</p> <p>14 the high spending customers were sitting, things</p> <p>15 like that. A lot of threats.</p> <p>16 Q. Did that happen to you?</p> <p>17 A. Yes, it did.</p> <p>18 Q. Any particular main floor host?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know their names?</p> <p>21 A. One of them I don't remember by name, and</p> <p>22 he's specifically threatened me. And there was</p> <p>23 another one who would frequently push me out of</p> <p>24 bottle service areas, and he still works there.</p> <p>25 Q. Did you ever report that to anyone?</p>

Page 49

1 A. I did. I would tell Kewan a lot of
2 times --
3 Q. Okay.
4 A. -- when the hosts would say things like
5 that.
6 Q. Do you know what would occur?
7 A. Nothing.
8 Q. You don't think anything would occur?
9 A. No. He would listen, but he wouldn't act
10 on it, no.
11 Q. Okay. What about another manager?
12 A. No. Kewan was really the only one that I
13 talked to.
14 Q. Okay. All right. So you mentioned
15 managers. In terms of tipping, how much did you
16 tip managers?
17 A. I didn't tip them regularly. Only if I
18 asked something of them, like cashing funny money
19 on a time when it wasn't scheduled or to go home
20 early or anything like that.
21 Q. Okay. All right. So you said to go home
22 early. Are you referring to you wanting to leave
23 prior to five hours?
24 A. Correct.
25 Q. Okay. What would happen if you wanted to

Page 50

1 leave after you had been on premises for five
2 hours?
3 A. What would happen?
4 Q. What was the procedure for you to check
5 out?
6 A. What I mentioned earlier. We would get
7 the slip from the DJ, have the manager sign it, and
8 have the house mom sign it and give it to the guy
9 at the back door.
10 Q. Okay. Did you ever have anyone withhold
11 their signature?
12 MS. CALVERT: Objection. Sorry. Vague
13 as to referring before or after the five hours?
14 You can answer.
15 THE WITNESS: After the five hours?
16 BY MS. SMITH:
17 Q. Yes.
18 A. No, not that I can recall.
19 Q. Okay. If you wanted to stop performing
20 if you had been on premises for less than five
21 hours, what would your procedure be?
22 A. Ask a manager if you could leave, and
23 then he would have to give the DJ the okay to issue
24 the slip.
25 Q. Were you told you could not stop

Page 51

1 performing if you hadn't been there for five hours?
2 A. Yes. I would be told that I had to stay.
3 Q. For how long?
4 A. Just until the five hours is up.
5 Q. And did that happen to you specifically?
6 A. Yes, it would happen.
7 Q. Do you recall how often?
8 A. I didn't ask to go home that often.
9 Q. Okay. If -- do you recall if you're --
10 scratch that.
11 On times that you testified that you were
12 not permitted to depart the premises prior to five
13 hours, were you required to keep performing?
14 A. We were only ever required to perform on
15 stage.
16 Q. Okay. So if you actually wanted to stop
17 interacting with customers but the manager would
18 not sign your slip because it was less than five
19 hours, could you just hang out in the dressing
20 room?
21 A. Yes.
22 Q. Okay. Okay. So we talked about the tips
23 for DJ, house mom, cashier, manager, valet, the two
24 kinds of hosts, and the back door guy.
25 Is that it?

Page 52

1 A. I believe that's it.
2 Q. Okay. When you were on the main floor,
3 was anyone monitoring what you were doing?
4 A. I don't think so.
5 Q. Okay. Did you ever have to check in with
6 anyone after you had gotten payment for a lap
7 dance?
8 A. No.
9 Q. Did you need to report to anyone at Crazy
10 Horse how much you earned during a shift?
11 A. Not during a whole shift, no.
12 Q. When you say "not during a whole shift,"
13 was there another time you had to report how much
14 you earned?
15 A. If a host introduced you to a customer
16 and you went off with that customer to make money,
17 they would expect you to report back to them how
18 much you made off that customer.
19 Q. Do you know why they would want that
20 information?
21 A. So that they would get their tip out.
22 Q. Okay. Did you ever date anyone that you
23 met at Crazy Horse?
24 A. No.
25 Q. Did you ever leave the premises with

<p style="text-align: right;">Page 53</p> <p>1 anyone you met at Crazy Horse?</p> <p>2 A. No.</p> <p>3 Q. Did you ever date anyone who worked or</p> <p>4 performed at Crazy Horse?</p> <p>5 A. No.</p> <p>6 Q. What about arranged to meet someone that</p> <p>7 you met at Crazy Horse later on after you were done</p> <p>8 performing?</p> <p>9 A. I'm sorry. I don't understand.</p> <p>10 Q. Did you ever meet any customers, maybe</p> <p>11 during a shift, that you then arranged to meet</p> <p>12 later on after you would stop performing?</p> <p>13 A. No.</p> <p>14 Q. Did you have your own customer base?</p> <p>15 A. No.</p> <p>16 Q. Any particular reason why not?</p> <p>17 A. It's a very tourist-driven town, so we</p> <p>18 don't see a lot of the same faces.</p> <p>19 Q. Okay. Did you have any regulars?</p> <p>20 A. No.</p> <p>21 Q. Okay.</p> <p>22 A. Well, yes, actually. But very, very,</p> <p>23 very -- in fact, I can only recall one specific</p> <p>24 local guy at the time who was a regular.</p> <p>25 Q. Okay. Was that person familiar with your</p>	<p style="text-align: right;">Page 55</p> <p>1 A. Yes.</p> <p>2 Q. Any restrictions on the term that you had</p> <p>3 to perform at Crazy Horse?</p> <p>4 A. As far as how many days or weeks or</p> <p>5 months you had to work there? Is that what you're</p> <p>6 asking?</p> <p>7 Q. Yeah.</p> <p>8 A. No. No requirement. No minimum.</p> <p>9 Q. Okay. It wasn't that you only had to</p> <p>10 dance at Crazy Horse for six months or something</p> <p>11 like that?</p> <p>12 A. No.</p> <p>13 Q. Okay. How did you learn how to dance?</p> <p>14 A. You learn as you go.</p> <p>15 Q. Okay. Is that the same with dancing on</p> <p>16 stage?</p> <p>17 A. Yes.</p> <p>18 Q. Would you ever practice dancing on stage?</p> <p>19 A. No. Only during a shift.</p> <p>20 Q. Okay. Have you had any plastic surgery?</p> <p>21 A. Yes, I have.</p> <p>22 Q. What have you had done?</p> <p>23 A. I've had my breasts done. I've had my</p> <p>24 lips and parts of my face injected. I've had</p> <p>25 cosmetic veneers. That's it.</p>
<p style="text-align: right;">Page 54</p> <p>1 dancing from Spearmint Rhino or is that someone you</p> <p>2 met at Crazy Horse?</p> <p>3 A. No. He was a regular at Crazy Horse.</p> <p>4 And I wasn't the only dancer he paid there, but I</p> <p>5 was one of his favorites.</p> <p>6 Q. Okay.</p> <p>7 A. But that's so rare to have regulars.</p> <p>8 Q. Okay. All right. Now, you also</p> <p>9 testified that you didn't always tip managers.</p> <p>10 Would anything occur if you didn't tip managers?</p> <p>11 A. Again, there wouldn't be immediate</p> <p>12 consequences. But in the long run, they can sway</p> <p>13 you in one direction or another as far as how much</p> <p>14 money you make and how much access to money you</p> <p>15 have in the club. So it was more of a long-term</p> <p>16 consequence, I guess.</p> <p>17 And then, like I said, if you ask for</p> <p>18 something, such as going home earlier and you don't</p> <p>19 tip them, they're more likely to say no than if you</p> <p>20 do or if you ask to cash funny money earlier. If</p> <p>21 you tip them, they're more likely to do it for you.</p> <p>22 Just things like that.</p> <p>23 Q. Okay. Could you choose to stop</p> <p>24 performing at Crazy Horse and go dance at another</p> <p>25 club?</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. Did you get any of those things because</p> <p>2 you were an adult dancer?</p> <p>3 A. That probably had a lot to do with it,</p> <p>4 yes.</p> <p>5 Q. Any of those things in particular?</p> <p>6 A. The breasts, at least.</p> <p>7 Q. Do you recall how much you paid for that?</p> <p>8 A. 6,000.</p> <p>9 Q. Okay. Do you know what year you got that</p> <p>10 done?</p> <p>11 A. 2007.</p> <p>12 Q. Aside from gentlemen's clubs and the</p> <p>13 private parties that you mentioned earlier and the</p> <p>14 party buses that you mentioned earlier, any other</p> <p>15 places where you could be an adult dancer?</p> <p>16 A. No. Clubs, bachelor parties, and suites</p> <p>17 and party buses. That's it.</p> <p>18 Q. Okay. What made you choose to dance in</p> <p>19 gentlemen's clubs over just doing the private</p> <p>20 parties that you do now?</p> <p>21 A. I guess because it was instant when I</p> <p>22 moved out here. The clubs were available 24 hours</p> <p>23 a day. It was easier to just go into Spearmint</p> <p>24 Rhino and start working right away as opposed to</p> <p>25 trying to work my way into an agency, which can</p>

Page 57

1 take time to get regular bookings.
2 Q. Okay. Any reasons that you would prefer
3 to dance in a gentlemen's club over an agency
4 booking?
5 A. Just the fact that they're available 24
6 hours a day.
7 Q. Okay. So if you wanted to perform, there
8 was a place you could go?
9 A. Correct.
10 Q. All right. Earlier you testified to a
11 house fee, I believe?
12 A. Yes.
13 Q. Do you recall how much that was?
14 A. It varied depending on the time of day we
15 checked in.
16 Q. Okay. Do you recall a range?
17 A. I usually paid 75.
18 Q. Do you know what dictated the range of
19 fees?
20 A. The time you checked in.
21 Q. Sorry. I think you said that and somehow
22 I missed it.
23 How did you select what times you would
24 go in to start a shift?
25 A. I would usually try to come in when it

Page 58

1 was the busiest or about to be the busiest.
2 Q. Okay. Did you have specific days that
3 you preferred to perform?
4 A. No. I believe I worked all different
5 days.
6 Q. Okay. Would you do any research to try
7 and determine certain times when the club might be
8 busier than other times?
9 A. No. They would let us know when
10 conventions were coming in and we may be busier,
11 but not always.
12 Q. Okay. So that wasn't something you
13 researched independently?
14 A. No.
15 Q. Okay.
16 A. They made us aware if it was a big enough
17 convention.
18 Q. Okay. Now, earlier we talked a little
19 bit about the promotional events you attended off
20 of club premises.
21 A. Yes.
22 Q. Would you receive anything in exchange
23 for doing that?
24 A. We would be given a free house fee.
25 Q. Okay. Is that why you would go on the

Page 59

1 promo events?
2 A. Yes.
3 Q. Okay. Would you ever drink alcohol
4 during your shift?
5 A. No. I don't like alcohol.
6 Q. Okay. Would you sell any alcohol or try
7 to sell any bottles of alcohol?
8 A. Only in combination of selling a VIP
9 room.
10 Q. Okay. Did Crazy Horse have any
11 requirements that you were supposed to sell
12 bottles?
13 A. No.
14 Q. Just the VIP minimum that you mentioned
15 earlier, right?
16 A. Correct. If your customer was purchasing
17 a VIP dance with you, he was also required to
18 purchase drinks or a bottle.
19 Q. Okay. So that was just sort of tied into
20 the VIP experience?
21 A. Yes.
22 Q. Okay. Other than that, did Crazy Horse
23 require you to sell a certain amount of VIP time or
24 VIP experiences?
25 A. No.

Page 60

1 Q. Okay. Do you recall if Crazy Horse
2 served food?
3 A. They did.
4 Q. Okay. Do you remember if that was on
5 site?
6 A. Yes. The kitchen was inside the club.
7 Q. Would you ever eat during your breaks?
8 A. The food from the club?
9 Q. Any food.
10 A. House mom's food.
11 Q. Okay. What kinds of things would she
12 bring?
13 A. She would make a variety of different
14 things. She made tacos, quesadillas, sandwiches,
15 soup, anything like that. It's always different.
16 Q. Wow. Nice.
17 If you were taking a break where you were
18 going to eat something, was there a particular
19 place you were supposed to be?
20 A. In the dressing room. We weren't
21 supposed to eat on the floor.
22 Q. Did you ever try to eat on the floor?
23 A. No. I knew we weren't supposed to.
24 Q. Could you eat with a customer?
25 A. You could probably eat with a customer,

Page 61	Page 63
<p>1 yes, if the customer ordered food.</p> <p>2 Q. Okay. Was there a requirement that you</p> <p>3 would have to eat with a customer if they ordered</p> <p>4 food?</p> <p>5 A. No.</p> <p>6 Q. And what about alcoholic drinks, was</p> <p>7 there a requirement that you had to have alcoholic</p> <p>8 beverages with a customer?</p> <p>9 A. It's -- it's kind of expected if he</p> <p>10 offers you a drink that you accept it, but I don't</p> <p>11 remember if it was a rule and if there was a</p> <p>12 punishment for not accepting it.</p> <p>13 Q. Okay. If you accepted it, did you have</p> <p>14 to drink it?</p> <p>15 A. No.</p> <p>16 Q. Okay.</p> <p>17 A. I threw many drinks over my shoulder onto</p> <p>18 the floor. Yeah. Absolutely.</p> <p>19 Q. Okay. Splash another dancer while doing</p> <p>20 that?</p> <p>21 A. Maybe.</p> <p>22 Q. Good to know.</p> <p>23 Did you have any specialty, such as did</p> <p>24 you consider dancing on the pole your specialty</p> <p>25 versus a lap dance?</p>	<p>1 A. Are you asking a date?</p> <p>2 Q. Yes.</p> <p>3 A. No. I think it happened throughout the</p> <p>4 time I was working there.</p> <p>5 Q. So you think that, that occurred more</p> <p>6 than once?</p> <p>7 A. Yes.</p> <p>8 Q. Do you have an approximation of how many</p> <p>9 times you were fined for missing stage?</p> <p>10 A. No. I would say quite a few.</p> <p>11 Q. Do you think over five?</p> <p>12 A. Probably.</p> <p>13 Q. How about over ten?</p> <p>14 A. Maybe not.</p> <p>15 Q. Okay. So you think between five and ten?</p> <p>16 A. If I had to estimate, yes.</p> <p>17 Q. Do you have any idea how they kept track</p> <p>18 of that?</p> <p>19 A. The DJ kept track and then reported it at</p> <p>20 the end of the night.</p> <p>21 Q. Okay. How would you know how much you</p> <p>22 had been fined for missing stage?</p> <p>23 A. You would find out the next time you</p> <p>24 checked in, and it was on your balance.</p> <p>25 Q. Okay. So someone would tell you?</p>
Page 62	Page 64
<p>1 A. No.</p> <p>2 Q. What about any special lap dance moves?</p> <p>3 A. No.</p> <p>4 Q. Did you have any special way of</p> <p>5 approaching a customer?</p> <p>6 A. A friendly smile. I don't know.</p> <p>7 Q. How would you go about determining</p> <p>8 whether or not someone was interested in you?</p> <p>9 A. I guess you just learn to read people</p> <p>10 over the years.</p> <p>11 Q. Okay. What would happen if you</p> <p>12 approached someone about a dance and then they said</p> <p>13 no?</p> <p>14 A. Then you would just try a different one.</p> <p>15 Q. Were there any consequences if a customer</p> <p>16 refused a lap dance from you?</p> <p>17 A. No.</p> <p>18 Q. What about if they refused to go into the</p> <p>19 VIP area with you?</p> <p>20 A. No consequences.</p> <p>21 Q. Okay. Did Crazy Horse ever fine you for</p> <p>22 any conduct?</p> <p>23 A. Not conduct. I believe I was only fined</p> <p>24 for missing stage.</p> <p>25 Q. Do you recall when that would have been?</p>	<p>1 A. The guy at the back door that you checked</p> <p>2 in with would tell you, you needed to pay that</p> <p>3 day's house fee plus a fine from the last day that</p> <p>4 you worked.</p> <p>5 Q. Okay. Do you recall what was told to you</p> <p>6 as a fine for missing stage?</p> <p>7 A. It was usually \$40, which was a two-song</p> <p>8 set. I believe the exact way they calculated a</p> <p>9 fine was \$20 per song.</p> <p>10 Q. Okay.</p> <p>11 A. And so if only one stage was open, a set</p> <p>12 would be 40. So my typical missed stage fee was</p> <p>13 40.</p> <p>14 Q. What do you mean by if only one stage was</p> <p>15 open?</p> <p>16 A. If the club was busy and our overflow</p> <p>17 area was open, we had a second stage.</p> <p>18 Q. Okay.</p> <p>19 A. And you would perform back to back, so</p> <p>20 that would be a total of four songs.</p> <p>21 Q. Okay. So would you start out on the main</p> <p>22 stage and then go on the other stage?</p> <p>23 A. Yes. That's correct.</p> <p>24 Q. Okay. Was two songs what you believed to</p> <p>25 be the minimum amount of songs you were supposed to</p>

Page 65	Page 67
<p>1 be on stage for?</p> <p>2 A. That was every stage set.</p> <p>3 Q. Only two songs?</p> <p>4 A. Correct.</p> <p>5 Q. Okay.</p> <p>6 A. Each girl would do two songs.</p> <p>7 Q. Okay. Did you ever ask to do only one</p> <p>8 song?</p> <p>9 A. No. You couldn't do that. You were</p> <p>10 required to do the entire set.</p> <p>11 Q. Who said you couldn't do that?</p> <p>12 A. The club.</p> <p>13 Q. Do you recall anyone in particular saying</p> <p>14 that to you?</p> <p>15 A. That was made very clear when you're</p> <p>16 first hired, your first day, and they go over the</p> <p>17 rules that you must perform an entire stage set</p> <p>18 every time you're called up in rotation unless you</p> <p>19 pay an offstage fee at the beginning of the night.</p> <p>20 Q. What about if you're in the VIP room?</p> <p>21 A. Then that's the only exception.</p> <p>22 Q. What about if you're in the middle of</p> <p>23 giving someone a lap dance on the main floor?</p> <p>24 A. No. Then you have to leave and do stage.</p> <p>25 Q. Okay. But did you ever ask if you could</p>	<p>1 A. No.</p> <p>2 Q. Why is that?</p> <p>3 A. You weren't compensated for it.</p> <p>4 Q. What do you mean you weren't compensated</p> <p>5 for it?</p> <p>6 A. There was no guaranteed compensation for</p> <p>7 going on stage. You just got topless, put in the</p> <p>8 work, and hoped that a patron would tip you, but it</p> <p>9 was not -- not guaranteed.</p> <p>10 Q. Okay. Did you ever meet any customers by</p> <p>11 performing on stage?</p> <p>12 A. That could happen if they saw you</p> <p>13 perform, they might notice you, and notice that</p> <p>14 they like you.</p> <p>15 Q. Okay. So during a shift when you weren't</p> <p>16 on stage, what would you be doing?</p> <p>17 A. Mingling.</p> <p>18 Q. Okay. Would you walk around?</p> <p>19 A. Yes.</p> <p>20 Q. Were there any requirements on the amount</p> <p>21 of time you were supposed to be walking around</p> <p>22 while you were performing?</p> <p>23 A. No.</p> <p>24 Q. Okay. Could you just hang out in the bar</p> <p>25 area and try to meet customers that way?</p>
Page 66	Page 68
<p>1 only do one song?</p> <p>2 A. No. I would ask the DJ if I could do no</p> <p>3 songs.</p> <p>4 Q. Okay. What would that response be?</p> <p>5 A. No. Unless you tipped him, and then</p> <p>6 sometimes it was yes.</p> <p>7 Q. Okay. When you say "no, unless you</p> <p>8 tipped him," was that tipping in addition to an</p> <p>9 offstage fee or you would not pay an offstage fee</p> <p>10 and just tip the DJ?</p> <p>11 A. If you tipped the DJ and he said he would</p> <p>12 skip you, then you didn't have to pay a missed</p> <p>13 stage fee or an offstage fee.</p> <p>14 Q. Do you think a missed stage fee and an</p> <p>15 offstage fee are the same thing?</p> <p>16 A. No. An offstage fee is paid at the</p> <p>17 beginning of the night with your house fee.</p> <p>18 Q. Okay.</p> <p>19 A. Then you're not required to go on stage.</p> <p>20 If you don't pay the offstage fee and you miss</p> <p>21 stage, then you're fined a miss stage fee.</p> <p>22 Q. Okay. Did you ever ask to stay on stage</p> <p>23 for three songs?</p> <p>24 A. No.</p> <p>25 Q. Did you like dancing on stage?</p>	<p>1 A. If that's what you wanted to do, yes.</p> <p>2 Q. Okay. Do you think that you were a good</p> <p>3 entertainer?</p> <p>4 A. Yes.</p> <p>5 Q. Do you think that you were better than</p> <p>6 the average entertainer?</p> <p>7 A. Definitely more experienced at that</p> <p>8 point.</p> <p>9 Q. Okay. Do you think it was your</p> <p>10 experience that made you better?</p> <p>11 A. Yes.</p> <p>12 Q. Do you think anyone could be a good</p> <p>13 dancer?</p> <p>14 A. No.</p> <p>15 Q. Why not?</p> <p>16 A. It's a lot about reading the customers</p> <p>17 and recognizing what they like and what they don't</p> <p>18 like, what they want, and I don't think everybody</p> <p>19 has that gift.</p> <p>20 Q. Fair enough.</p> <p>21 Did you ever ask anyone at Crazy Horse</p> <p>22 for wages?</p> <p>23 A. No.</p> <p>24 Q. Any reason?</p> <p>25 A. It was just common knowledge that</p>

<p style="text-align: right;">Page 69</p> <p>1 entertainers did not earn a wage. 2 Q. Did you ever ask to be hired by Crazy 3 Horse? 4 A. No. 5 Q. Okay. And by "hired by Crazy Horse," I 6 mean as an employee. 7 A. No. I never did. 8 Q. Okay. Did you ever ask Crazy Horse to 9 monetarily compensate you in any other way? 10 A. I was compensated for a promotion I did 11 by check one time. 12 Q. Okay. Do you know how much that was? 13 A. \$100. I'm sorry. I believe it was cash. 14 I'm sorry. I think it was cash. 15 Q. Okay. 16 A. Because it was a promotion I did with 17 cocktail servers. And since they were employees, 18 they got paid, so I got paid also. 19 Q. Okay. 20 A. Cash or check, but I believe it was cash. 21 Q. Were you aware of any different 22 requirements on the cocktail servers versus the 23 dancers? 24 A. They were required to wear uniforms that 25 were issued to them. They were required to only</p>	<p style="text-align: right;">Page 71</p> <p>1 supposed to look, I guess, "cute" when we did 2 promotions. 3 Q. Okay. Not rolling out of bed, huh? 4 A. Right. 5 Q. Okay. What made you choose to do 6 promotional events for Crazy Horse? 7 A. I was really struggling for money at the 8 time, so any way I could save money on house fees, 9 I would usually try to do it. 10 Q. Okay. Did you -- sorry. 11 Do you have an estimate as to how much 12 you would spend on costumes per month while 13 performing at Crazy Horse? 14 A. No. I didn't really buy a lot of 15 costumes at the time because I had so many years 16 worth of outfits I had accumulated by that point. 17 Q. Okay. What about expenditures on hair 18 and makeup? 19 A. I wouldn't keep track of that stuff. 20 Q. Okay. Did you ever hire anyone to help 21 you with your hair and makeup? 22 A. No. 23 Q. Could you have? 24 MS. CALVERT: Objection. Calls for 25 speculation.</p>
<p style="text-align: right;">Page 70</p> <p>1 take breaks when they were assigned breaks. 2 Q. Okay. Anything else? 3 A. They were required to show up in the 4 event designated times. 5 Q. Do you recall what the promo was that you 6 did with the cocktail servers that you got 7 compensated on? 8 A. Yes. It was a convention at Sands. I 9 believe it was Global Gaming Expo. 10 Q. Okay. What were you doing during that 11 promo? 12 A. Handing out cards. 13 Q. Okay. 14 A. Not supposed to be doing that at 15 convention centers. 16 Q. Okay. Just sort of speaking to people 17 and letting them know about Crazy Horse III? 18 A. Giving them cards and telling them to 19 call for a limo to go to the club after their 20 convention. 21 Q. Okay. Was that promotional event 22 required? 23 A. No. 24 Q. Did you have to wear something specific? 25 A. No. It was just understood that we were</p>	<p style="text-align: right;">Page 72</p> <p>1 THE WITNESS: I believe -- I -- you mean 2 inside the club or outside the club? 3 BY MS. SMITH: 4 Q. Either or. 5 A. Not inside the club, no. But outside the 6 club, I guess I would have been free to hire 7 whoever I wanted to help me. 8 Q. Was there any set individual that you had 9 to report to during a shift at Crazy Horse? 10 A. The DJ. 11 Q. Was that for your stage sets? 12 A. Yes. When you were ready, you were 13 supposed to let the DJ know that you were ready and 14 available to be called on stage. 15 Q. Okay. What made you decide to stop 16 performing at Crazy Horse? 17 A. I felt like the hosts were rude to me. 18 Q. Any particular host? 19 A. Yes. 20 Q. Do you recall their names? 21 A. Do I have to name? 22 MS. CALVERT: If you remember. 23 THE WITNESS: Yeah. Tommy Van was 24 especially rude to me. 25 /////</p>

Franklin
January 10, 2017

Page 73	Page 75
<p>1 BY MS. SMITH: 2 Q. Anyone else? 3 A. There were a couple others that got fired 4 before I left, so they weren't really a problem 5 anymore. But, no, just Tommy Van at that point. 6 Q. Okay. Other than rude hosts, any other 7 reason you decided to stop performing at Crazy 8 Horse? 9 A. Because they played favorites a lot. And 10 when I felt like I didn't have access to money that 11 was in the club and I was being pushed away, I 12 decided to go look for a club where I had more of 13 an equal opportunity to make money. 14 Q. Okay. After the last time you performed 15 at Crazy Horse, did you tell anyone that you 16 weren't going to return? 17 A. I think I told the house moms I was 18 leaving. I would go back and sell outfits to the 19 house moms, so they would see me even after I 20 stopped working there. 21 Q. Okay. Why would you do that? 22 A. Because I was a seamstress, and they sold 23 my outfits. 24 Q. Okay. Did you ever make some of your own 25 outfits?</p>	<p>1 Q. In this current lawsuit? 2 A. Yes. 3 Q. Do you recall who that was? 4 A. Yes. It was Danielle and Ashleigh. 5 Q. Do you know their last names? 6 A. Lamar. Danielle Lamar and Ashleigh 7 Holzman, H-o-l-z-m-a-n, I believe. 8 Q. Did she have a different name? 9 A. Not that I'm aware of. 10 Q. Do you know if you're still, if -- not 11 you, sorry. 12 Do you know if they're still involved in 13 the case? 14 A. I don't speak to them anymore, so I can't 15 confirm that. 16 Q. Okay. Any particular reason? 17 A. We just aren't friends anymore. 18 Q. Okay. So after you heard about Danielle 19 and Ashleigh speaking about the lawsuit, what did 20 you do? 21 A. I asked them who they were in contact 22 with, and they provided a name and a phone number 23 for me. 24 Q. Okay. Did they ask you to get involved 25 in the lawsuit?</p>
Page 74	Page 76
<p>1 A. Yeah. Occasionally, yes. 2 Q. What other kinds of things do you sell? 3 A. Just bikinis and lingerie, G-strings for 4 male entertainers as well. So that was also 5 another reason I went to Hustler. They had male 6 entertainers, and I would sell outfits to them. 7 Q. That must be interesting. 8 Do those come in different sizes? 9 A. Short, long, extra long. 10 Q. That's okay. 11 Let's take a brief break, and we will 12 come back and I'll go over some documents with you. 13 A. Okay. 14 (A short break was taken.) 15 BY MS. SMITH: 16 Q. Ms. Franklin, we're back on the record. 17 Once again, the oath that you took earlier today is 18 still in effect; okay? 19 A. Okay. 20 Q. How did you first hear about this 21 lawsuit? 22 A. I overheard some girls I was working with 23 at Hustler at the time talking about it. 24 Q. Do you recall what they said about it? 25 A. They said they were involved in it.</p>	<p>1 A. No. They just told me, I guess, the 2 premise of it and that they were involved in it. 3 And it was something I was interested in learning 4 more about so I contacted the lawyer that they gave 5 me the number for. 6 Q. Okay. Do you recall who you contacted? 7 A. John. I believe his last name is Taylor. 8 Q. Do you know what law firm? 9 A. I believe I met him in the same building 10 where I met Lauren. 11 Q. Okay. So maybe Morris Anderson or Big 12 Horn Law? 13 A. Correct. It was the same building, yeah. 14 Q. Okay. And it was your understanding 15 that, that same firm is still your legal counsel? 16 A. I'm not exactly sure. 17 Q. Okay. Are you aware of any other firms 18 that are representing you in this case? 19 A. No. 20 Q. Okay. Aside from Danielle and Ashleigh, 21 have you spoken to any other dancers about this 22 lawsuit? 23 A. No. 24 Q. Aside from your attorney, have you spoken 25 with anyone about this lawsuit?</p>

19 (Pages 73 to 76)

Page 77

1 A. No.
2 Q. What about your deposition today?
3 A. Other than mentioning I have to be here
4 for a deposition, but no -- no details to anyone
5 about it.
6 Q. Okay. Did you go over any documents for
7 your deposition today?
8 A. I did.
9 Q. Do you know what you reviewed?
10 A. The paperwork that I signed at Crazy
11 Horse III, the various rules that were posted
12 around the club.
13 Q. Okay. Anything else?
14 A. Some depositions from a prior lawsuit.
15 Q. Do you recall what lawsuit?
16 A. Against Sapphire.
17 Q. Do you recall whose depositions they
18 were?
19 A. No.
20 Q. Anyone you knew?
21 A. No.
22 Q. Did you have those documents on your own
23 or were they given to you?
24 A. They were given to me.
25 Q. So what made you exactly want to join

Page 78

1 this lawsuit against Crazy Horse?
2 A. I believe that the entertainers were
3 being treated unfairly, and I guess everything the
4 lawsuit stands for, I stand behind. I believe in
5 it.
6 Q. What do you mean by that?
7 A. Specifically, I believe that the
8 entertainers were taken advantage of by the club.
9 Q. What do you mean by -- what do you mean
10 by "taken advantage of"?
11 A. We weren't compensated by the club, yet
12 we weren't given a lot of the freedom that I feel
13 we should have had for not being compensated. I
14 also believe they took an unfair amount of money
15 from us. We were often threatened if we didn't tip
16 more money on top of what we're required to tip
17 out. I believe it's all very unfair, and they were
18 taking advantage of us.
19 Q. Okay. What did you -- what did you mean
20 when you said you weren't given freedom?
21 A. I know a lot of other people that work as
22 contractors, such as hairdressers. I have friends
23 that do hair, eyelash extensions, things like that,
24 and they're contractors and they're given the right
25 to do a lot of things that we as entertainers

Page 79

1 weren't allowed to do.
2 Q. Are you thinking of anything specific?
3 A. Yeah. Like charge clients by credit card
4 on your own.
5 Q. Did anyone tell you, you couldn't charge
6 credit card -- client's credit cards on your own at
7 Crazy Horse?
8 A. Oh, absolutely. If a client wanted to
9 pay with a credit card, he had to go to the cashier
10 and the club charged his card. They charged him a
11 surcharge, then they charged us a fee to cash those
12 out. We could not charge the clients on our own
13 with a Square Reader or whatever.
14 Q. Did you ask to be able to charge a client
15 on your own with a Square Reader?
16 A. No. No. We knew we weren't supposed to.
17 Q. What do you mean you knew were weren't
18 supposed to?
19 A. It was just one of those things that was
20 just common knowledge. We knew we had to take them
21 to the cashier. They always said that we had to
22 take them to the cashier cage.
23 Q. Did you ever ask?
24 A. Specifically about using a Square Reader
25 or something?

Page 80

1 Q. Yes.
2 A. No, because I was scared.
3 Q. What about PayPal?
4 A. I believe also, same thing. You --
5 you're afraid. Like, if you do it, you don't want
6 to get caught doing it because you're afraid of the
7 consequences.
8 Q. Do you have a PayPal?
9 A. I do.
10 Q. Could you have told a customer your email
11 to receive a PayPal payment from them?
12 MS. CALVERT: Objection. Calls for
13 speculation.
14 THE WITNESS: I would have been afraid of
15 the consequences if the club found out.
16 BY MS. SMITH:
17 Q. What do you mean "afraid"?
18 A. I think the club would look at me like I
19 was stealing money from them because they aren't
20 getting either those surcharge from the credit card
21 or the ATM fee.
22 Q. Did anyone specifically tell you, you
23 couldn't do that?
24 A. No. PayPal was never mentioned
25 specifically.

<p style="text-align: right;">Page 81</p> <p>1 Q. How would someone have known if you gave</p> <p>2 a customer your email address, for instance, on</p> <p>3 PayPal?</p> <p>4 MS. CALVERT: Objection. Calls for</p> <p>5 speculation.</p> <p>6 THE WITNESS: I guess they wouldn't, but</p> <p>7 we were also told specifically that we weren't</p> <p>8 allowed to give out private or personal</p> <p>9 information. I know for a fact that was in our</p> <p>10 rules. We could not give out phone numbers,</p> <p>11 contact information, things like that. I believe</p> <p>12 it wasn't only a rule, I believe it's a law.</p> <p>13 BY MS. SMITH:</p> <p>14 Q. Do you think that's because it could be</p> <p>15 considered solicitation?</p> <p>16 A. Yes.</p> <p>17 MS. CALVERT: Objection. Calls for</p> <p>18 speculation. Legal conclusion.</p> <p>19 BY MS. SMITH:</p> <p>20 Q. It's okay. It's normal to want to</p> <p>21 answer, and then Lauren wants to make her</p> <p>22 objection. Don't worry about it.</p> <p>23 A. That's what we were told at Spearmint</p> <p>24 Rhino.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 83</p> <p>1 from making money and things like that.</p> <p>2 Q. Do you have a calculation as to how much</p> <p>3 you think that you're entitled to for this lawsuit?</p> <p>4 A. I can only calculate the house fees and</p> <p>5 the fines that I paid because they're recorded in</p> <p>6 the computer. I can't put a number on how much</p> <p>7 money I paid out in just tips to hosts and managers</p> <p>8 and various employees.</p> <p>9 Q. Okay. But that wasn't required?</p> <p>10 MS. CALVERT: Objection. Asked and</p> <p>11 answered.</p> <p>12 THE WITNESS: It --</p> <p>13 BY MS. SMITH:</p> <p>14 Q. I'm sorry. I believe you testified</p> <p>15 previously that it wasn't mandatory?</p> <p>16 MS. CALVERT: Objection. Misstates prior</p> <p>17 testimony.</p> <p>18 THE WITNESS: Tipping employees was not</p> <p>19 required, but it's something that we did out of</p> <p>20 fear.</p> <p>21 BY MS. SMITH:</p> <p>22 Q. Fear of what?</p> <p>23 A. Being "black listed" as they call it.</p> <p>24 Q. Can you just go perform at another club?</p> <p>25 A. Yeah. That's what I did.</p>
<p style="text-align: right;">Page 82</p> <p>1 A. Again, I don't -- I don't know that it's</p> <p>2 a fact, but that's what I was told.</p> <p>3 Q. Okay. Have you ever heard of Apple Pay?</p> <p>4 A. Yes.</p> <p>5 Q. Could you have taken an Apple payment?</p> <p>6 MS. CALVERT: Objection. Calls for</p> <p>7 speculation.</p> <p>8 THE WITNESS: My answer would be the same</p> <p>9 as with PayPal.</p> <p>10 BY MS. SMITH:</p> <p>11 Q. Okay. The friends that you have that you</p> <p>12 are referring to that you said were contractors,</p> <p>13 where would they provide their services at?</p> <p>14 A. In like a studio suite or -- it's like --</p> <p>15 they would rent a space from an establishment.</p> <p>16 Q. Okay. So they would have to rent an area</p> <p>17 to do their eyelash extensions or hairstyling?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. What are you hoping to achieve</p> <p>20 out of this lawsuit?</p> <p>21 A. I'm hoping that the clubs will change the</p> <p>22 way they operate, to kind of leave a better future</p> <p>23 for future entertainers. And also, I hope to get</p> <p>24 some compensation from all of the fees and all of</p> <p>25 the tipping and all of the ways they prevented me</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. Okay. Why did you perform at Crazy Horse</p> <p>2 for over a year?</p> <p>3 A. For a while, I feel like I kind of flew</p> <p>4 under the radar. And eventually, the favoritism of</p> <p>5 other dancers started to take over and I was</p> <p>6 getting pushed out of the way a lot more often.</p> <p>7 The black listing that they threatened me with</p> <p>8 ended up coming to fruition.</p> <p>9 Q. Do you know what Club Tracks is?</p> <p>10 A. I believe that's their software system we</p> <p>11 use.</p> <p>12 Q. Was that what you were referring to</p> <p>13 regarding a record of house fees and fines paid by</p> <p>14 you?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Are you aware that the Nevada</p> <p>17 Legislature issued a statute regarding independent</p> <p>18 contractors?</p> <p>19 A. I'm not familiar with that.</p> <p>20 Q. Have you ever heard of NRS 608.0155?</p> <p>21 A. No.</p> <p>22 Q. Do you know personally of any criteria</p> <p>23 that would be used to assess an independent</p> <p>24 contractor or whether someone was an independent</p> <p>25 contractor?</p>

Page 85

1 A. I don't know the specific criteria.
2 Q. As an entertainer at Crazy Horse, did you
3 feel that you were responsible for the customer's
4 experience?
5 MS. CALVERT: Objection. Vague.
6 THE WITNESS: Some of it. I could only
7 provide entertainment. I couldn't be responsible
8 for the rest of their experience.
9 BY MS. SMITH:
10 Q. As opposed to -- what do you mean by
11 that?
12 A. The drink service and things like that.
13 Where they sat in the club, that was not my
14 territory.
15 Q. Okay. I'm going to show you a document
16 that has previously been produced in this
17 litigation. It's an Entertainer Login by Date. It
18 reflects a stage name "Sarah" and what I believe to
19 be your name, Jacqueline Franklin. It's been
20 produced in a couple of different formats. I was
21 trying to see if a different one was attached.
22 Okay. I'm going to have the court
23 reporter mark that as Exhibit A.
24 (Exhibit A was marked for the record.)
25 /////

Page 86

1 BY MS. SMITH:
2 Q. I'm going to also hand you another
3 document -- sorry. Exhibit A, I believe, was
4 produced under the Bates No. RR0607. Sorry.
5 I'm going to also show you something I'm
6 going to have the court reporter mark as Exhibit B.
7 This has also been previously produced in this
8 litigation. It's been Bates stamped RR0057 through
9 RR0067.
10 I'm also going to show you a document
11 that I'm not going to attach because it does
12 reflect your full social security number. I'm
13 going to have you review it and tell me if that
14 information is accurate or if it was accurate at
15 the time.
16 A. Okay.
17 MS. SMITH: We can go off the record for
18 a second.
19 (Exhibit B was marked for the record.)
20 (A short break was taken.)
21 THE WITNESS: Okay. I looked them over.
22 BY MS. SMITH:
23 Q. Okay. Ms. Franklin, that document I had
24 you review that reflected your social security
25 number that had been Bates stamped RR0055 and also

Page 87

1 has an accompanying picture Bates stamped RR0056,
2 was that correct?
3 A. Yes. Everything on it is correct.
4 Q. Okay. Thank you. I can take that back.
5 Now, the exhibits that the court reporter
6 actually marked, it's important that you leave
7 those at the end of the deposition. If you want
8 copies, I believe your counsel will probably have
9 some. Otherwise, the court reporter and probably
10 Lauren will have to chase you down for the
11 documents.
12 A. Okay.
13 Q. I'm going to turn your attention to
14 Exhibit A, the Entertainer Login.
15 Does this appear to be an accurate
16 reflection of the dates and times you performed at
17 Crazy Horse?
18 A. Yes. It appears accurate.
19 Q. Do you see anything that you believe to
20 be incorrect?
21 A. No, I do not.
22 Q. Do you believe 12/19 to 12/20/2014 to be
23 the last time you performed at Crazy Horse?
24 A. Yes.
25 Q. Okay. Do you have any reason to doubt

Page 88

1 the accuracy of this document?
2 A. I do not.
3 Q. Okay. Do you have any documents in your
4 possession that would refute the information on
5 Exhibit A?
6 A. No.
7 Q. I'm going to direct your attention to
8 Exhibit B.
9 Does this appear to be an accurate
10 reflection of fees that were charged and paid by
11 you?
12 A. Yes, it appears correct.
13 Q. Any reason to doubt the accuracy of this
14 document?
15 A. No. No reason.
16 Q. Do you have any documents in your
17 possession that would refute the information in
18 this document?
19 A. No.
20 Q. Can you show me where in Exhibit B it
21 would reflect a missed stage fine?
22 A. No. I see a lot that are labeled
23 "offstage fee," and I could speculate that it's
24 written the same way because it's the same amount
25 of money.

Page 89	Page 91
<p>1 Q. Do you have any basis for that belief 2 aside from that it shows a \$40 offstage fee? 3 A. That would be it. 4 Q. Do you have any documents that would 5 support that belief? 6 A. No. 7 Q. Did you ever pay an offstage fee? 8 A. I paid offstage fees many times when I 9 first started working there, and later on, I would 10 never pay an offstage fee. And when I would miss 11 stage, they would fine me. That's the only reason 12 I can speculate that it's the same charge. 13 Q. Do you have any documentation evidencing 14 a missed stage fee? 15 A. No. I keep no documents. 16 Q. So is it your recollection that at some 17 point in time, you stopped ever paying an offstage 18 fee? 19 A. Yeah. I stopped paying offstage fees 20 shortly after starting to work there because \$40 21 every night in addition to my house fees was 22 becoming too expensive. 23 Q. So was the offstage fee, to your 24 recollection, the same amount as a missed stage 25 fine?</p>	<p>1 Q. That circumstance you were just referring 2 to, tipping the DJ to skip you, would that be for 3 him to skip you for the entire night? 4 A. Sometimes. Yes. 5 Q. Okay. 6 A. Yes. It also depended on which DJ was 7 working. 8 Q. What do you mean by that? 9 A. I got along pretty well with one DJ in 10 particular who would skip me for the whole night, 11 and the other DJ would put me on rotation and call 12 me up. And if I asked him to skip me for a set, I 13 would tip him for that. 14 Q. So in terms of what you had testified to 15 earlier about at some point not paying an offstage 16 fee, do you think that could have stopped in March 17 of 2014? 18 A. Yes. 19 Q. Okay. Did you ever ask for a refund of 20 any of your house fees? 21 A. I never asked for a refund. However, 22 there were times I accumulated a substantial 23 balance and I would ask to have that balance 24 cleared. 25 Q. When you say "accumulated a substantial</p>
Page 90	Page 92
<p>1 A. Yes. It's \$40. 2 Q. Okay. I'm going to turn your attention 3 to RR0063. It's page 7 of 11 in Exhibit B. 4 A. Okay. Okay. 5 Q. There's an entry on 3/29/2014. Do you 6 see that? 7 A. Yes. 8 Q. Do you recall if that was a date that you 9 missed stage? 10 A. I can't recall. 11 Q. Do you think you would have paid an 12 offstage fee in March 29th of 2014? 13 A. I don't believe I was paying offstage 14 fees that far into working there, but I can't say 15 for sure. I don't remember. 16 Q. I'm going to have you review the rest of 17 the document. 18 Does it appear that after March 29th, 19 2014, that you paid any offstage fees? 20 A. It doesn't appear that I did, no. 21 Q. Do you think you may have been paying 22 offstage fees periodically up until March of 2014? 23 A. I don't know how many times I paid a 24 missed stage fee to the club versus just tipping 25 the DJ to skip me, which I frequently did.</p>	<p>1 balance," do you mean money -- I'm sorry. 2 When you say "substantial balance," what 3 do you mean by that? 4 A. If I wouldn't pay my house fee on my way 5 in and then I would also leave without paying it, 6 it would accumulate. 7 Q. Okay. And you would sometimes ask for 8 that to be cleared? 9 A. Yes. 10 Q. And would that occur? 11 A. Sometimes. Yes. 12 Q. Okay. Could you dance on a shift then 13 with a running balance? 14 A. Yes. 15 Q. Did you do that? 16 A. Yes, I did. 17 Q. Okay. I'm going to turn your attention 18 to RR0059. I'm sorry. Exhibit B. 19 A. 57? 20 Q. I'm going to direct your attention to 21 page RR0059. Inside it's page 3 of 11. I'm sorry. 22 A. Okay. 23 Q. There's a lot of numbers on here and 24 unfortunately for you, us attorneys try to use the 25 Bates numbers because it makes it easier later on.</p>

Page 93

1 In particular, I'd like to draw your attention to
2 the entry on 12/18/2013.
3 A. Yes.
4 Q. And do you see where it states "Went home
5 sick so we gave her credit"?
6 A. Yes.
7 Q. Do you recall that happening?
8 A. I do.
9 Q. Okay. So do you think that the
10 corresponding entertainer login also reflected on
11 12/18 -- well, it starts on 12/17, I believe, of
12 1.07 hours.
13 Do you think that's accurate?
14 A. Yes.
15 Q. Okay.
16 A. I believe I recall that day,
17 specifically.
18 Q. Okay. So did you go up and ask for a
19 credit because you were sick?
20 A. Yes. I asked if I could just put it
21 toward the next day.
22 Q. Okay. If you wanted to be on premises
23 for, what you previously testified to as five
24 hours, would you need to pay a checkout fee?
25 A. I'm sorry. Repeat that.

Page 94

1 Q. If you wanted to leave the premises prior
2 to the five hours, which you testified to
3 previously, would you need to pay a specific
4 checkout fee?
5 A. No. It was more like tipping the manager
6 to get him to agree to it.
7 Q. Okay.
8 A. It was not a fee. It was generally a
9 tip.
10 Q. Okay.
11 A. Or a good reason why you had to leave.
12 Q. Okay. Would you do that frequently?
13 A. I wouldn't say frequently, no.
14 Q. Okay. Do you believe that you would do
15 that on each of the dates reflected in Exhibit A
16 where it appears you were on premises for less than
17 five hours?
18 A. Yeah. I would say this is accurate. I
19 would generally tip the manager unless I had a
20 really good reason why I needed to leave early.
21 Q. Okay. Did anyone ever require you to
22 stay on premises for over eight hours?
23 A. No.
24 Q. What about perform or be on premises for
25 over 40 hours in a given week?

Page 95

1 A. No.
2 Q. If you had wanted to work every day,
3 could you have?
4 A. Yes.
5 Q. What about if you did not want to perform
6 three days in a week?
7 A. That's fine. I just would have had my
8 locker revoked, from my understanding.
9 Q. Did everyone have a locker?
10 A. No. It was optional.
11 Q. Okay. So you chose to have, what, an
12 assigned locker there?
13 A. Yes.
14 Q. Did you bring your own lock for that?
15 A. I don't remember.
16 Q. Okay.
17 A. Probably.
18 Q. Otherwise, could you have just chosen to
19 bring whatever you needed for a shift with you each
20 shift?
21 A. Right.
22 Q. Okay. So the idea was to probably, what,
23 leave some cosmetics?
24 A. Outfits and shoes. The shoes were big.
25 Q. Do you have an estimate on how much you

Page 96

1 would spend on shoes per month?
2 A. Shoes would usually last a couple of
3 months. They're about 120. I might get three
4 months out of them.
5 Q. Okay. That's true while you were
6 performing at Crazy Horse?
7 A. Yes.
8 Q. I'm going to turn your attention to
9 RR0063. It's page 7 of 11.
10 A. Okay.
11 Q. And, in particular, the entry -- the
12 first entry that's dated 4/19/2014.
13 Do you see that?
14 A. Yes.
15 Q. It says, "promo minus 375."
16 Do you see that?
17 A. Yes.
18 Q. Do you understand that to be a credit you
19 were given for a promo?
20 A. I don't remember why I was given that
21 credit.
22 Q. Do you remember getting that credit?
23 A. Yeah. I remember not having to pay house
24 fees for a while until it ran out, but I can't
25 remember why I got it.

Page 97

1 Q. Okay. What about higher up on that page
2 for the entry dated 4/7/2014? It says, "Adjustment
3 comp minus 125," and that brought your running
4 total to zero.
5 Is that your understanding of that line?
6 A. Yes. I'm sure that was one of the times
7 that I referred to earlier where I would accumulate
8 a little bit of a balance, and I would ask Kewan to
9 clear it for me.
10 Q. Okay. Do you think that's also what
11 occurred, for instance, on RR0060, page 4 of 11,
12 those adjustments that said, "Kewan"?
13 A. No. Because when those were issued, I
14 didn't have a balance or they're issued for more
15 than what my balance was. So those may have
16 legitimately been from promos or something.
17 Q. Okay. All right.
18 A. Unless he was just feeling incredibly
19 generous. I don't know.
20 Q. Okay. Are there any times you recall
21 paying an offstage fee when you would still go up
22 on stage anyway?
23 A. No. If the offstage fee was paid at the
24 beginning of the night, then you were not on
25 rotation and never asked to go on stage.

Page 98

1 Q. Okay. I'm going to turn your attention
2 to RR0066. It's page 10 of 11. And, in
3 particular, the second entry on 9/8/2014. It says,
4 "Adjustment JL minus 350."
5 Do you see that?
6 A. Yes.
7 Q. Do you recall what that was?
8 A. Well, I had a balance of 350. They
9 cleared my balance. That's Justin Lohrman, I'm
10 assuming that's what that means, was who I would do
11 promos with. That may have been one of the
12 conventions I worked with him, gee, two years or
13 something like that. I don't know.
14 Q. Okay. Those times that you mentioned
15 that you would request for your running total to be
16 cleared, did the club then request something of you
17 in exchange for clearing your running total?
18 MS. CALVERT: Objection. Vague.
19 THE WITNESS: No.
20 BY MS. SMITH:
21 Q. So you would just ask and maybe they
22 would clear it?
23 A. Yeah.
24 Q. Okay. Any time you recall you asking and
25 them not clearing it?

Page 99

1 A. Of course.
2 Q. Do you have any dates of that?
3 A. No. No. There were quite a few times I
4 accumulated a balance. Sometimes I would ask if I
5 owed maybe just one house fee, and they would say
6 no. And then I would let it go for a while, and I
7 would keep complaining and eventually Kewan would
8 almost always clear it for me or I would end up
9 doing a promo and then Justin would clear it for
10 me.
11 MS. SMITH: Okay. All right. I'm going
12 to have the court reporter mark another exhibit. I
13 believe this will be Exhibit C.
14 (Exhibit C was marked for the record.)
15 MS. SMITH: I'm going to also have her
16 mark an Exhibit D.
17 (Exhibit D was marked for the record.)
18 MS. SMITH: Just for the record, because
19 these aren't Bates stamped yet, Exhibit C is
20 labeled "Plaintiff Jacqueline Franklin's Answers to
21 Defendant's Interrogatories" electronically served
22 12/28/2016. And Exhibit D is "Plaintiff Jacqueline
23 Franklin's Responses to Defendant's Requests for
24 Production of Documents" also electronically served
25 on December 28th, 2016.

Page 100

1 We're going to go off the record for a
2 minute and have you review that and then let us
3 know when you are ready.
4 THE WITNESS: Okay.
5 (A short break was taken.)
6 BY MS. SMITH:
7 Q. So, Ms. Franklin, you took a moment to
8 look over Exhibit C and Exhibit D that were marked
9 by the court reporter. I'm going to turn your
10 attention to Exhibit C first.
11 In your response to Interrogatory No. 20,
12 I believe -- I'm sorry, Interrogatory No. 2, the
13 answer, which starts on page 3 of 14 and goes into
14 page 4 of 14, do you see that?
15 A. Yes.
16 Q. Okay. It says here that you also worked
17 at Treasures?
18 A. Yes, that's correct.
19 Q. I'm sorry. Did you list Treasures
20 earlier?
21 A. No, because I did Treasures
22 simultaneously with Spearmint Rhino for a short
23 period.
24 Q. Do you recall when that was?
25 A. I'm going to say late 2010 into 2011. I

Page 101	Page 103
<p>1 only did Treasures Friday and Saturday nights, and</p> <p>2 I still worked Spearmint Rhino through the week.</p> <p>3 Q. Okay.</p> <p>4 A. I never worked solely at Treasures for</p> <p>5 any extended amount of time.</p> <p>6 Q. Okay. And you didn't perform at</p> <p>7 Treasures at all while you were performing at Crazy</p> <p>8 Horse?</p> <p>9 A. No. Only at Rhino. And that's exactly</p> <p>10 why because Spearmint Rhino was too crowded on</p> <p>11 Fridays and Saturdays. There often weren't seats</p> <p>12 available for floor dances and the lines to get</p> <p>13 into the VIP rooms had too long of a wait,</p> <p>14 sometimes hours for fully private suites.</p> <p>15 Q. Wow. I had no idea.</p> <p>16 Okay. So then did Crazy Horse III and</p> <p>17 Spearmint Rhino ever overlap?</p> <p>18 A. No.</p> <p>19 Q. Okay. Do you have a LinkedIn account?</p> <p>20 A. I do not.</p> <p>21 Q. Okay. Sometimes that doesn't get counted</p> <p>22 as social media because it's more for business</p> <p>23 connections.</p> <p>24 On page 5 of 14, your response to</p> <p>25 Interrogatory No. 4, it says, "TAM card."</p>	<p>1 Where did you use that one at?</p> <p>2 A. Spearmint Rhino and probably Treasures.</p> <p>3 Q. How did you select Honey?</p> <p>4 A. It was more like it was assigned to me.</p> <p>5 There were thousands of entertainers in the system</p> <p>6 at Spearmint Rhino and stage names were very hard</p> <p>7 to get. So if an entertainer was not present for</p> <p>8 so many days, they would give away her stage name.</p> <p>9 Q. Okay. I was going to say Honey seems</p> <p>10 like it would be common.</p> <p>11 And I believe you previously testified</p> <p>12 that you didn't keep track of any of the tips or</p> <p>13 gratuities that you paid out at Crazy Horse?</p> <p>14 A. Paid out?</p> <p>15 Q. Yeah</p> <p>16 A. Tips that I paid out? No. I wouldn't</p> <p>17 keep track of that, no.</p> <p>18 Q. What about tips that you received?</p> <p>19 A. No. I didn't keep track of those either.</p> <p>20 Q. I believe earlier you testified that you</p> <p>21 didn't have a bank account, but did you --</p> <p>22 A. Correct.</p> <p>23 Q. -- keep a ledger at home of any sums of</p> <p>24 money that you earned?</p> <p>25 A. No.</p>
Page 102	Page 104
<p>1 Do you still have that?</p> <p>2 A. I do.</p> <p>3 Q. Prior to me handing you Exhibit C, had</p> <p>4 you seen this document before?</p> <p>5 A. Yes.</p> <p>6 Q. I'm going to have you turn to page --</p> <p>7 it's not numbered, but it's right after page 13 and</p> <p>8 right before page 14 of the document.</p> <p>9 A. Okay.</p> <p>10 Q. Do you recall receiving this page?</p> <p>11 A. Yes.</p> <p>12 Q. Do you recall signing this?</p> <p>13 A. Yes.</p> <p>14 Q. Just for the record, the title of this</p> <p>15 page is "Verification," and it does not have a page</p> <p>16 number.</p> <p>17 Is that your signature?</p> <p>18 A. Yes, it is.</p> <p>19 Q. Do you believe that you signed this</p> <p>20 document on the 12th of December?</p> <p>21 A. Yes.</p> <p>22 Q. In your response to Interrogatory No. 7</p> <p>23 on page 7 of 14, the answer starts on the previous</p> <p>24 page 6 but goes into page 7. It says that you also</p> <p>25 use the stage name "Honey."</p>	<p>1 Q. Okay. Any particular reason why not?</p> <p>2 A. It just wasn't important to me. I would</p> <p>3 just throw cash in my safe, and when I needed to</p> <p>4 pay for something, I would take out what I needed.</p> <p>5 It was never important to me how much money was in</p> <p>6 my safe. It didn't matter.</p> <p>7 Q. Okay.</p> <p>8 A. As long as I had enough to pay my bills.</p> <p>9 Q. I'm sorry.</p> <p>10 Going back to that question about the TAM</p> <p>11 card, did you have to obtain that for another club?</p> <p>12 A. I was an employee at Hustler.</p> <p>13 Q. Okay. What were you doing at Hustler?</p> <p>14 A. Cashiering.</p> <p>15 Q. Oh, okay.</p> <p>16 A. Worked as an entertainer from, I think,</p> <p>17 February '15 to February '16. And then I was a</p> <p>18 cashier after that, so I was required to obtain a</p> <p>19 TAM card.</p> <p>20 Q. Okay. When did you stop being a cashier?</p> <p>21 A. April 28th.</p> <p>22 Q. Of 2016?</p> <p>23 A. Yes.</p> <p>24 Q. How come?</p> <p>25 A. I was fired.</p>

Page 105

1 Q. Why were you fired?
2 A. A cashier who was not on the schedule
3 showed up by mistake and they put her in my cashier
4 cage and I threw a fit and I got fired for being
5 insubordinate.
6 Q. Okay. So during the time that you were
7 cashiering at Hustler, did you stop performing?
8 A. Correct. That was required.
9 Q. Okay. Throughout this deposition, we've
10 been sort of using the terms "entertaining" or
11 "entertainer" and "performing," "performers,"
12 "dancer." Is it your understanding that those were
13 all the same thing?
14 A. Yes.
15 Q. Okay. Do you know what minimum wage is?
16 A. I believe it's what I was paid at
17 Hustler, 7.25 an hour.
18 Q. Okay. I'm going to refer you to page 10
19 of 14.
20 A. Okay.
21 Q. It's your response to Interrogatory
22 No. 13. The response actually begins on page 9.
23 It appears that you're referring to a single host
24 at Crazy Horse.
25 Was that the person that you referred to

Page 106

1 earlier, Tommy Van?
2 A. There were more than one.
3 Q. Okay. You don't know any other names?
4 A. I can't remember the other guy that
5 threatened me by name, no.
6 Q. When you say "threatened," what do you
7 mean?
8 A. He followed me to the dressing room,
9 cornered me, and demanded a 20 percent tip out from
10 me because the client who I took to the VIP room,
11 he said was a regular of his and would call him
12 when he came into town. And by me taking him to
13 the VIP room, he didn't get to put, I guess, his
14 girls on that client. And so he said I was taking
15 money out of his pocket so I owed him 20 percent.
16 Q. Did you report that?
17 A. I did mention that to Kewan. Nothing was
18 done about it.
19 Q. How do you know that?
20 A. Because other girls would make the same
21 complaints about him, chasing them down and shaking
22 them down for tips.
23 Q. Did you know a manager named Keith?
24 A. Yes.
25 Q. Who did you understand him to be?

Page 107

1 A. The general manager.
2 Q. Did you ever report that you were being
3 threatened to him?
4 A. Not that incident. I did -- Keith got
5 involved in one incident that I had with a host,
6 but for the most part, entertainers didn't have a
7 lot of interaction with Keith. He would spend a
8 lot of time in the office.
9 Q. But he would be on premises?
10 A. Yes. Yes. And he would only be called
11 out if it was, I guess, a pretty heated incident.
12 Q. Did you have access to the office door?
13 A. Yes.
14 Q. Could you have gone and reported it to
15 him?
16 A. I suppose I could have, yes.
17 Q. Previously you mentioned Justin Lohrman.
18 Do you recall him?
19 A. Yes. He would take us on promos.
20 Q. What was your understanding of who he
21 was?
22 A. Assistant general manager.
23 Q. Did you ever report this host behavior to
24 Justin?
25 A. No.

Page 108

1 Q. Could you have?
2 A. I could have. I guess it was my
3 understanding that Kewan was, like, the floor
4 manager and his duties were more dealing with
5 entertainers than Justin and Keith, who were more
6 on the office side of things. If that makes sense.
7 Q. Was there more than one floor manager on
8 duty during a shift?
9 A. I'm not too clear about who was the
10 manager versus who was a host. I just know Kewan
11 was a manager because he was the one that hired me,
12 and he was the one I interacted with the most.
13 Q. Okay. Did you recall -- or I'm sorry.
14 Do you recall interacting with any other
15 floor managers or people you understood to be floor
16 managers?
17 A. No. I don't think I could even name
18 another manager.
19 Q. Did you ever ask about other floor
20 managers?
21 A. Yeah. I know that there were times when
22 Kewan wasn't working, and I would have to have
23 someone else sign my slip. And if I didn't know
24 who the manager was at that time, I would ask the
25 DJ when I picked up the slip from him who I was

<p style="text-align: right;">Page 109</p> <p>1 supposed to take it to.</p> <p>2 Q. Okay.</p> <p>3 A. But at this point, I've forgotten names</p> <p>4 and faces.</p> <p>5 Q. All right. Understandable.</p> <p>6 Okay. I'm going to refer you to your</p> <p>7 response to Interrogatory No. 14.</p> <p>8 A. Okay.</p> <p>9 Q. Interrogatory 14 requests whether or not</p> <p>10 you were a party to other class actions in which</p> <p>11 you were either a lead plaintiff or a member of a</p> <p>12 class in the past five years.</p> <p>13 Do you see that?</p> <p>14 A. Yes, I see that.</p> <p>15 Q. Now, previously I believe you stated you</p> <p>16 weren't involved in any litigations.</p> <p>17 Do you know what Barber VD.2801 Westwood,</p> <p>18 Inc., is?</p> <p>19 A. Westwood, Inc., is the name that</p> <p>20 Treasures operates under, I believe.</p> <p>21 Q. So were you part of a lawsuit against</p> <p>22 Treasures?</p> <p>23 A. No.</p> <p>24 Q. Okay. You didn't receive any money from</p> <p>25 a lawsuit against Treasures?</p>	<p style="text-align: right;">Page 111</p> <p>1 clubs I worked with.</p> <p>2 MS. CALVERT: He's an attorney, so I</p> <p>3 probably should have objected to attorney/client</p> <p>4 privilege. Sorry. I was just thinking -- I'm,</p> <p>5 like, John's an attorney.</p> <p>6 THE WITNESS: Okay.</p> <p>7 MS. SMITH: All right.</p> <p>8 MS. CALVERT: Sorry.</p> <p>9 MS. SMITH: I don't know that that's</p> <p>10 rendering legal advice that she was just informed</p> <p>11 of other lawsuits.</p> <p>12 MS. CALVERT: I'm okay with what's been</p> <p>13 said so far. I don't think it has anything weird,</p> <p>14 but I can see it going that way.</p> <p>15 BY MS. SMITH:</p> <p>16 Q. What about Smith versus The Spearmint</p> <p>17 Rhino Companies Worldwide, Inc.? Do you know what</p> <p>18 that case is?</p> <p>19 A. I know there was a case years ago against</p> <p>20 all Spearmint Rhinos. I was not part of that, and</p> <p>21 I do not know that this Smith versus Spearmint</p> <p>22 Rhino is that case or a different one.</p> <p>23 Q. Did you receive any monies from the</p> <p>24 previous Spearmint Rhino case you were just</p> <p>25 referring to?</p>
<p style="text-align: right;">Page 110</p> <p>1 A. No.</p> <p>2 Q. Do you know if that case is ongoing?</p> <p>3 A. I was told they had a case brought</p> <p>4 against them when I became part of this lawsuit. I</p> <p>5 was told there were several clubs that had cases</p> <p>6 being brought against them at that time, but I've</p> <p>7 never been questioned specifically about Treasures.</p> <p>8 Q. Okay. So no deposition?</p> <p>9 A. No.</p> <p>10 Q. No Responses to Discovery?</p> <p>11 A. No, nothing really related to Treasures</p> <p>12 so far.</p> <p>13 Q. Okay. So you're not a named plaintiff in</p> <p>14 that case?</p> <p>15 A. It's ongoing. I don't -- I don't know.</p> <p>16 Q. Do you understand that you're a named</p> <p>17 plaintiff in this case?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. But you don't know if you're a</p> <p>20 named plaintiff in the case against D. Westwood,</p> <p>21 Inc.?</p> <p>22 A. Correct. When I initially met with John</p> <p>23 Taylor, he was the one I first had contact with, he</p> <p>24 told me there were several clubs that had suits</p> <p>25 being brought against them and he asked me which</p>	<p style="text-align: right;">Page 112</p> <p>1 A. I did not.</p> <p>2 Q. Okay. This current -- well, when I say</p> <p>3 "current," I mean the Spearmint Rhino case listed</p> <p>4 in this response. Are you aware if you're a named</p> <p>5 plaintiff in that case?</p> <p>6 A. I am not aware.</p> <p>7 Q. Okay. Do you know why those cases are</p> <p>8 listed in your Answers to Interrogatory No. 14?</p> <p>9 A. Because in my initial meeting when I</p> <p>10 named the clubs I worked at, I was told that Crazy</p> <p>11 Horse III, Treasures, and Spearmint Rhino all had</p> <p>12 suits being brought against them. I was eligible</p> <p>13 to be part of those suits because of the times I</p> <p>14 worked there.</p> <p>15 Q. Okay. So you're unaware if the Spearmint</p> <p>16 Rhino case reflected in your responses is still</p> <p>17 going on?</p> <p>18 MS. CALVERT: Objection. Asked and</p> <p>19 answered.</p> <p>20 You can go ahead.</p> <p>21 THE WITNESS: I've not been updated or</p> <p>22 given any information.</p> <p>23 BY MS. SMITH:</p> <p>24 Q. Okay. So no deposition or discovery</p> <p>25 responses such as in this case?</p>

Page 113	Page 115
<p>1 A. No. I -- I was asked a few questions</p> <p>2 initially, specifically Spearmint Rhino, I believe,</p> <p>3 but that was a long time ago, and I haven't been</p> <p>4 contacted since then and I've never done a</p> <p>5 deposition.</p> <p>6 Q. When you say "asked a few questions," are</p> <p>7 you referring to a conversation you had with your</p> <p>8 attorney?</p> <p>9 MS. CALVERT: John?</p> <p>10 THE WITNESS: An attorney? No. A</p> <p>11 different guy.</p> <p>12 MS. CALVERT: Was it John Taylor?</p> <p>13 THE WITNESS: No.</p> <p>14 MS. CALVERT: Oh.</p> <p>15 THE WITNESS: It was a different guy.</p> <p>16 BY MS. SMITH:</p> <p>17 Q. Was it an attorney?</p> <p>18 A. It was my understanding that he was.</p> <p>19 Q. Okay. So someone --</p> <p>20 A. Someone --</p> <p>21 Q. -- with the Law Firm Morris Anderson,</p> <p>22 also know as Big Horn Law?</p> <p>23 A. Yes. Called me in, asked me a few</p> <p>24 questions --</p> <p>25 Q. Okay.</p>	<p>1 A. Okay.</p> <p>2 Q. The last sentence of your response, it's</p> <p>3 kind of like lines 9 through 11-ish on page 11.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Aside from your independent recollection</p> <p>7 of being fined for a missed stage, you have no</p> <p>8 documents to reflect that?</p> <p>9 A. No, I do not.</p> <p>10 Q. Okay. And after looking at Exhibit B,</p> <p>11 did you see anything labeled as a missed stage fee?</p> <p>12 A. No, I did not.</p> <p>13 Q. Or a missed stage fine?</p> <p>14 A. No.</p> <p>15 Q. Okay. Do you think you needed to utilize</p> <p>16 any specific skills to be a good entertainer?</p> <p>17 A. Sure. It took skill.</p> <p>18 Q. With what kind?</p> <p>19 A. As I mentioned earlier, just being able</p> <p>20 to recognize what the client was looking for.</p> <p>21 Sometimes it was just attention. Sometimes it</p> <p>22 was -- they wanted you to dance for them and be</p> <p>23 sexy. And everyone wanted something different, so</p> <p>24 just recognizing what that client wanted from you.</p> <p>25 Q. Okay. I'm going to have you look at page</p>
Page 114	Page 116
<p>1 MS. CALVERT: And just stop there.</p> <p>2 THE WITNESS: I answered them, I signed</p> <p>3 it, and I have not heard anything since then.</p> <p>4 BY MS. SMITH:</p> <p>5 Q. So like filled out a questionnaire, not</p> <p>6 filled out a response like the responses I'm having</p> <p>7 you review right now?</p> <p>8 A. Right. He asked me questions, he wrote</p> <p>9 down my answers, and then I signed the bottom of</p> <p>10 it.</p> <p>11 Q. Okay. All right. And I know I asked you</p> <p>12 this earlier, but no receipts or documents in your</p> <p>13 possession?</p> <p>14 A. No.</p> <p>15 Q. Maybe hidden away in that safe?</p> <p>16 A. No.</p> <p>17 Q. Okay. What about expense receipts?</p> <p>18 A. No. I don't keep those.</p> <p>19 Q. So you wouldn't keep receipts for clothes</p> <p>20 or shoes or anything like that?</p> <p>21 A. No, because I never filed taxes. I</p> <p>22 didn't see a purpose for saving receipts.</p> <p>23 Q. Okay. So I'm going to direct your</p> <p>24 attention to page 11 of 14, your response to</p> <p>25 Interrogatory No. 16.</p>	<p>1 13 of 14 -- sorry. You're probably looking forward</p> <p>2 to being done with the document.</p> <p>3 A. Okay.</p> <p>4 Q. Is this response accurate? Actually,</p> <p>5 scratch that. Let me just move onto the next.</p> <p>6 Okay. So I'm going have you look at</p> <p>7 Exhibit D, which is your Responses to Requests for</p> <p>8 Production of Documents.</p> <p>9 You looked over this document also?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. In your response to Request No. 9,</p> <p>12 which requests copies of your licenses, permits,</p> <p>13 and other documentation, you referred to Exhibit 1</p> <p>14 attached to this.</p> <p>15 A. Okay. Yes.</p> <p>16 Q. Okay. It appears that Exhibit 1 reflects</p> <p>17 your name at the top and is for a sole</p> <p>18 proprietorship?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Do you recall if back in 2010 the</p> <p>21 expiration date for sole proprietor business</p> <p>22 licenses is longer?</p> <p>23 A. No. I believe as long as I've had my</p> <p>24 license, it expired every year. The only thing</p> <p>25 that changed was the cost.</p>

Page 117	Page 119
<p>1 Q. Okay. And then it appears that Exhibit 1 2 does not have a copy of your sheriff's card. Would 3 you have that still? 4 A. I do have that, yes. 5 Q. Okay. Would you be able to provide that 6 to your counsel? 7 A. Yes. 8 Q. Is that true of your TAM card as well? 9 Do you still have a hard copy of that? 10 A. Yes. 11 Q. Okay. 12 A. I have all of my cards. 13 Q. You could provide that to your counsel? 14 A. Yes. 15 Q. Okay. I actually don't see in here where 16 you refer to the additional exhibits. Do you 17 see -- sorry. 18 Ms. Franklin, do you see in your 19 Responses to Requests for Production where you 20 referred to Exhibits 2 and 3? You know, that's 21 okay. I don't see it in your interrogatory 22 responses either. We can just look at the 23 document. 24 MS. CALVERT: It's -- 25 /////</p>	<p>1 we could work outside of the club came up. 2 Q. Okay. So that was just to demonstrate 3 that you attended other promotional events? 4 MS. CALVERT: Objection. Legal 5 conclusion. Misstates. 6 THE WITNESS: I think it's supposed to 7 show that we had the opportunity to work events 8 outside of the club. 9 BY MS. SMITH: 10 Q. Okay. So these weren't required events? 11 A. No, they weren't required. They were 12 optional. 13 Q. Did you go to the CH3 Golf Tournament? 14 A. I don't believe so, no. 15 Q. Okay. How about Exhibit 3? I'll have 16 you take a look at that. 17 A. Okay. 18 Q. Can you tell me what this is? 19 A. One of the many papers that were posted 20 around the dressing room. 21 Q. Did you -- how do you have this in your 22 possession? 23 A. I took a picture of it because I thought 24 it was funny and I sent it to my friend. 25 Q. Okay. Do you have any pictures of any</p>
Page 118	Page 120
<p>1 BY MS. SMITH: 2 Q. Jacqueline, it's okay. You can just look 3 at the exhibits. 4 A. Okay. 5 Q. Will you look at Exhibit 2 that's 6 attached to Exhibit D? 7 A. Okay. 8 Q. Can you tell me what this single page 9 reflects? 10 A. Text messages between -- 11 Q. Do you know from whom? 12 A. Justin Lohrman. 13 Q. Do you know when you received these? 14 A. It would be in my cell phone. 15 Q. Do you have other text messages from 16 Justin Lohrman? 17 A. Probably on other cell phones. 18 Q. Okay. Do you recall providing this 19 document to your attorneys? 20 A. Yes. 21 Q. Do you recall what this was supposed to 22 be in response to? 23 A. Why did I produce this? 24 Q. Yes. 25 A. The topic of, I guess, events and things</p>	<p>1 other signs? 2 A. Not that I found, no. I think this was 3 the only one that was hilarious enough to deserve a 4 picture. 5 Q. Did you shower at Crazy Horse? 6 A. I did not. 7 Q. Okay. So it wasn't required that you 8 shower at Crazy Horse? 9 A. No. 10 Q. Do you know what you provided this 11 document for? 12 MS. CALVERT: Objection. Calls for a 13 legal conclusion. 14 Go ahead, if you know. 15 THE WITNESS: Again, it came up because 16 we were discussing various rules that were posted 17 around the club that weren't actually written in 18 the initial paperwork that we signed. 19 BY MS. SMITH: 20 Q. Okay. 21 A. This is just one example of many things 22 that were hanging up. 23 Q. So -- I'm sorry. 24 Showering wasn't a rule? 25 A. Showering at the club was not a rule.</p>

Page 121	<p>1 Q. In fact, it says "at own risk."</p> <p>2 Did you ever shower at Crazy Horse?</p> <p>3 A. No.</p> <p>4 Q. Okay.</p> <p>5 A. There was no door on the shower. It was</p> <p>6 weird.</p> <p>7 Q. Since you stopped performing at Crazy</p> <p>8 Horse, have you contacted the club?</p> <p>9 A. No. I haven't contacted them for</p> <p>10 anything.</p> <p>11 Q. Have you contacted any individual at the</p> <p>12 club?</p> <p>13 A. No. I've visited the club as a customer.</p> <p>14 Q. Okay. Did you fill out any applications</p> <p>15 at the club?</p> <p>16 A. No.</p> <p>17 Q. Did you ever text Justin Lohrman to see</p> <p>18 if there were openings at the club?</p> <p>19 A. Yes.</p> <p>20 Q. When was that?</p> <p>21 A. When I got fired from Hustler.</p> <p>22 Q. What did you inquire about?</p> <p>23 A. A cashier position because that's what I</p> <p>24 had been trained on.</p> <p>25 Q. Okay. All right. Why did you contact</p>	Page 123	<p>1 how much money I could make.</p> <p>2 MS. SMITH: Okay. I don't have any</p> <p>3 further questions.</p> <p>4 MS. CALVERT: I have a couple.</p> <p>5 EXAMINATION</p> <p>6 BY MS. CALVERT:</p> <p>7 Q. Will you look at Interrogatory No. 1,</p> <p>8 specifically your answer to -- yeah. Interrogatory</p> <p>9 No. 1.</p> <p>10 A. Okay.</p> <p>11 Q. It starts on the -- or am I looking at</p> <p>12 the wrong one? Oh, I'm sorry. The Document 1,</p> <p>13 No. 1. Golly gee, my brain is gone.</p> <p>14 A. Okay.</p> <p>15 Q. And then look on to page 3 where your</p> <p>16 answer continues. Let me know what you see at the</p> <p>17 very top of page 3. You're on page 2.</p> <p>18 Do you see where it says Exhibit 2 and</p> <p>19 Exhibit 3?</p> <p>20 A. Yes.</p> <p>21 Q. Do you think that Exhibit 2 and Exhibit 3</p> <p>22 are referenced in your response to RFP No. 1?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. There we go.</p> <p>25 MS. SMITH: I apologize. I was looking</p>
Page 122	<p>1 Crazy Horse?</p> <p>2 MS. CALVERT: Objection. Asked and</p> <p>3 answered.</p> <p>4 THE WITNESS: I --</p> <p>5 BY MS. SMITH:</p> <p>6 Q. Let me rephrase that.</p> <p>7 Why did you contact Crazy Horse as</p> <p>8 opposed to another club?</p> <p>9 A. I did go to other clubs as well.</p> <p>10 Q. Which other one?</p> <p>11 A. Sapphire.</p> <p>12 Q. Any others?</p> <p>13 A. No.</p> <p>14 Q. Have you ever been a part of a lawsuit</p> <p>15 against Sapphire?</p> <p>16 A. No. I've never worked at Sapphire.</p> <p>17 Q. Okay. Sorry.</p> <p>18 If you had previously felt that VIP hosts</p> <p>19 and managers were rude to you as you responded in</p> <p>20 your -- or I'm sorry, maybe not managers, VIP hosts</p> <p>21 and other employees were harassing and bullying,</p> <p>22 why would you want to return to Crazy Horse?</p> <p>23 A. Because as a cashier, they would have no</p> <p>24 affect on the money that I made, as opposed to</p> <p>25 being an entertainer where they directly affected</p>	Page 124	<p>1 for Exhibit 2 and 3 to be referenced after 1.</p> <p>2 MS. CALVERT: No.</p> <p>3 BY MS. CALVERT:</p> <p>4 Q. Let's see here.</p> <p>5 Were you ever prevented from accessing</p> <p>6 patrons by someone working for Crazy Horse?</p> <p>7 MS. SMITH: Objection. Form.</p> <p>8 THE WITNESS: Yes, a few times.</p> <p>9 BY MS. CALVERT:</p> <p>10 Q. Do you remember anything specific about</p> <p>11 those times?</p> <p>12 A. Yes. There -- I specifically remember</p> <p>13 trying to go up into bottle service areas before,</p> <p>14 and hosts, specifically Tommy, but also other hosts</p> <p>15 would tell me I wasn't allowed to go up there. And</p> <p>16 also at the front door, I specifically remember</p> <p>17 trying to greet a group of customers coming in the</p> <p>18 front door and Tommy Van ran past me so fast to get</p> <p>19 to them that he literally knocked me to the ground.</p> <p>20 Q. Okay. Do you recall -- I think that</p> <p>21 might be at the same time.</p> <p>22 Looking at Exhibit A and Exhibit B, how</p> <p>23 do you know those are accurate? What are you</p> <p>24 basing your -- that statement on?</p> <p>25 A. My own recollection.</p>

Franklin
January 10, 2017

Page 125

1 Q. Do you know that the exact minutes on
2 there are correct?
3 MS. SMITH: Objection. Form.
4 THE WITNESS: I do not know without a
5 doubt that they are exactly correct. However, to
6 my recollection, they seem accurate.
7 MS. CALVERT: Okay. That's it.
8 MS. SMITH: Okay. Two more quick ones.
9 THE WITNESS: Okay.
10 EXAMINATION
11 BY MS. SMITH:
12 Q. Did you think that Tommy Van was a
13 manager?
14 A. No.
15 Q. Okay. Did you consider him and the club
16 to be the same?
17 MS. CALVERT: Objection. Legal
18 conclusion. Calls for speculation.
19 THE WITNESS: To my understanding, he was
20 a floor host. However, he was given free reign to
21 act the way he did by management. He was never
22 reprimanded or stopped.
23 BY MS. SMITH:
24 Q. How do you know he was never reprimanded?
25 A. Because he continued to do that. And to

Page 126

1 this day, he still continues to do that.
2 Q. So you don't actually know whether or not
3 he has been reprimanded?
4 A. No.
5 Q. Okay. And as for Exhibit A and Exhibit
6 B, do you have any records to refute any of the
7 information reflected?
8 MS. CALVERT: Objection. Asked and
9 answered.
10 THE WITNESS: I do not.
11 BY MS. SMITH:
12 Q. Okay. One more question.
13 Did you think that the house mom was an
14 employee of Crazy Horse?
15 A. They --
16 MS. CALVERT: Objection. Calls for a
17 legal conclusion. Speculation.
18 THE WITNESS: I believe that they were
19 both at some point. I mean, I believe at one point
20 they weren't employed, and at one point they were
21 employed.
22 BY MS. SMITH:
23 Q. Okay.
24 A. From what I was told.
25 Q. Okay.

Page 127

1 A. It changed.
2 Q. Okay. And did anyone at Crazy Horse ever
3 tell you that you needed to leave the premises?
4 A. No.
5 MS. SMITH: Okay. No more questions.
6 MS. CALVERT: None.
7 MS. SMITH: Thank you.
8 MADAM REPORTER: Counsel, would you like
9 a copy of the transcript?
10 MS. CALVERT: Yes. Electronic version
11 would be great.
12 (The deposition concluded at 5:19 p.m.)
13
14
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24
25

Page 128

1 CERTIFICATE OF DEPONENT
2 PAGE LINE CHANGE REASON
3 _____
4 _____
5 _____
6 _____
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 *****
14
15 I, JACQUELINE FRANKLIN, deponent herein, do hereby
16 certify and declare under the penalty of perjury
17 the within and foregoing transcription to be my
18 deposition in said action; that I have read,
19 corrected and do hereby affix my signature to said
20 deposition.
21
22
23 _____
24 JACQUELINE FRANKLIN, Deponent
25

32 (Pages 125 to 128)

1 CERTIFICATE OF REPORTER
2 STATE OF NEVADA)
3) SS:
4 COUNTY OF CLARK)
5 I, Trina K. Sanchez, CCR No. 933, RPR
6 declare that I reported the taking of the
7 deposition of the witness, JACQUELINE FRANKLIN,
8 commencing on Tuesday, January 10, 2017, at 1:30
9 p.m.
10 That prior to being examined, the witness
11 was by me duly sworn to testify to the truth, the
12 whole truth, and nothing but the truth;
13 That I thereafter transcribed my said
14 shorthand notes into typewriting and that the
15 typewritten transcript of said deposition is a
16 complete, true, and accurate transcription of said
17 shorthand notes taken down at said time, and that a
18 request has not been made to review the transcript.
19 I further declare that I am not a
20 relative or employee of any party involved in said
21 action, nor a person financially interested in the
22 action.
23 IN WITNESS WHEREOF, I have hereunto set
24 my hand in the County of Clark, State of Nevada,
25 this 18th day of January, 2017.

Trina K. Sanchez, CCR No. 933, RPR

EXHIBIT 2

SUPP

RYAN M. ANDERSON, ESQ.

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LAUREN CALVERT, ESQ.

Nevada Bar No.: 10534

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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

**PLAINTIFF JACQUELINE
FRANKLIN'S SUPPLEMENTAL
ANSWERS TO DEFENDANT'S
INTERROGATORIES**

1 **PLAINTIFF JACQUELINE FRANKLIN'S SUPPLEMENTAL ANSWERS TO**
2 **DEFENDANT'S INTERROGATORIES**

3 Pursuant to NRCP 33, Plaintiff JACQUELINE FRANKLIN (hereinafter "Plaintiff") hereby
4 Supplements her Answers Interrogatories served by Defendant as follows:

5 Plaintiff has not yet completed her discovery and investigation for the preparation of this case
6 for trial. Accordingly, the responses set forth herein are provided without prejudice to the Plaintiff's
7 right to produce any subsequent discovered facts or interpretations thereof and/or to add, modify or
8 otherwise change or amend the responses herein. The information hereinafter set forth is true and
9 correct to the best of the Plaintiff's knowledge at this particular time, but it is subject to correction for
10 inadvertent errors or omission, if any such error or omissions are found to exist.

11
12 **GENERAL ANSWER AND OBJECTIONS**

13 The following terms, conditions, representations, and statements shall apply to all answers
14 contained herein:

- 15
16 1. The answers given in this document are made in direct response to the interrogatories
17 submitted by Defendant to Plaintiff (the "Interrogatories") and shall not be construed or
18 interpreted to respond to any discoverable matter outside the scope of the Interrogatories.
- 19 2. Discovery is continuing. Plaintiff reserves the right to supplement these Answers at any
20 time prior to trial.
- 21 3. Under no circumstances shall any answer contained herein be construed as an exhaustive
22 response to the corresponding interrogatory. The Plaintiff is not omnipotent and all
23 knowing. Information and/or evidence outside of the Plaintiff's present scope of
24 knowledge may be available to further prove or supplement any answer given herein.
- 25 4. These Answers are given by Plaintiff and only reflect the current state of her knowledge of
26 the matter(s) discussed. Plaintiff makes no representation, assertion, or statement as to the
27 knowledge of other individuals, employees, agents, contractors, vendors, stockholders,
28 knowledge of other individuals, employees, agents, contractors, vendors, stockholders,

1 associates, or affiliates. In the event that the Defendant seeks information known to sue
2 persons, then the Defendant must individually depose such persons.

3 5. The Defendant's Interrogatories repeatedly use certain undefined terms that are vague,
4 ambiguous, or otherwise confusingly worded. Unable to effectively answer the
5 Interrogatories containing such undefined terms, Plaintiff objects to each and every
6 Interrogator containing such terms and demands clarification from the Defendant.
7

8 **INTERROGATORY NO. 2:**

9 Please identify each and every source of income for the RELEVANT TIME PERIOD, whether
10 official or unofficial.
11

12 **ANSWER:**

13 Plaintiff objects to this interrogatory as beyond the scope of discovery. In this action Plaintiff
14 has alleged that Defendants have failed to pay her wages and that Defendants were unjustly enriched
15 by their failure to pay Plaintiff. Plaintiff's gross income for that year and other sources of that income
16 are neither admissible in this action, nor reasonably calculated to lead to the discovery of evidence
17 admissible in this action. Defendant's use of the term "whether official or unofficial" is vague and
18 ambiguous. Additionally, this interrogatory seeks personal and sensitive information and requiring the
19 same would be oppressive. Furthermore, requiring Plaintiff to provide this information would be unduly
20 burdensome, given its lack of probative value. Notwithstanding and without waiving this objection,
21 Plaintiff worked at a party bus company during the same time period she worked at Crazy Horse III.
22

23 **INTERROGATORY NO. 10:**

24 For the RELEVANT TIME PERIOD through the present, state the total gratuities You received,
25 per year, while Performing at Crazy Horse and identify the method supporting Your calculation of this
26 amount.
27

28 ///

1 **ANSWER:**

2 Plaintiff objects to this interrogatory as beyond the scope of discovery. In this action Plaintiff
3 has alleged that Defendant failed to pay her wages and that Defendant was unjustly enriched. The
4 requested information is neither admissible in this action, nor reasonably calculated to lead to the
5 discovery of evidence admissible in this action. "Tips or gratuities received by employees shall not be
6 credited as being any part of or offset against the wage rates" required by the Minimum Wage
7 Amendment." Nev. Const. art. 15, § 16(A). Additionally, this interrogatory seeks personal and sensitive
8 information and requiring the same would be oppressive. Furthermore, requiring Plaintiff to provide
9 this information would be unduly burdensome, given its lack of probative value.
10

11
12 Notwithstanding nor waiving the foregoing, Plaintiff states that per Defendant's records, she
13 worked 157 shifts for a total of 1,086.59 hours. On an average night, Plaintiff could expect to make at
14 about \$500 per shift. This equates to \$78,500.

15 **INTERROGATORY NO. 12:**

16 State the amount You allege that Defendant owes You, and identify how You calculated this
17 amount.
18

19 **ANSWER:**

20 Plaintiff objects to this interrogatory as the relevant information that will allow Plaintiff to
21 compute an answer to this interrogatory is in Defendants' possession and has not been provided in full.
22 Every hour Plaintiff was logged in at Defendants' place of business was an hour worked without just
23 compensation. All records reflecting damages owed by Defendant to her are within the possession and
24 control of Defendants. The request calls for an expert opinion, which Plaintiff is not qualified to give.
25 Neither waiving nor withstanding the foregoing, Plaintiff alleges she is owed:
26

- 27 1) a minimum wage for the number of hours she worked, which Defendant has represented as
28 1086.59 hours, multiplied by the minimum wage of \$8.25, which equals \$8,964.37;

- 2) applicable wait time penalties in the amount of \$1,980.00 (30 days multiplied by 8 hours multiplied by \$8.25);
- 3) fees, fines and payments Defendant unlawfully extracted from her in an amount of \$4,710.00 in tip-outs to the DJ and house mom (\$15 per shift to house mom and \$15 per shift to DJ multiplied by 157 shifts), \$15,700 in tip-outs to floor and VIP hosts (20% of Plaintiff's total received tips), \$624.00 in Dance Dollar fees (reported by Defendant), and \$10,795.00 in house fees and missed stage fines (reported by Defendant);
- 4) attorney's fees, in an amount not yet ascertained; and
- 5) other equitable relief.

See RR0055-68; and RR0607. Plaintiff also responds: Jared A. Frost, CPA is expected to testify regarding his analysis of monies that were paid or not paid between the Club and the Dancers in order to ascertain the total amount of wages that should have been paid to the Dancers and the total amount by which Crazy Horse was unjustly enriched by the fees and fines paid to it by the Dancers. See Plaintiffs' Updated and Amended Expert Disclosure, served to Defendant on February 21, 2017.

INTERROGATORY NO. 16:

Identify all instances in which you claim you were fined by Crazy Horse, including in your response, the details of such fines and whether you paid such fines.

ANSWER:

Plaintiff objects that this Request is vague and ambiguous in its use of the term "instances in which you claim you were fined." This Request is compound and contains multiple subparts in violation of the rules of discovery. This information is equally, if not solely, in the possession of Defendant. Notwithstanding the foregoing objections, Plaintiff responds that she was fined for missing stage calls. While Plaintiff cannot recall all of the instances, based on the records of Defendant, Plaintiff states she believes was fined for missing stage calls on: 3/29/14, 3/28/14, 3/16/14, 3/14/14, 2/22/14 (twice on this

1 date), 2/16/14, 2/15/14, 2/8/14, 1/25/14, 1/18/14, 1/5/14 and 1/3/14. The fine imposed for each instance
2 was \$40. Plaintiff either paid the fine or worked promotional or outside events for the Club to pay for
3 the fines. *See* RR0055-68; and RR0607. Plaintiff states she was ultimately “black listed” from the Club
4 for not paying enough money in tip-outs to managers and hosts of the Club in December of 2014, the
5 month and year she last worked at the Club.
6

7 DATED this 21st day of July, 2017.

8 **MORRIS//ANDERSON**

9 By: /s/ Lauren Calvert

10 **LAUREN CALVERT, ESQ.**

11 Nevada Bar No.: 10534

12 716 S. Jones Blvd.

13 Las Vegas, Nevada 89107

14 *Attorneys for Plaintiffs*
15
16
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VERIFICATION

JACQUELINE FRANKLIN, being first duly sworn deposes and says:

That JACQUELINE FRANKLIN is a Plaintiff in the above-entitled action; that I have read the foregoing *SUPPLEMENTAL ANSWERS TO DEFENDANT'S INTERROGATORIES*, and know the contents thereof; that the same is true of my own knowledge, except of those matters therein contained stated upon information and belief, and as to those matters, I believe it to be true.

DATED this ____20th____ day of July, 2017.



JACQUELINE FRANKLIN

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 21st day of July, 2017, I served the foregoing **PLAINTIFF JACQUELINE FRANKLIN'S SUPPLEMENTAL ANSWERS TO DEFENDANT'S INTERROGATORIES** 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

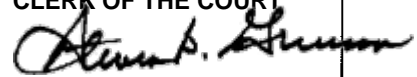
☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below and in the confirmation sheet filed herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender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

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/s/ Erickson Finch
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1 **RPLY**

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

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

21 JACQUELINE FRANKLIN, ASHLEIGH)
22 PARK, LILY SHEPARD, STACIE ALLEN,)
23 MICHAELA DIVINE, VERONICA VAN)
24 WOODSEN, SAMANTHA JONES,)
25 KARINA STRELKOVA, LASHONDA,)
26 STEWART, DANIELLE LAMAR, and)

27 DIRUBIN TAMAYO, individually,
28 and on behalf of a class of similarly
situated individuals,

Plaintiffs,

vs.

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

Defendant

AND RELATED COUNTERCLAIMS

Case No.: A-14-709372-C

Dept. No.: 31

**DEFENDANT'S REPLY IN SUPPORT
OF ITS MOTION FOR
SUMMARY JUDGMENT AGAINST
PLAINTIFFS PURSUANT TO
N.R.C.P. 56**

Hearing Date: August 17, 2017

Hearing Time: 9:30 a.m.



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3101

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 On July 11, 2017, the Court granted Defendant's Motion to Dismiss for Lack of
4 Subject Matter Jurisdiction with respect to all Plaintiffs except for Jacqueline Franklin who
5 had alleged wage claim damages which exceeded \$10,000.00. At the time of filing this
6 Reply, only Plaintiff Jacqueline Franklin remains in the litigation. Plaintiffs' Motion for
7 Summary Judgment on Employee Status is now grossly misrepresentative of the remaining
8 determinations that the Court may make due to the dismissal of all Plaintiffs, except for
9 Plaintiff Franklin.
10

11 Also, this honorable Court has now twice denied Plaintiff's (Plaintiffs') attempts to
12 certify a class of dancers. *See generally, Plaintiffs' Motion for Summary Judgment.* Now, the
13 only issue remaining is whether Plaintiff Jacqueline Franklin was an employee, as there is no
14 class and there are no other remaining plaintiffs. Defendant's underlying Motion for
15 Summary Judgment ("MSJ"), Jennifer Franklin is an independent contractor pursuant to NRS
16 608.0155. Indeed, it appears that Plaintiff has conceded that other potential tests or factors,
17 such as those previously used due to the lack of any independent contractor definition, are
18 now irrelevant and inapplicable. Accordingly, summary judgment must be granted for
19 Defendant.
20
21

22 II. RESPONSIVE FACTS

23 **A. Plaintiff Franklin Fails to Sufficiently Raise Disputed Material Facts to**
24 **Defeat Summary Judgment.**

25 Plaintiff tries to pick and choose slight variations or interpretations that some of the
26 dancers "may" have allegedly experienced (notably there is no evidence of many of the
27 alleged "policies" or "rules" that they were actually subjected to). Plaintiff utilizes the
28



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1 “undisputed material facts” to allegedly evidence that Plaintiffs, including Jacqueline
2 Franklin, is somehow actually an employee. However, Plaintiff Franklin’s purportedly
3 “undisputed facts” and her dispute of Defendant’s undisputed material facts, do not actually
4 represent material facts that are in dispute, nor do they defeat Defendant’s entitlement to
5 summary judgment as a matter of law, based on NRS 608.0155.¹ Regardless of Plaintiff’s
6 purported “Statement of Undisputed Material Facts” (“SOF”), the facts they allege are
7 insufficient as they are not “material” to either entitle Plaintiff to a finding that she was an
8 employee or to defeat summary judgment as a matter of law. Plaintiff is grasping at “facts” to
9 attempt to defeat summary judgment, but as shown in Defendant’s Opposition to Plaintiffs’
10 Motion for Summary Judgment, the “facts” cited do not constitute material facts to the claims
11 at issue, or pertain more to Defendant and its other patrons.
12

13
14 **B. Plaintiff Fails to Adequately or Actually Dispute Defendant’s Undisputed**
15 **Facts which Evidence She is Presumptively an Independent Contractor**
16 **Pursuant to NRS 608.0155.**

17 Plaintiff only chooses to dispute some of Defendant’s Undisputed Facts. The
18 Undisputed Facts that Plaintiff does attempt to dispute she fails to adequately or actually,
19 dispute in any significant way or to create a material issue of fact which would defeat
20 summary judgment. Plaintiff also attempts to rely upon other dancers’ testimony who are
21 now no longer part of this case.

22 (1) Plaintiff does not dispute that she had no schedule or minimum number of
23 days she was required to perform or even show up at Defendant’s venue, as set forth in
24 Defendant’s Undisputed Fact (“UF”) No. 6, Plaintiff Franklin provides deposition testimony,
25 that dancers who wanted to have a locker, needed to perform a minimum of three (3) days a
26

27
28 ¹Defendant incorporates herein its response to Plaintiff’s undisputed facts as set forth in its Opposition to
Plaintiffs’ MSJ as 26 of their 28 “undisputed facts” are identical. Plaintiff’s “facts” Nos. 25-27 in their
Opposition, are evidenced solely through PMK deposition testimony from the federal case filed by Ms. Desio.



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1 week, which is hardly a requirement that she was required to work a certain amount of days.
2 *See Oppo.*, 8:15-16. However, Plaintiff Franklin was not required to have a locker on
3 Defendant's premises.

4 (2) Plaintiff insufficiently disputes Defendant's UF No. 7, that Defendant did not
5 specifically instruct Plaintiffs on how to dance, or what style of dance they could perform. In
6 fact, the only deposition testimony that purportedly addresses the style or how to dance,
7 addresses that the dancers had to take their tops off all the way at some point. *See ¶9, Exhibit*
8 *cited thereto*. Defendant does not dispute that it is a gentlemen's club for topless performers.
9 And indeed, Plaintiff Franklin's cited testimony only addresses that there were times dancers
10 were requested to be on stage, or how long they were on stage.²

11 (3) Plaintiff Franklin does not dispute, Defendant's UF No. 8, that she could
12 choose her outfits and look, including any accessories, as long as the outfit and look was
13 within the confines of her agreement as an independent contractor, and also comported with
14 legal requirements for exotic dancers. *See Exhibit 8 to MSJ, at 28:12-29:21*.

15 (4) As to Plaintiff's alleged dispute of Defendant's UF No. 10, Plaintiff Franklin
16 does not dispute that Defendant did not impose a required number of lap dances, or a quota of
17 dances she needed to perform, or an amount of time she had to spend in the VIP area, and in
18 fact testified to the opposite. *See Oppo.*, 8:17-21; *Exhibit 8 to MSJ, at 34:13-16*.

19 (5) In trying to dispute Defendant's UF No. 11, Plaintiff Franklin provides some
20 anecdotal testimony, which alleges she was limited in trying to approach guests. *Oppo.* 9:1-5.
21 Again, such testimony does not actually dispute the fact that Franklin could choose to

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² Plaintiff again refers to ambiguous tip outs or fines, however, she has failed to produce any actual evidence to substantiate these allegations.



1 approach any number of patrons she chose while at Crazy Horse III, or how long she could
2 talk to a patron. *Exhibit 8 to MSJ, at 34:17-23.*

3 (6) Plaintiff Franklin does not dispute Defendant's UF No. 12, that Defendant did
4 not set, or require, a minimum amount of money she had to earn, and she also does not
5 dispute that she never reported the total amounts of money she earned to anyone at Crazy
6 Horse III. *See Oppo., 8:17-21; Exhibit 8 to MSJ, at 52:5-11.*

8 (7) Plaintiff mischaracterizes Defendant's UF No. 13, and does not dispute that
9 Defendant did not keep track of cash payments from patrons to dancers. *See Oppo., 9:10-18.*
10 There has never been a dispute that Crazy Horse III utilized a Club Trax software to keep
11 track of dance dollars. Indeed, the portion of Plaintiff Franklin's testimony cited to does not
12 even state that hosts expected to be told amounts. In fact, Plaintiff's Exhibit 9 (Franklin's
13 deposition testimony), 59:2-21, addresses that Defendant did not have a requirement for her
14 to sell bottles of alcohol (aside from some VIP minimums), and that she was not required to
15 "sell a certain amount of VIP time or VIP experiences." *See Exhibit 9 to Oppo.* Plaintiff
16 Franklin has provided no evidence that Defendant performed, or was capable of, tracking any
17 cash payments to dancers. *See generally, Oppo. and Exhibits thereto.* In fact, Defendant did
18 not track such payments. *See Exhibit 3 to MSJ, 71:19-21*

21 (8) Plaintiff does not dispute that she could choose when to start performing
22 during whichever range of work hours she was presented with by Crazy Horse III. *See*
23 *generally Oppo.* In attempting to dispute Defendant's UF No. 15, Plaintiff claims that she was
24 denied the opportunity to leave if she had not been on Defendant's premises for five (5)
25 hours. *Exhibit 9 to Oppo., at 50-51.* However, Plaintiff Franklin's log in/log out sheet, reflects
26 a wide variety of times she spent on the premises ranging from 1.07 hours to 12.33 hours,
27
28



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1 evidencing that Plaintiff Franklin could, and did, spend any amount of time there she chose.
2 *See Exhibit 10 to MSJ.* In fact, Plaintiff Franklin departed the premises after being there for
3 less than five (5) hours approximately eighteen (18) times. *Id.* Plaintiff has no evidence that
4 she was denied the ability to leave the premises, and no evidence that she was fined or forced
5 to pay money to leave Defendant's premises prior to being there for five hours, aside from her
6 own self-serving testimony. *See generally, Oppo.* In fact, Plaintiff's Opposition cites to
7 deposition testimony from dismissed Plaintiff Lily Shepard, and her testimony states that a
8 dancer was supposed to stay for six hours. *See Exhibit 8 to Oppo., at 39:3-8.*³ Accordingly,
9 this further evidences Defendant's lack of control over dancers, as there is little agreement as
10 to any required time on Defendant's premises. Additionally, Plaintiff Franklin testified that if
11 she wanted to stop performing and she had not been on the premises for the allegedly required
12 five hours, she could hang out in the dressing room and not interact whatsoever with the
13 customers. *See Exhibit 9 to Oppo., at 51:11-21.*

16 (9) Despite Plaintiff Franklin's self-serving testimony to dispute Defendant's UF
17 No. 16, regarding alleged retaliation or black balling, Plaintiff has failed to produce any
18 evidence supporting her allegations that she was fined or that she was forced to tip persons
19 inside of Defendant's premises. *See generally, Oppo.* Indeed, Plaintiff has not produced any
20 documentation evidencing the tips she allegedly paid or any fines she was assessed or paid.
21 *Id.* In fact, Defendant's PMK testified that it was not the Defendant's policy to have any
22 mandatory tips or any fines. *See Exhibit 3 to MSJ at 83:12-18, 95:18-22.*

25 (10) In attempting to dispute Defendant's UF No. 21, that she could negotiate with
26 patrons for a higher price, Plaintiff Franklin testified that the pricing was allegedly enforced

27
28 ³ Lily Shepard testified to tipping however no evidence has been provided in this case, aside from self-serving testimony, that there was any mandatory tipping.



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1 by management, but there are no allegations that Defendant or their agents were involved in
2 discussions for lap dances, particularly on the main floor. *See generally, Oppo.* Also,
3 Plaintiff Franklin does not cite to any actual language prohibiting her from negotiating higher
4 pricing with a patron. *Id., See Exhibit 12 to MSJ.* Plaintiff testified that she never tried to ask
5 for more than twenty dollars for a lap dance, as such, she cannot competently dispute whether
6 she could have negotiated for more per lap dance, as some of the other independently
7 contracted performers did. *See generally, Oppo., see also, Exhibit 9 to Oppo., at 33:1-24.*
8 Plaintiff does not dispute that she would collect cash payments directly from customers. *Id.*
9 As such, Plaintiff fails to adequately dispute Defendant's UF No. 21 that she in fact, could
10 have negotiated with patrons.
11

12
13 (11) Plaintiff does not actually dispute Defendant's UF No. 22, that she could
14 refuse to be paid in "dance dollars." *See Exhibit 8 to MSJ, at Franklin Depo., 39:12-14.* The
15 mere fact that a patron or customer may choose to go to another dancer, merely because that
16 dancer chose to accept dance dollars, did not actually prevent Plaintiff from refusing them.
17 Such an issue is between a dancer and that individual Plaintiff.
18

19 (12) Notably, Plaintiff does not dispute that she was free to perform at any other
20 club, gentleman's club, venue, or form other businesses or business relationships during the
21 time frame she performed at Crazy Horse III. *Id.* This is another significant factor in assessing
22 Plaintiff pursuant to NRS 608.0155. Plaintiff Franklin does not dispute Defendant's UF No.
23 18, that she could take breaks whenever she chose, and did not have to report when she taking
24 was taking a break or the length of her breaks. *See Exhibit 8 to MSJ, Franklin Depo., 38:16-*
25 *39:5.*
26



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1 (13) Plaintiff does not dispute that she was free to hire employees to assist her
2 business of being an exotic dancer. *See generally, Oppo.*

3 (14) Additionally, Plaintiff does not dispute that she supplied her own supplies, such
4 as outfits and cosmetics. *Id.* Again, these are factors significant in determining that Plaintiff
5 Franklin was in fact, an independent contractor and treated accordingly.
6

7 (15) Plaintiff Franklin does not dispute that she could write off business expenses
8 such as house fees, clothing, accessories, hair, makeup, nails, shoes, pouches for money, and
9 food and alcohol, and vehicle mileage. *See generally, Oppo.* Although Plaintiff Franklin in
10 particular denied having ever filed any taxes to be able to write off such expenses. *Exhibit 8*
11 *to MSJ at 24:21-25:1.*
12

13 As discussed above and herein, Plaintiff fails to demonstrate there are any material
14 facts in dispute that would preclude summary judgment in favor of Defendant. Plaintiff
15 clearly and plainly meets all of the criteria set forth in NRS 608.0155 and is therefore
16 presumptively an independent contractor pursuant to Nevada State law.
17

18 **III. ARGUMENT**

19 **A. Plaintiff Attempts to Rely on Other Jurisdictions and Fails to Properly Analyze 20 NRS 608.0155.**

21 Plaintiff's argument that she does not meet the requisites of NRS 608.0155 is
22 disingenuous. Indeed, Plaintiff does not bother to continue to dispute that NRS 608.0155 is
23 inapplicable merely that she does not meet the requisites, which is patently false. *See*
24 *generally, Oppo.* Plaintiff attempts to construe and add certain requirements to the statutory
25 plain language, and then fails to actually analyze the true nature of Plaintiff and Defendant's
26 business relationship pursuant to the statutory criteria. *Id.* Plaintiff cites to a single case from
27 the 5th circuit, prior to the institution of both NRS 608.0155 in Nevada which is entirely
28



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1 inapplicable and not binding on this Court, who has already decided that NRS 608.0155 is
2 applicable to the claims at hand. As is evidenced by the facts and the analysis in the
3 underlying MSJ, Plaintiff is presumptively an independent contractor and Defendant is
4 entitled to summary judgment, as a matter of law.
5

6 **B. Plaintiff Satisfies All of the Criteria to be Presumed an Independent**
7 **Contractor, Therefore Defendant is Entitled to Summary Judgment.**

8 **1. Plaintiff Undisputedly has a Social Security Number Thereby Meeting the first**
9 **Requisite of NRS 608.0155**

10 Again, Plaintiff Franklin meets NRS 608.0155(a), as there is no dispute that she
11 possesses a social security number, despite her failure to pay income taxes. *See NRS*
12 *608.0155(a); see also, generally Oppo, Exhibit 1 to MSJ.*

13 **2. Plaintiff was Required to Hold a Nevada State Business License for**
14 **Her Sole Proprietorship and a Sheriff's Card to Operate as an Exotic Dancer**
15 **Thereby Satisfying the Second Requisite of NRS 608.0155.**

16 NRS 608.0155(b) provides, in pertinent part, that a person is presumptively an
17 independent contractor if:

18 (b) The person is required by the contract with the principal to hold any
19 necessary state business registration or local business license and to
20 maintain any necessary occupational license, insurance or bonding...

21 Plaintiff, by performing at Defendant's venue, plainly agreed to have a valid business
22 license and Sheriff's card, whether or not those two items were specifically listed as part of
23 her agreed upon requirements. Plaintiff attempts to argue that the Entertainer Agreement is
24 not valid because she cannot waive her rights to minimum wage, and/or that the agreement
25 does not specifically contain language regarding her licensing and/or bonding. *See Oppo.,*
26 *11:5-12:15.* Plaintiff does not allege that she is unable to enter into a contract for services,
27 nor does she contend that she was deprived of the opportunity to take the entertainer
28



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1 agreement to an attorney for assistance in interpreting it or answering any questions she may
2 have. *See generally, Oppo*. Additionally, the facts and circumstances evidence that Plaintiff
3 conducted herself as an independent contractor and was treated accordingly. *See generally,*
4 *MSJ*.

5
6 As for the statutory requirement regarding a contract, there is no portion of the statute
7 that provides a “contract” that the principal holds any business license and/or occupational
8 license must be in writing. In fact, it was a known fact that all persons operating as exotic
9 dancers needed to have a Nevada State Business License and a Sheriff’s card in order to
10 legally operate as an exotic dancer. *See Nev. Muni. Code 6.35 et seq., and NRS 76*. Indeed,
11 the language within the Entertainer Agreement here, clearly states that the “Entertainer agrees
12 to comply in all respects with the applicable, laws, rules and regulations of...the State of
13 Nevada and County of Clark...” *See Exhibit 12 to MSJ, at ¶5*. Plaintiff Franklin understood
14 that Nevada law and/or Defendant required these documents by law, and admitted that these
15 licenses were necessary to dance not just at Crazy Horse III but at any Clark County Nevada
16 gentlemen’s club at which she wished to provide and contract her services. *Excerpts of*
17 *Deposition of Jacqueline Franklin, attached hereto as Exhibit A, 24:5-17*. Accordingly,
18 Plaintiff Franklin meets the second requisite of NRS 608.0155.

19
20
21 **3. Plaintiff Franklin Satisfies Three or More of the Remaining Criteria**
22 **Required to be a Presumptive Independent Contractor and Precluded from**
23 **Making Any Wage Claims.**

24 Plaintiff, clearly and undisputedly, satisfies the first two criteria set forth, of having a
25 social security number and having any necessary license or permits, to be conclusively
26 presumed an independent contractor. As such, Plaintiff Franklin only must satisfy three of
27 the remaining five (5) criteria set forth in NRS 608.0155, to be presumptively considered as
28



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1 an independent contractor. *NRS 608.0155(1)(c)(1-5)*. As evidenced within in the Undisputed
2 Material Facts in the MSJ, and Plaintiff's failure to actually dispute those facts, or set forth
3 her own material facts that would preclude summary judgment, Defendant is entitled to
4 summary judgment in its favor. *NRS 608.0155(1)(c)(1-5)* specifically states that in addition
5 to the first two criteria discussed herein, a person will presumptively be an independent
6 contractor provided:
7

8 c) The person satisfies three or more of the following criteria:

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

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

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

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

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

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

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

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

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

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

→The determination of whether an investment of capital is substantial for the
purpose of this subparagraph must be made on the basis of the amount of income the
person receives, the equipment commonly used and the expenses commonly incurred in
the trade or profession in which the person engages.



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1 Plaintiff Franklin specifically satisfies all of the remaining requisites to be presumed
2 independent contractors.

3 **a. Plaintiff had control and discretion over the means and manner of**
4 **performing and running her exotic dancing sole proprietorship, and the**
5 **results of her business, and had complete control over the timer her “work”**
6 **was performed, thereby fulfilling two remaining criteria.**

7 NRS 608.0155(1)(c)(1) and (c)(2) provide, in pertinent part, that,

8 [N]otwithstanding the exercise of any control necessary to comply with any
9 control necessary to comply with any statutory, regulatory or contractual
10 obligations, the person has control and discretion over the means and manner
11 of the performance of any work and the result of the work, rather than the
12 means or manner by which the work is performed...

13 Except for an agreement with the principal relating to the completion schedule, range
14 of work hours or, if the work contracted for is entertainment, the time such
15 entertainment is to be presented, the person has control over the time the work is
16 performed.

17 As evidenced through Plaintiff's own testimony, she had a varied business approach,
18 and significant discretion in customer interaction, and even interaction with Defendant.
19 Plaintiff had significant “control and discretion” over the performance of their “work, and the
20 result of their “work” which was primarily to make money by providing customers they met
21 in Defendant's club with adult exotic dances. While performing at Crazy Horse III, Plaintiff
22 had complete control over the method and the manner of their performances for their
23 clients/the club's patrons as long as it is in accordance within state and/or local laws. *See*
24 *Exhibit 3, 114:4-10, Exhibit 12 to MSJ.*

25 Plaintiff Franklin testified that there were no requirements aside from what was in her
26 contract, as to what she was wearing, and she was never told to change. *Exhibit A, 28:15-*
27 *29:13.* Plaintiff Franklin chose her own stage name, and was never required to wear any
28 special costumes or accessories by Defendant. *Id. at 29:22-30:15.* While Plaintiff Franklin



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1 was in Defendant's venue, there was no required number of lap dances or individuals that
2 Plaintiff Franklin had to approach or requirements on how long she could speak to a guest. *Id.*
3 *at 34:13-23.* That was solely in her discretion.

4 While performing on stage, Plaintiff Franklin just did what was comfortable for her,
5 and only needed to follow the laws required by the state and/or county. *Id. at 35:5-23.*
6 Plaintiff could also perform lap dances how she wanted, as long as it followed the legal
7 requirements. *Id. at 35:24-36:5.* While in Defendant's venue, Plaintiff could hang out by the
8 bar or take a break at whenever, and for how long, she chose, without having to check in or
9 out with anyone for the break. *Exhibit A, 38:10-39:1.* In fact, Plaintiff Franklin could spend
10 hours or all of her time in Defendant's venue in the dressing room, or at the bar, and not
11 doing any lap dances or VIP dances.

12 Plaintiff Franklin could use her cell phone or hang out in the dressing room area
13 should she choose to do so at any time during her shift, unless she had chosen not to forego
14 dancing on stage. *Id. at 43:7-20.* Also, Defendant did not place any requirements on Plaintiff
15 Franklin to sell bottles of alcohol, nor was she required to sell a certain amount of VIP time or
16 experiences to individuals. *Id. at 59:10-25.*

17 There were times when Plaintiff Franklin could access the club with zero house fee.
18 *See Exhibit 3, to MSJ, 45:9-25.* Most importantly, Plaintiff could choose whether or not she
19 performed at Crazy Horse III on any given day and was not assigned a certain number of days
20 or certain days of the week. *See Exhibit 8 to MSJ, 19:12-15.* For instance, Plaintiff Franklin,
21 during the time she performed at Defendant's club, would choose a wide variety of times to
22 commence performing on any given day. *See Exhibit 10 to MSJ for Jacqueline Franklin.* For
23 example, she chose to come in to perform as early as 7:45 p.m. one day, but chose to come in
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1 at 1:06 a.m. on another day, thus illustrating significant control over her own business hours.
2 *Id.* And although Plaintiff Franklin testified she was supposed to work three shifts a week in
3 order to have a locker to use on Defendant's premises, there was no locker requirement by
4 Defendant, and thus it was Plaintiff Franklin's choice to perform three or more days per
5 week. *See Oppo.*, 8:15-17.
6

7 These specific facts to Plaintiff Franklin demonstrates that Plaintiff Franklin met
8 NRS 608.0155(1)(c)(1) and (c)(2), in that she had control and discretion over the means and
9 manner of her work, and had full control over her schedule of hours and when she
10 performed in Defendant's venue, thus fulfilling two of the three remaining criteria.
11

12 **b. Plaintiff Franklin undisputedly did not have an exclusive agreement to perform**
13 **at Defendant's venue, therefore she satisfies yet another criteria for**
presumptively being an independent contractor.

14 There is no dispute that Plaintiff Franklin could perform at other venues or clubs and did
15 not have to perform exclusively at Defendant's venue. *See generally, Oppo.* Therefore,
16 Plaintiff franklin clearly satisfies NRS 608.0155(1)(c)(3). Defendant does not have to
17 analyze the other factors, as Plaintiff Franklin has already satisfied the requisite number of
18 criteria to presumptively be an independent contractor.
19

20 **c. Plaintiff Franklin was free to hire employees.**

21 However, Plaintiff Franklin, agrees and therefore, satisfies the other criteria to be
22 presumptively an independent contractor as well. Plaintiff Franklin was free to hire
23 employees to assist her with her business of being an exotic dancer, such as hair and makeup
24 persons, thereby satisfying the criterion set forth by NRS 608.0155(1)(c)(4). *Exhibit A*,
25 71:20-72:2.
26



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1 **d. Plaintiff Franklin contributed substantial investments of capital in her**
2 **business, including cosmetic surgery, and lease of venue time/space to**
3 **perform.**

4 Lastly, Plaintiff Franklin admits that she invested a substantial amount of capital into
5 her business, including fees spent to engage in exotic dancing inside of clubs, such as
6 Defendant's club. *See generally, Oppo, and Third Amended Complaint.* Plaintiff Franklin
7 testified she spent significant amounts of money on cosmetic alterations including breast
8 implants and teeth veneers. *See Exhibit 8 to MSJ at 55:22-56:8.* Plaintiff Franklin also had
9 accumulated years of outfits by the time she entered into a contractual relationship to
10 perform at Plaintiff's venue, and did not even keep track of the amount of money she spent
11 on hair and makeup. *Exhibit A, 71:11-19.*

12
13 Here, Plaintiff Franklin satisfies each of the requisite criteria to be a presumptive
14 independent contractor. Since, Plaintiff Franklin is an independent contractor pursuant to
15 NRS 608.0155 and therefore cannot proceed with her wage claims, and her claim for unjust
16 enrichment. As such, the undisputed *material* facts clearly entitle Defendant to summary
17 judgment in its favor as a matter of law.
18

19 **C. Defendant is Entitled to Summary Judgment as to Plaintiff's Claim for**
20 **Unjust Enrichment Fails as a Matter of Law.**

21 Again, based on the foregoing analysis, Plaintiff's claim for unjust enrichment fails on
22 its face. Plaintiff Franklin was not misclassified but was accordingly treated as an
23 independent contractor per her business contractual agreement with Defendant. *See generally,*
24 *Exhibit 12.* Plaintiff's claim for unjust enrichment is based solely on allegations that
25 Defendant illegally withheld wages, or charged impermissible "fees and fines" or "tips" to
26 "employee(s)" *See generally, Third Amended Complaint.* This claim is based only on the
27 incorrect assumption and assertion by Plaintiff that she was an employee as opposed to an
28



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1 independent contractor. *Id.* As clearly detailed herein and in the underlying Motion, Plaintiff
2 Franklin was clearly not Defendant's employee, and as such, Defendant was free to charge
3 her a fee to utilize its venue for her individual business, as a sole proprietorship, to perform as
4 an exotic dancer. *See generally, MSJ, UF Nos 6-23.* Plaintiff's Unjust Enrichment claims fail
5 because she is not, and was never, an employee of Defendant.
6

7 Additionally, to the extent that Plaintiff Franklin is still claiming unjust enrichment as to
8 her alleged wages, Plaintiff's claim is premised on, and fails to assert any other allegations to
9 support their claim for unjust enrichment other than the above alleged violations of the
10 MWA. *See Id.* Plaintiff is still essentially seeking to recover, in equity, the wages allegedly
11 earned but inequitably retained by Defendant because of the alleged violation of the MWA.
12 *See Id.*
13

14 Plaintiff's claim for relief labeled as "Unjust Enrichment" is in actuality, another
15 claim, in equity, for Defendant's alleged violations of the MWA. *See Id. See also, Hartford*
16 *Ins. v. Statewide Appliances*, 87 Nev. 195, 197, 484 P.2d 569, 571 (1971) (object of the
17 action, rather than the legal theory for recovery, governs when determining statute of
18 limitation); and *Perry*, 132 Nev. Adv. Op. 75 at *6 (method of recovery or calculation of
19 damages does not alter the fact that the claim is for an alleged failure to pay minimum wage
20 required by the MWA). Plaintiffs' claim for unjust enrichment fails on its face because they
21 have (or had) a full and adequate remedy at law. And, since Plaintiffs had express
22 agreements with Defendant, their claims in equity fail as a matter of law.
23
24

25 As to alleged payment of alleged tips or other fees, Plaintiff is essentially seeking to
26 be doubly enriched, or to otherwise punish Defendant for their various individual business
27 failures. Again, despite limited testimony regarding alleged fines assessed to Plaintiff, the
28



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1 actual documentary evidence produced by Defendant provides no corroboration that Plaintiff
2 was actually fined for any conduct. *See Exhibit 11 to MSJ*. Under Nevada law, the “proper
3 measure of damages in an unjust enrichment case is the reasonable value of services
4 performed.” *Asphalt Prods. Corp. v. All Star Ready Mix, Inc.*, 111 Nev. 799, 802, 898 P.2d
5 699, 701 (1995). The records support testimony by Defendant’s Person Most
6 Knowledgeable, that Defendant did not impose and/or enforce fines on the Plaintiffs. *See*
7 *Exhibit 3*, 78:22-79:3, 83:12-14. As such, Plaintiff’s claim for equitable relief for their
8 purportedly unpaid wages fails because of their express agreements with Defendant.
9

10 Plaintiff’s claim for unjust enrichment with respect to fees and/or fines, or other vaguely
11 identified monies allegedly paid, such as tips, additionally fail because Plaintiff would be
12 entitled to recovery of illicitly retained fees and/or fines pursuant to any MWA claim and
13 associated damages. Despite Plaintiff Franklin’s estimated fees and/or allegedly mandatory
14 tips she paid to Defendant or Defendant’s purported agents or employees, Plaintiff Franklin
15 has zero admissible evidence to support her vague estimations. Plaintiff’s only evidence of
16 any alleged “damages” she suffered from having to purportedly pay out tips and fines, is
17 merely her own self-serving testimony. In particular, Plaintiff Franklin specifically testified to
18 keeping no records of the income she earned or paid out to others, having no bank account,
19 and filing no taxes. *See Exhibit 8 to MSJ at 25-26*. Therefore, Defendant is also entitled to
20 summary judgment as to Plaintiff’s claims for unjust enrichment.
21
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25 / / /

26 / / /

27 / / /

28



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1 **V. CONCLUSION**

2 Based on the foregoing arguments, Defendant respectfully requests that this Court grant its
3 Motion for Summary Judgment in its entirety since Plaintiff Franklin meets all of the
4 applicable criteria of NRS 608.0155, thereby barring her from making claims pursuant to the
5 MWA and defeating her associated claim for Unjust Enrichment.
6

7 DATED this 11th day of August, 2017.

8 **MORAN BRANDON BENDAVID MORAN**

9
10 /s/ Jeffery A. Bendavid, Esq.
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Exhibit “A”



Transcript of the Testimony of

Jacqueline Franklin

Date Taken: January 10, 2017

Case: JACQUELINE FRANKLIN v. RUSSELL ROAD
FOOD AND BEVERAGE, LLC, et al.

Case No.: A-14-709372-C

Las Vegas Reporting
Phone: 702.509.5001 Fax: 702.974.2242
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DISTRICT COURT
CLARK COUNTY, NEVADA

JACQUELINE FRANKLIN,)
ASHLEIGH PARK, LILY)
SHEPARD, STACIE ALLEN,) CASE NO.: A-14-709372-C
MICHAELA DIVINE, VERONICA) DEPT NO.: 31
VAN WOODSEN, SAMANTHA)
JONES, 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)

DEPOSITION OF JACQUELINE FRANKLIN
Taken at Moran Brandon Bendavid Moran
on Tuesday, January 10, 2017
at 1:30 p.m.
at 630 South Fourth Street
Las Vegas, Nevada 89101

Reported by: Trina K. Sanchez, CCR No. 933, RPR

1 APPEARANCES:

2
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8 For the Defendants:

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13 I N D E X

13 WITNESS:	PAGE
14 JACQUELINE FRANKLIN	
15 Examination by Ms. Stephanie Smith	3
16 Examination by Ms. Lauren Calvert	123
17 Examination by Ms. Stephanie Smith	125

18 E X H I B I T S

20 EXHIBITS	DESCRIPTION	PAGE
21 EXHIBIT A	Entertainer Login by Date	85
22 EXHIBIT B	Entertainer Charge Summary	86
23 EXHIBIT C	Answers to Interrogatories	99
24 EXHIBIT D	Responses to Defendant's Requests	99
25	for Production of Documents	

1 A. I did.

2 Q. Do you still have a Nevada business
3 license?

4 A. Not a current one, no.

5 Q. What about your sheriff's card, is that
6 current?

7 A. It is.

8 Q. Okay. So during the time that you were
9 performing at Crazy Horse, you think you had a
10 Nevada business license?

11 A. I did, yes.

12 Q. Did you understand that to be a
13 requirement to perform at Crazy Horse?

14 A. Yes. It was required.

15 Q. Okay. All right. Did you need to have
16 those items to perform at other clubs?

17 A. Yes.

18 Q. Okay. I guess I wasn't very clear about
19 items. I meant the business license and the
20 sheriff's card.

21 Did you file income tax with the Internal
22 Revenue Service?

23 A. No. I never have.

24 Q. Not for any of the time you performed at
25 Crazy Horse?

1 specifically for Crazy Horse?

2 A. Yes. I did those.

3 Q. Okay. And what would that entail?

4 A. Handing out cards for various managers
5 and VIP hosts.

6 Q. Okay. Did you have your own cards?

7 A. No. We would hand out their cards.

8 Q. Okay. Was that mandatory?

9 A. No.

10 Q. Okay. How would you --

11 A. Or I'm sorry. Do you mean attending the
12 promotions?

13 Q. Yes.

14 A. No. That wasn't...

15 Q. Okay. How did you go about being able to
16 attend the promotions?

17 A. We would usually just ask Justin if there
18 were any coming up and text him if we wanted to
19 attend.

20 Q. Okay. But there was no requirement that
21 you do a certain number of promotional events?

22 A. No.

23 Q. What about events on premises? Did you
24 do any of those? Any special events?

25 A. Such as what?

1 Q. Maybe like a New Year's party or a
2 Christmas party, something to that affect?

3 A. Well, the club was open 24/7 so if they
4 were having an event like an anniversary party or a
5 featured entertainer, it was still the same as
6 working a normal shift.

7 Q. Okay. All right. So there was no
8 additional requirement that you come in for, like,
9 holidays or special occasions that they were
10 having?

11 A. No.

12 Q. Okay. So you mentioned earlier that you
13 would typically wear a two-piece outfit?

14 A. Correct.

15 Q. Did Crazy Horse have any requirements on
16 what kind of outfits you needed to wear while
17 performing?

18 A. I believe what was in our contract and
19 what was enforced by the house mom was very vague.
20 Such as neat, put together, professional. They
21 were kind of vague words.

22 Q. Okay. Do you remember anything specific?

23 A. No. I was never told that I needed to
24 change.

25 Q. Okay. Could you have changed if you

1 wanted to during a shift?

2 A. Yes.

3 Q. Okay. What about any requirements on
4 your hair or makeup?

5 A. Same thing. They would always just tell
6 us we needed to look neat and presentable and
7 professional.

8 Q. Okay.

9 A. It was usually at the discretion of the
10 house moms.

11 Q. Okay. Did you need to check in with or
12 report to someone about your outfit?

13 A. No.

14 Q. Okay. What about hair and makeup?

15 A. No. But if they didn't like it, they
16 could tell you to do something about it.

17 Q. Did that ever happen to you?

18 A. Not to me.

19 Q. Okay. Any other rules about what you
20 could or couldn't wear?

21 A. No.

22 Q. Okay. Did you have a stage name?

23 A. I used my middle name, Sarah.

24 Q. Well, I don't have to ask you how you
25 came up with that.

1 Was that something that you had to get
2 approved by anyone at Crazy Horse?

3 A. You put it on your paperwork when you got
4 hired.

5 Q. Okay. So did it need to be actually
6 approved? Like, did someone sign off on that?

7 A. Yes. They just want to make sure that it
8 wasn't already being used at the club.

9 Q. Okay. So not 100 Sarahs on the floor?

10 A. Correct.

11 Q. Okay.

12 A. The guy that worked the cage.

13 Q. Okay. Were you ever required to wear any
14 special costumes or special accessories?

15 A. No.

16 Q. Okay. Did you have any signature items
17 that you would wear?

18 A. No.

19 Q. Did you have any signature dance moves?

20 A. No.

21 Q. So if you were going to approach an
22 individual that came into the club, can you walk me
23 through what you would do?

24 A. Introduce myself, strike up a
25 conversation, and then offer a dance and VIP room.

1 A. Yes, I did.

2 Q. Do you have any particular style that you
3 dance on the stage?

4 A. I'm not sure I understand the question.

5 Q. Any particular moves or artistic style
6 that you used while on stage?

7 A. I did what was comfortable for me.

8 Q. Okay.

9 A. Yes.

10 Q. Were there any rules about how you were
11 supposed to be performing on stage?

12 A. Not other than the laws.

13 Q. Okay. What did you understand the laws
14 to be?

15 A. Things like not removing your panties or,
16 you know, touching your genitals and things like
17 that while you danced.

18 Q. Okay.

19 A. It was very simple. Just a couple of
20 things that were laws.

21 Q. Okay. So you mean like State or County
22 laws?

23 A. Correct.

24 Q. Okay. What about rules or restrictions
25 regarding lap dances?

1 A. No.

2 Q. Okay. What about how long a break could
3 be? Any rules on that?

4 A. No. But if you got called on stage, you
5 had to go.

6 Q. Okay. Did you ever pay a fee to not
7 dance on stage?

8 A. Yes.

9 Q. So you mentioned -- I think you called it
10 "funny money" or "dance dollars" earlier.

11 A. Yes.

12 Q. Do you know if you could refuse to accept
13 those from a customer?

14 A. I suppose you could.

15 Q. Did you ever?

16 A. No, because then you wouldn't get paid.

17 Q. Okay. Didn't -- you didn't ever ask just
18 for cash?

19 A. You could ask the customer to go to the
20 ATM. But if that wasn't an option, then you had no
21 choice but to take the funny money or not make
22 money.

23 Q. Okay. They would probably just find
24 another dancer that would take the dance dollars?

25 A. Right.

1 been going for a little bit now. We'll just come
2 back in about five minutes.

3 A. Okay.

4 (A short break was taken.)

5 BY MS. SMITH:

6 Q. Okay. Ms. Franklin, we are back on the
7 record. The oath that you took earlier in the
8 afternoon is still in effect. That will carry on
9 throughout the depo. I'll remind you whenever we
10 come back from a break, though.

11 A. Okay.

12 Q. Now, you had already testified that you
13 believed it was expected that you tip the house mom
14 for the locker; is that right?

15 A. Correct.

16 Q. What about tips to anyone else at Crazy
17 Horse?

18 A. Yes. It was expected of us.

19 Q. Okay. Was it actually a rule that was
20 required?

21 A. It wasn't in writing.

22 Q. Okay. Who did you believe expected tips?

23 A. The DJ, the house mom, the valet, the VIP
24 hosts on the floor and in the dressing rooms, the
25 cashier, the back door guy, and managers all got

1 tipped.

2 Q. Okay. How much would you tip the DJ?

3 A. On a typical night, I would usually tip
4 10. If I ever asked anything of him, then I would
5 have to tip him more.

6 Q. What do you mean ask anything of him?

7 A. For example, if I was up in rotation and
8 I wanted him to push me back because I was talking
9 to a client that I thought might spend money.

10 Q. Okay. What about for a song request?

11 A. No. We didn't do those.

12 Q. Okay. So you could ask to be moved
13 around in the -- on stage rotation?

14 A. You could ask, but you wouldn't always
15 get the answer you wanted.

16 Q. Okay. So was tipping the DJ a required
17 rule?

18 A. No.

19 Q. Okay.

20 A. They just -- sorry. Like I said, it
21 wasn't in writing. It was just expected.

22 Q. Okay. Did you ever tip the DJ \$0?

23 A. I believe if it was a night I didn't make
24 money myself and I had no money to tip.

25 Q. Okay. Would anything happen if that

1 speculation.

2 THE WITNESS: Yeah. There were VIP hosts
3 that I guess you could say guarded the bottle
4 service area, and they would only let certain girls
5 up. And, again, it was their discretion.

6 BY MS. SMITH:

7 Q. Did you ever go up to those bottle
8 service areas?

9 A. I would occasionally.

10 Q. Okay. Could you ever hang out by the bar
11 inside of Crazy Horse?

12 A. Occasionally.

13 Q. Okay. So could you hang out there during
14 a shift if you wanted?

15 A. You could.

16 Q. Okay. What about breaks? Would you --
17 how would you decide when you wanted to take a
18 break?

19 A. You could take a break whenever you
20 wanted.

21 Q. Okay. Did you have to check out with
22 someone?

23 A. No.

24 Q. Do you remember any rules about how many
25 breaks you could take during a shift?

1 promo events?

2 A. Yes.

3 Q. Okay. Would you ever drink alcohol
4 during your shift?

5 A. No. I don't like alcohol.

6 Q. Okay. Would you sell any alcohol or try
7 to sell any bottles of alcohol?

8 A. Only in combination of selling a VIP
9 room.

10 Q. Okay. Did Crazy Horse have any
11 requirements that you were supposed to sell
12 bottles?

13 A. No.

14 Q. Just the VIP minimum that you mentioned
15 earlier, right?

16 A. Correct. If your customer was purchasing
17 a VIP dance with you, he was also required to
18 purchase drinks or a bottle.

19 Q. Okay. So that was just sort of tied into
20 the VIP experience?

21 A. Yes.

22 Q. Okay. Other than that, did Crazy Horse
23 require you to sell a certain amount of VIP time or
24 VIP experiences?

25 A. No.

1 supposed to look, I guess, "cute" when we did
2 promotions.

3 Q. Okay. Not rolling out of bed, huh?

4 A. Right.

5 Q. Okay. What made you choose to do
6 promotional events for Crazy Horse?

7 A. I was really struggling for money at the
8 time, so any way I could save money on house fees,
9 I would usually try to do it.

10 Q. Okay. Did you -- sorry.

11 Do you have an estimate as to how much
12 you would spend on costumes per month while
13 performing at Crazy Horse?

14 A. No. I didn't really buy a lot of
15 costumes at the time because I had so many years
16 worth of outfits I had accumulated by that point.

17 Q. Okay. What about expenditures on hair
18 and makeup?

19 A. I wouldn't keep track of that stuff.

20 Q. Okay. Did you ever hire anyone to help
21 you with your hair and makeup?

22 A. No.

23 Q. Could you have?

24 MS. CALVERT: Objection. Calls for
25 speculation.

1 THE WITNESS: I believe -- I -- you mean
2 inside the club or outside the club?

3 BY MS. SMITH:

4 Q. Either or.

5 A. Not inside the club, no. But outside the
6 club, I guess I would have been free to hire
7 whoever I wanted to help me.

8 Q. Was there any set individual that you had
9 to report to during a shift at Crazy Horse?

10 A. The DJ.

11 Q. Was that for your stage sets?

12 A. Yes. When you were ready, you were
13 supposed to let the DJ know that you were ready and
14 available to be called on stage.

15 Q. Okay. What made you decide to stop
16 performing at Crazy Horse?

17 A. I felt like the hosts were rude to me.

18 Q. Any particular host?

19 A. Yes.

20 Q. Do you recall their names?

21 A. Do I have to name?

22 MS. CALVERT: If you remember.

23 THE WITNESS: Yeah. Tommy Van was
24 especially rude to me.

25 /////

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)
) SS:
3 COUNTY OF CLARK)

4 I, Trina K. Sanchez, CCR No. 933, RPR
5 declare that I reported the taking of the
6 deposition of the witness, JACQUELINE FRANKLIN,
7 commencing on Tuesday, January 10, 2017, at 1:30
8 p.m.

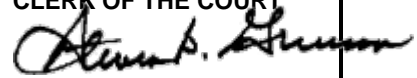
9 That prior to being examined, the witness
10 was by me duly sworn to testify to the truth, the
11 whole truth, and nothing but the truth;

12 That I thereafter transcribed my said
13 shorthand notes into typewriting and that the
14 typewritten transcript of said deposition is a
15 complete, true, and accurate transcription of said
16 shorthand notes taken down at said time, and that a
17 request has not been made to review the transcript.

18 I further declare that I am not a
19 relative or employee of any party involved in said
20 action, nor a person financially interested in the
21 action.

22 IN WITNESS WHEREOF, I have hereunto set
23 my hand in the County of Clark, State of Nevada,
this 18th day of January, 2017.

24 _____
25 Trina K. Sanchez, CCR No. 933, RPR



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

ASHLEIGH PARK,)
)
Plaintiffs,)
)
vs.)
)
CRAZY HORSE III GENTLEMAN'S CLUB)
AT THE PLAYGROUND,)
)
Defendant.)
AND OTHER PARTIES)

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

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

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

**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
AGAINST PLAINTIFFS PURSUANT TO NRCP 56**

THURSDAY, AUGUST 17, 2017

APPEARANCES:

FOR PLAINTIFF: LAUREN CALVERT, ESQ.

FOR CRAZY HORSE III: JEFFREY A. BENDAVID, ESQ.
STEPHANIE J. SMITH, ESQ.

RECORDED BY: SANDRA HARRELL, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

1 **LAS VEGAS, CLARK COUNTY, NEVADA, AUGUST 17, 2017, 10:06 A.M.**

2 *** * * * ***

3 THE COURT: -- 09372.

4 MS. CALVERT: Good morning, Your Honor. Lauren
5 Calvert for plaintiffs or plaintiff.

6 MR. BENDAVID: Good morning, Your Honor. On behalf
7 of defendant, Jeff Bendavid on behalf of defendant.

8 MS. SMITH: Stephanie Smith also on behalf of
9 defendant.

10 THE COURT: Okay. Thank you so very much. It's
11 plaintiffs' motion for summary judgment on employee status on
12 Ms. Franklin is probably the easiest way I'll phrase that.

13 MS. CALVERT: Yes, Your Honor.

14 THE COURT: Okay. Your opposition, and go ahead. I
15 was going to say the rest of the stuff.

16 MR. BENDAVID: And then our motion for summary
17 judgment as well, Your Honor.

18 THE COURT: All right. So however which you want to
19 phrase it, you've got Ms. Franklin left. You've heard from
20 both myself and Justice Saitta. So we are where we are at.

21 MS. CALVERT: We are where we are at.

22 THE COURT: So whoever wants to go first, I mean,
23 really you all are saying that this is an issue of law no
24 matter which way it is and that she either is or isn't. So
25 there is or is not a trial.

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1 MR. BENDAVID: Yeah. Honestly, Your Honor, I think
2 they can be addressed as one argument. You know what I'm
3 saying?

4 THE COURT: And wouldn't you agree because your
5 points are really --

6 MR. BENDAVID: They're the same.

7 THE COURT: Everything in support of your -- this is
8 really where your burdens are on your respective motions.

9 MR. BENDAVID: I agree.

10 MS. CALVERT: Correct, Your Honor.

11 THE COURT: So go ahead, plaintiff first.

12 And then I'll let you each get five minutes and then
13 two minutes each for summary and response to each other. Does
14 that work for you?

15 MR. BENDAVID: No problem.

16 MS. CALVERT: Yeah. Absolutely, and mine will be
17 pretty short because I know that you have read an enormous
18 amount of briefing.

19 THE COURT: Including just to let you know everything
20 that was before Justice Saitta and read everything thereto so,
21 yes.

22 MS. CALVERT: Sure, Your Honor. So really unless
23 there's questions, we are willing to rest on the briefing
24 because I don't think there is anything else to add. We've
25 looked at NRS 6080155. There's several of those elements that

1 we've conceded, one of them being that Ms. Franklin has a
2 Social Security number.

3 When we start to look at some of the other elements,
4 particularly the second part that the result of the work rather
5 than the means or manner by which the work is performed is the
6 primary element bargained for. You know, we argued that the
7 dancers do not perform any work for the club because the
8 agreement has been stylized as a lease, and based on that alone
9 we do not -- we're not going to meet that element and be
10 presumptively independent contractors or contractor, I guess,
11 singular.

12 When we look at whether the person has control over
13 the time -- control over the time the work is performed,
14 certainly there is some leeway for dancers. We have contended
15 that especially when it comes to times. Whether they're an
16 a.m. shift person or a p.m. shift person dictates when they can
17 come into the club and also when they are called on stage to
18 perform. They have to then be on stage at that time and that
19 time only.

20 Let me see here. Whether or not they are free to
21 hire employees to assist with the work, certainly they cannot
22 hire a dance partner to come in. The club has tried to assert
23 that, well, you could hire someone to come in and do your hair
24 or to drive you around between clubs, but that's not really the
25 work. The work is dancing.

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1 THE COURT: Can I interrupt and ask you that
2 question?

3 MS. CALVERT: Yeah.

4 THE COURT: Because you raised the issue of the VIP
5 bottles and the lap dancing, right? So and you're more
6 narrowly in your argument phrasing the work as more the, what
7 do you want to call it, to dancing on the stage versus the lap
8 dancing versus the VIP room versus the selling a bottle --

9 MS. CALVERT: Yeah, I would --

10 THE COURT: -- so what are you kind of defining as
11 the work if you don't mind? That would be my only question.

12 MS. CALVERT: Sure. And I think that becomes
13 difficult because when you look at the agreement, the work is
14 being a tenant, just merely paying to come in and access the
15 club. In our view, it is dancing period, whether that's on
16 stage doing lap dances, doing VIP dances. Wherever you're
17 dancing, that is your work.

18 So having someone assist you with your work, to me
19 what comes to mind is having, you know, a dance partner, not
20 someone to style your hair. That is not part of your work, and
21 if they wanted to bring in let's say a dance partner, that
22 person would have to have a Sheriff's card, have auditioned,
23 they can't just unilaterally hire someone and bring them into
24 assist with the work which we say is dancing wherever it occurs
25 at within the club.

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1 THE COURT: Okay.

2 MS. CALVERT: Whether or not they contribute a
3 substantial investment of capital in the business and in
4 person, specifically Ms. Franklin I think, you know, the
5 largest expenditure she had was shoes that she had to buy once
6 every three months because they wore out. Other than that, she
7 had already the outfits that she would wear in her possession.
8 So she didn't have to go out and, you know, buy a new wardrobe
9 in order to do her dancing. She --

10 THE COURT: But don't they assert that her physical
11 appearance alteration aspects were also part of her job?

12 MS. CALVERT: Well, sure.

13 THE COURT: I'm not going to be more specific. You
14 know what I'm referencing.

15 MS. CALVERT: She had a breast augmentation, but she
16 had that --

17 THE COURT: And the veneers, right?

18 MS. CALVERT: And veneers. She had those well before
19 she started dancing at the club.

20 THE COURT: Okay.

21 MS. CALVERT: So I would not -- they were, you know,
22 done perhaps for performing at an earlier club, but not for
23 Crazy Horse III. So I, you know, what they already -- whatever
24 they've incurred expensewise for their appearance prior to
25 that, yeah, maybe it helped them getting the job, but it wasn't

1 an investment for that job for that club. That's our position.

2 THE COURT: I do --

3 MS. CALVERT: Let me see here. As far as the
4 investment of dancers in obtaining permission from the
5 principal to access the work space and a lease of any workspace
6 from the principal, for that point we're really relying or
7 we're maintaining defendant's own representations that this
8 amount was marginal because plaintiff in their own words could
9 access the club during times for which no stage fee was
10 assessed or for which the stage fee was reduced. So we believe
11 that weighs in in our favor as well.

12 And I jumped around a little bit. Let me --

13 THE COURT: No worries.

14 MS. CALVERT: I think that's really all the factors
15 there, Your Honor. I'm of course happy to answer any questions
16 you might have after defendants present their position.

17 THE COURT: Sure. Okay. Thank you.

18 Go ahead, Counsel.

19 MR. BENDAVID: Good morning, Your Honor. Your Honor,
20 I think we finally agree. It's taken a long road, but that NRS
21 6080155 controls here. The Court has already ruled that that
22 is the controlling law in this case and the controlling law as
23 to whether they're an independent contractor or an employee.

24 Under that statute, Your Honor, they're presumably an
25 independent contractor under a three criteria step if you will,

1 a three-prong step, the first being a Social Security number
2 and the second being that they've obtained the required
3 registration with the state and locals, that if that is
4 required under that profession, and the third is that
5 there's -- is required to work -- well, let me rephrase, is
6 that there's three of the five additional criteria under
7 subsection 3 must be met, and if they're not met, then they're
8 not presumed an employee at that point. There's still another
9 test has to be done.

10 But for purposes of this case, for purposes of
11 Franklin, obviously they've conceded the first prong, that she
12 does have a Social Security number. We don't really need to
13 get into that. She testified to it. She has a Social Security
14 number. We can move on.

15 The second prong, Your Honor, Franklin testified that
16 she did have the Nevada required business registration that she
17 filed every year, and she had the Sheriff's card that was also
18 required by state law and local ordinances to perform as an
19 exotic dancer in Clark County. So she had both. So she meets
20 the first prong and second prong with regards to NRS 6080155.

21 In Subsection c, you must have three or more of the
22 criteria. Your Honor, she has all five, and I'll summarize
23 those quickly, Your Honor, but with regards to the first part,
24 she had complete control over her dance. Her testimony -- now,
25 Your Honor, I am using and our brief uses Franklin's testimony

1 and written discovery to respond and analyze these prongs.

2 Franklin testified that she, quote, danced whatever
3 felt right. She said she was never told how to dance. She was
4 in control of her dance. She said she knew what was legal and
5 not legal under state law and that she conducted her dance and
6 what felt right to her and that she was never instructed on how
7 to dance and not dance. So she had complete control over her
8 dance or for her performance of her profession.

9 Under the second one, she had complete control over
10 her schedule. She testified to that. She said she could come
11 and go whenever she wanted. She could pick any day of any week
12 of any month of any year, and within those days she could pick
13 any time to come in, any time to leave. She did testify that
14 she had to be there she believed at least six hours, but the
15 evidence actually showed the contrary.

16 In discovery, and they actually went to the discovery
17 commissioner because they wanted two parts of this. They
18 wanted the check in and check out days that each plaintiff
19 attended, and they wanted within the system what actually
20 record the actual moment in time that they would swipe in and
21 swipe out, and, in fact, there was 18 times that Franklin alone
22 was there less than five hours. In fact, some of hers -- one
23 of them, she was there for an hour and 7 minutes. Some of them
24 she was there for 12 hours. So it shows you the range was 1
25 hour to 7 minutes to 12 hours.

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1 She chose those, which means she was in control, in
2 complete control, Your Honor, of all of her scheduling, and she
3 did testify that she could come in whatever day that she chose
4 to come in. She could leave whatever day. If she didn't want
5 to --

6 THE COURT: And I will keep you to the same few
7 moments.

8 MR. BENDAVID: I will.

9 THE COURT: Okay. Go ahead.

10 MR. BENDAVID: Yeah, I will, Your Honor. So that
11 satisfies the second prong, Your Honor.

12 In terms of breaks, she was in complete control of
13 her own breaks. She said she could take a break any time she
14 wanted to. She could come in for 10 hours, use 9 of it as
15 breaks and 1 of it to perform, 30 minutes to perform and 9 and
16 a half hours to break. It was completely and entirely up to
17 her, and she testified that she could take a break for as long
18 as she wanted whenever she wanted, and if she paid -- and the
19 only thing that could interrupt her break is if she got called
20 to the stage, but she could pay a stage fee and not go to that
21 and not do that. So she was -- that third prong, Your Honor,
22 or that third criteria is also satisfied in terms of she is in
23 complete control of her own schedule.

24 The third is that she, is that Franklin did not have
25 an exclusive agreement to only perform at that club. She

1 testified that during the period of time that she danced at
2 this club she only danced at that club, but not because she had
3 an exclusive agreement. She just chose to. But she had no
4 exclusive agreement, and, in fact, Your Honor, they could see.
5 The agreement speaks for itself. The agreement has a
6 nonexclusive clause in it that states that the dancer can
7 perform at any club at any time. She could even leave that
8 club that night and go to another club and dance. So there's
9 no exclusivity. She satisfies the third -- the third prong.

10 In terms of free to hire employees and assistance,
11 you heard some argument that that's ridiculous to the extent
12 that it doesn't help her perform. There's nowhere in the
13 statute -- in fact, Your Honor, it says free to hire. The
14 person is free to hire employees to assist with the work.

15 Your Honor, if you make a comparison, a law firm
16 hires runners to deliver documents. That runner is not helping
17 me practice law. It's not helping me analyze this case. It's
18 not helping me argue it, but there are other actions that
19 occur, the same thing as an assistant.

20 She testified she could've hired, could have, doesn't
21 mean they had to, but free to hire is what the statute says,
22 and she was free to hire an assistant, too, for hair, makeup,
23 assisting with dance -- her dance practices, assisted with
24 training for her body. Anything like that within her
25 profession she was free to hire. The fact that she didn't does

1 not matter, Your Honor, but those are employees that she
2 could've hired if she wanted to. So that satisfies the fourth
3 prong.

4 The fifth prong is substantial investment in her
5 profession. Now, what it actually says is the person
6 contributes to substantial investment of capital in the
7 business of the person. It doesn't say in the business of the
8 person for that specific job. In other words, if she had done
9 things, which she did and testified to, that she paid for
10 cosmetics. She paid for cosmetic surgery, such as the breast
11 implants, she paid for the teeth veneers, she paid for shoes,
12 clothing, drinks, food, alcohol, all of those things were
13 investments into her profession.

14 The fact that I paid for law school before I got a
15 job as an attorney is the same thing. She paid in a
16 substantial investment into herself, into her body, into
17 presenting herself as a dancer prior to coming to the club.
18 It's the same investment. So she satisfies that fifth prong,
19 Your Honor.

20 I think there's no question under the basis of
21 summary judgment, Your Honor, using her own testimony, not
22 slanting her testimony, taking her actual testimony what she
23 was free to do, what she had the ability to do and what she did
24 do satisfies all the prongs of NRS 6080155, and she's
25 conclusively an independent contractor.

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1 THE COURT: Thank you so much. Any response?

2 MS. CALVERT: Yeah, I think just two quick points.
3 One is that although Ms. Franklin did have a Sheriff's card,
4 she did have her business license, those were not required by
5 the contract, and that's what the statute states is that those
6 requirements are delineated in the agreement with the putative
7 employer. She complied with those because they're required
8 under the law, but they are not required under the contract.
9 It's nowhere on the contract.

10 I don't know that Ms. Franklin hiring someone in
11 theory to do her hair or to do her makeup helps with her
12 dancing anymore than myself going and getting my hair done or
13 my makeup done to be a lawyer. There is a difference there
14 between those types of things and a runner. There's clearly a
15 difference and how those assist with the job.

16 And as to the style of dancing, Ms. Franklin was very
17 specific in describing that they were required when they were
18 on stage, the first song that comes on, all the clothes are on,
19 second song, their top comes off, and on the third song, they
20 have to be down to a G-string. Now, if they didn't comply with
21 that, if they decide I don't feel like doing those things in
22 that order or dancing in that fashion, a DJ would come on over
23 the intercom system and tell them to do so, to comply. They
24 weren't allowed to leave the stage until relief came and let
25 them off. Otherwise, they could be stuck there for as many

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1 sets until someone else showed up.

2 So I think there are -- I think there are factual
3 disputes that prevent defendants being granted summary
4 judgment, and I think we have sufficient facts here that under
5 NRS 608 we're not presumptively independent contractors.

6 THE COURT: Okay. Thank you.

7 MR. BENDAVID: Briefly, Your Honor. The agreement
8 does provide for the entertainer agrees to comply with all
9 requirements with respect to the applicable laws, rules,
10 regulations of the United States, State of Nevada and Clark
11 County. It is a State of Nevada law that if you are an exotic
12 dancer you must get the Nevada state business registration to
13 perform. It also -- Clark County requires a Sheriff's card for
14 you to perform.

15 She testified that she knew those legal requirements,
16 and she knew that she had to have those to perform, and she
17 testified to actually getting those licenses and having them
18 and keeping them up to date. So I think that's really a
19 nonissue with regards to the second prong, Your Honor.

20 THE COURT: I do appreciate it. Thank you so very
21 much.

22 Counsel, as you know, throughout this case you all
23 have been incredibly prepared, argued, organized, provided lots
24 of legal arguments and documentation, and at this juncture the
25 Court finds it is appropriate to grant defendant's motion for

1 summary judgment against plaintiff Ms. Franklin. The Court
2 finds that under NRS 6080155, as both parties agree is the
3 prevailing provision, notwithstanding the fact that the
4 document uses the term lease, the Court finds that each of the
5 parties have always argued this is either it's independent
6 contractor or whether it's employee, and the Court has to look
7 at the 6080155 provisions.

8 Looking at 6080155, Social Security card admitted by
9 both sides, undisputed. Second, required to hold the Nevada
10 State business licenses. Looking at Subparagraph B, the
11 person's required by contract with the principal to hold any
12 necessary state business registration or local license and to
13 maintain necessary occupational licensing. Here in the last
14 argument as referenced also in the briefs, it is part of the
15 contract. The general following of the compliance with the
16 laws that would fall within that provision. Ms. Franklin's
17 undisputed deposition testimony said that she knew the laws,
18 knew she had to have them. That factor is met.

19 So then you go to three or more of the remaining
20 criteria under Subportion C. If the person satisfies three or
21 more of the following criteria, under Sub 1, notwithstanding
22 the exercise or control necessary to comply with any statutory,
23 regulatory or contractual obligations, the person has control
24 and discretion over the means and manner of performance of any
25 work, and the result of the work rather than the means and

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1 manner the work is performed is the primary element bargained
2 for by the principal of the contract.

3 Here I do think that lies in favor of her independent
4 contractor status. While I'm appreciative that there may be a
5 particular order, and the order was stated, you know, with
6 regards to clothes on then top off and then down to a G-string,
7 her own testimony continues to say, I mean, she could've paid
8 the fee not to dance on stage and not have to have done that.

9 And if you were to parallel this, in no way
10 minimizing here, but I'm trying to make a example is someone
11 who is an independent contractor you may hire to clean a house,
12 to perform a job on your home, et cetera. Yes, they have to
13 ultimately build the closet, you know, fix the plumbing, clean
14 the house, whatever the idea may be.

15 And like I said, I'm not trying to minimize it in any
16 manner. I'm just trying to give a parallel example. By
17 definition, they have to do certain things to fix it. You
18 can't fix the plumbing until you get into the wall, till you
19 find the pipe, until you, you know, or I guess (unintelligible)
20 the back of the toilet, the O-ring, whatever the case may be,
21 fix it, shut off the water and do that.

22 So of course you have to do it in some kind of
23 process, but the ultimate goal you're hiring the person to do
24 would be independent contractor status would still lay in favor
25 there. So finding what is her own deposition testimony as she

1 described it, and that would rule in favor of her being an
2 independent contractor.

3 Looking then at the agreement of the principal
4 relating to the completion of schedule of work of hours. There
5 was testimony stated that sometimes not only the different
6 punch ins and punch outs which you have clearly and how long
7 she really was there. While I'm appreciative of the six-hour
8 minimum, it's clearly shown that the 18 times she didn't
9 necessarily do it, the 1 hour and 20 minutes.

10 There was another example that she didn't mention in
11 oral argument which is in your pleadings. I believe that she
12 came in one time at like 10 a.m.ish, and then another time she
13 came in at 1 a.m., and so she had a variety of different hours,
14 a variety of different days. Her own testimony states that,
15 and her ability to modify that on any days that she wished and
16 how she wished to do it once she was at the club as well would
17 all lean in favor of independent contractor status.

18 And then going to three, not required to work
19 exclusive for one principle when her own testimony states that
20 she could work wherever she wanted to. The fact she chose to
21 work at one wouldn't mean that she is an employee. That's her
22 own choice. You can choose to have one exclusive client or one
23 exclusive person that you work with, but that doesn't mean that
24 you're necessarily an employee because that was by choice, not
25 required either, A, by contract. The exclusive -- the

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1 nonexclusive provision of the contracts would be determinative
2 there in favor of independent contractor status, but also her
3 own testimony of what she had the opportunities to do, just
4 chose not to do it.

5 No. 5, Person contributes to the substantial
6 investment of capital in the business of the person include
7 without limitation. Now here I'm going to just give a
8 parallel. That's the reason why I gave the earlier example
9 about fixing something because I was going to lead to that same
10 path.

11 Down here at Sub I where it talks about purchase or
12 leasing ordinary tools, material, equipments regardless of the
13 same with the same analysis that I mentioned with regards to
14 someone doing either a plumbing job, a house job, et cetera,
15 you don't buy your new wrenches and all your tools for each
16 specific job. What they're meaning is that you have those, and
17 you can kind of bring them to the tools of the trade.

18 Here her tools of the trade was her body as she
19 stated in part and in addition to the clothing and things like
20 that. So the Court would find that she would've had a
21 substantial investment based on her own testimony once again of
22 what she needed in order to be an effective dancer and to earn
23 money. So that would lean in favor.

24 And so whether I look at it as all five or I look at
25 three of the five are met, either way it still makes her an

1 independent contractor. The statute does provide that, you
2 know, if she meets those, (unintelligible) presume, the Court
3 would find that all the factors have been met. The Court while
4 it's appreciative of the excellent oral argument and the
5 pleadings, the Court does find it's appropriate.

6 The undisputed -- the undisputed issues of
7 material -- there are no undisputed issues of material fact in
8 light of the statutory statements and incorporated in the
9 pleadings so therefore it's a matter of law the Court's going
10 to find the defendant's motion for summary judgment should be
11 granted, and in that regard, that's why I need to deny
12 plaintiff's motion for summary judgment because it's on the
13 exact same topic. It's either employer or independent
14 contractor. The Court finds independent contractor for the
15 reason stated, and so therefore, like I said, it's granted and
16 plaintiff's is denied.

17 The Court's going to ask while I have not set forth
18 every specific as it's detailed more in the pleadings, please
19 provide detailed findings of fact and conclusions of law,
20 circulate it to opposing counsel and provide it back to the
21 Court in accordance with EDCR 7.21.

22 But since you are going to have to do the findings of
23 fact and conclusions of law and circulate it, do you need more
24 than the 10 days?

25 MR. BENDAVID: We probably will, Your Honor.

1 THE COURT: Okay. Do you just want 30 days?
2 MR. BENDAVID: That's fine.
3 THE COURT: Does that make life easy?
4 MR. BENDAVID: Yes.
5 THE COURT: Okay. 30 days.
6 Now, that should take care of all matters for this
7 case, right?
8 MR. BENDAVID: Correct.
9 THE COURT: It is so ordered summary judgment is
10 granted. So then are you asking me to vacate your calendar
11 call and your trial date?
12 MR. BENDAVID: Correct.
13 MS. CALVERT: Correct.
14 THE COURT: Okay. So calendar call and trial date
15 are vacated; it is so ordered. And then you'll get the
16 appropriate findings of fact, conclusions of law and the
17 proposed judgment to the Court.
18 Thank you so very much. Appreciate your time.
19 MR. BENDAVID: Thank you, Your Honor.
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MS. CALVERT: Thank you, Your Honor.

THE COURT: Have a great rest of the week.

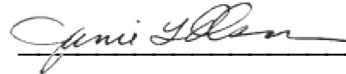
MR. BENDAVID: You, too, Your Honor.

MS. CALVERT: You as well.

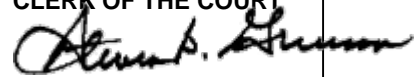
(Proceedings concluded 10:29 a.m.)

-oOo-

ATTEST: I do hereby certify that I have truly and correctly
transcribed the audio/video proceedings in the above-entitled
case.



Janie L. Olsen
Transcriber



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

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

Plaintiffs,

vs.

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

Defendants.

AND RELATED COUNTERCLAIMS

Case No.: A-14-709372-C

Dept. No.: 31

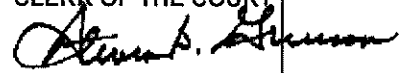
NOTICE OF ENTRY OF ORDER



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1 **ORDR**

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

3 Nevada Bar No. 6220

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

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14 **KAMER ZUCKER ABBOTT**

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17 (702) 259-8640

18 *Attorneys for Defendant/Counterclaimant*

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

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

Plaintiffs,

vs.

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

Defendants.

AND RELATED COUNTERCLAIMS

Case No.: A-14-709372-C

Dept. No.: 31

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

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

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



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

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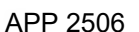
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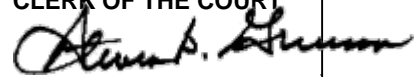
THE COURT FURTHER FINDS that Plaintiffs' Renewed Motion for Class Certification is DENIED, on the bases set forth in Defendant's Opposition to Plaintiffs' Renewed Motion for Class Certification.

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

MORRIS//ANDERSON

Attorneys for Plaintiffs





1 **NOE**

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

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

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

25 Plaintiffs,

26 vs.

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

Defendants.

AND RELATED COUNTERCLAIMS

Case No.: A-14-709372-C

Dept. No.: 31

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



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

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

7 DATED this 12th day of October, 2017.

8 **MORAN BRANDON BENDAVID MORAN**

9
10 /s/ Jeffery A. Bendavid

11 **JEFFERY A. BENDAVID, ESQ.**

12 Nevada Bar No. 6220

13 **STEPHANIE J. SMITH, ESQ.**

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16
17 **KAMER ZUCKER ABBOTT**

18 /s/ Gregory J. Kamer

19 **GREGORY J. KAMER, ESQ.**

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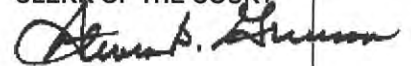
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Attorneys for Defendant/Counterclaimant

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 a class of similarly
situated individuals,

Plaintiffs,

vs.

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

Defendants.

AND RELATED COUNTERCLAIMS

Case No.: A-14-709372-C
Dept. No.: 31

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

AND

**PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

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



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

11
12 **PROCEDURAL HISTORY**

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

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



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1 FINDINGS OF FACT

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

13 CONCLUSIONS OF LAW

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

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

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

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



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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

14 13. Additionally, it is an undisputed material fact that Plaintiff Franklin had complete
15 control and discretion over the means and manner of the performance of her work and the
16 result of her work, as the undisputed material facts and Findings of Fact, are that Defendant
17 did not instruct her on how to dance, Plaintiff Franklin could perform as many lap dances as
18 she wanted or perform none if she chose, Plaintiff Franklin had the option of paying a fee to
19 avoid performing on stage, Plaintiff Franklin could approach any number of patrons she
20 chose and talk to them for as long as she chose. Additionally, it is undisputed material fact
21 that Defendant did not keep track of cash payments to Plaintiff Franklin, did not require
22 Plaintiff Franklin to tip any of its employees or agents, and did not otherwise require
23 Plaintiff Franklin to sell alcohol or VIP time, or require Plaintiff Franklin to otherwise
24 market it. It is an undisputed material fact that Plaintiff Jacqueline Franklin had a regular
25 customer at one point in time, and would choose to attend promotional events to save on
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1 paying house fees. Plaintiff Franklin could also take breaks whenever she chose for however
2 long she chose to do so, and did not report those breaks to anyone. Furthermore, Defendant
3 did not fine Plaintiff Franklin, Plaintiff Franklin was free to refuse to be paid in "dance
4 dollars", and Plaintiff Franklin could choose her outfits and accessories, as well as her stage
5 name. As such, Plaintiff Franklin satisfies the criterion set forth in NRS 608.0155(1)(c)(1).
6

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

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

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

26 17. The fact that Plaintiff Franklin's testimony indicated that she individually chose to
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1 usually perform only at Crazy Horse III gentlemen's club is not a factor in determining
2 whether she satisfies the criterion set forth by NRS 608.0155(1)(c)(3), as she testified that it
3 was her choice.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

12 DATED this 19 day of September, 2017.
13

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

17 Respectfully Submitted by:
18 MORAN BRANDON BENDAVID MORAN
19

Approved as to form:
MORRIS//ANDERSON

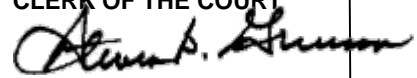
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DISTRICT COURT

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

NOTICE OF APPEAL

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DATED this 17th day of October, 2017.

By: /s/ Lauren Calvert
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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 17th day of October, 2017, I served the foregoing ***NOTICE OF***
APPEAL 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.

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