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Elizabeth A. Brown
Clerk of Supreme Court

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13 **RUSING LOPEZ & LIZARDI, PLLC**
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19 *Attorneys for Plaintiffs*

20 **DISTRICT COURT**

21 **CLARK COUNTY, NEVADA**

22 JANE DOE DANCER, I through V, individually,
23 and on behalf of Class of similarly situated
24 individuals,

25 Plaintiffs,

26 vs.

27 LA FUENTE, INC., an active Nevada
28 Corporation, WESTERN PROPERTY
HOLDINGS, LLC, an active Nevada Limited
Liability Company (all d/b/a CHEETAHS LAS
VEGAS and/or THE NEW CHEETAHS
GENTLEMAN'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-14-709851-C
DEPT. NO.: IV

NOTICE OF APPEAL

Notice is hereby given that Plaintiffs, individually and on behalf of a class of similarly situated individuals, hereby appeal to the Supreme Court of Nevada from the November 4, 2018

1 Order Granting Defendants' Motion for Summary Judgment and Denying Plaintiffs' Counter-
2 Motion for Summary Judgment.

3 DATED this 31st day of January, 2019.

4 **BIGHORN LAW**

5 By: /s/ Kimball Jones

6 **KIMBALL JONES, ESQ.**

7 Nevada Bar No.: 12982

8 716 S. Jones Blvd.

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13 Nevada Bar No.: 13769

14 **RUSING LOPEZ & LIZARDI, PLLC**

15 6363 North Swan Road, Suite 151

16 Tucson, Arizona 85718

17 *Attorneys for Plaintiffs*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of
3 **BIGHORN LAW**, and on the 31st day of January, 2019, I served the foregoing ***NOTICE OF APPEAL***
4 as follows:

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

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

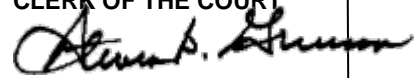
9 ☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile
10 number(s) shown below and in the confirmation sheet filed herewith. Consent to
11 service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by
facsimile transmission is made in writing and sent to the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

12 Doreen Spears Hartwell, Esq.
13 HARTWELL THALACKER, LTD.
14 11920 Southern Highlands Parkway, Suite 201
Las Vegas, Nevada 89141
Doreen@HartwellThalacker.com

15 Dean R. Fuchs, Esq.
16 SCHULTEN WARD & TURNER, LLP
17 260 Peachtree Street NW, Suite 2700
Atlanta, Georgia 30303
d.fuchs@swtwlaw.com

18 *Attorneys for Defendants*

19
20 /s/ Erickson Finch
21 An employee/agent of **BIGHORN LAW**
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Attorneys for Plaintiffs/Appellants

DISTRICT COURT

CLARK COUNTY, NEVADA

JANE DOE DANCER, I through V, individually,
and on behalf of Class of similarly situated
individuals,

Plaintiffs,

vs.

LA FUENTE, INC., an active Nevada
Corporation, WESTERN PROPERTY
HOLDINGS, LLC, an active Nevada Limited
Liability Company (all d/b/a CHEETAHS LAS
VEGAS and/or THE NEW CHEETAHS
GENTLEMAN'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-14-709851-C
DEPT. NO.: IV

CASE APPEAL STATEMENT

A. Name of Appellant Filing This Case Appeal Statement: Plaintiffs JANE DOE DANCER
I, II, III, and V.

1 B. Judge Issuing the Judgment Appealed From: The Honorable Kerry Earley.

2 C. Parties to the Proceedings in District Court:

3 JANE DOE DANCER, I through V, individually, and on behalf of Class of
4 similarly situated individuals (Plaintiffs); and

5 LA FUENTE, INC. and WESTERN PROPERTY HOLDINGS, LLC (Defendants).

6
7 D. Parties Involved in the Appeal:

8 LA FUENTE, INC. (Respondent); and

9 Plaintiffs JANE DOE DANCER I, II, III, and V, individually, and on behalf of Class
10 of similarly situated individuals (Appellants).

11 E. Counsel and Law Firms on Appeal:

12 a) KIMBALL JONES, ESQ.
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Email: Kimball@BighornLaw.com

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RUSING LOPEZ & LIZARDI, PLLC
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20 Tucson, Arizona 85718
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21 *Attorneys for Appellants*

22 b) Doreen Spears Hartwell, Esq.
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Las Vegas, Nevada 89141
25 Email: Doreen@HartwellThalacker.com

26 Dean R. Fuchs, Esq.
(*Admitted Pro Hac Vice*)
27 SCHULTEN WARD & TURNER, LLP
28 260 Peachtree Street NW, Suite 2700
Atlanta, Georgia 30303

Email: d.fuchs@swtwlaw.com
Attorneys for Respondents

F. Appellant was represented by retained counsel in the District Court.

G. Appellant is represented by retained counsel on Appeal.

H. Appellant has not been granted leave to proceed in forma pauperis.

I. Date this action was commenced in District Court: November 14, 2014.

J. This is a certified class action by exotic dancers against the owners of CHEETAHS LAS VEGAS and/or THE NEW CHEETAHS GENTLEMAN'S CLUB, a Las Vegas strip club, for failure to pay a minimum hourly wage as required by state law and for unjust enrichment. Appellants appeal from a January 4, 2019 Order Granting Defendants' case-terminating Motion for Summary Judgment on Employee Status and Denying Plaintiffs' Counter-Motion for Summary Judgment.

K. This case has not previously been the subject of an appeal to or original writ proceeding in the Supreme Court.

L. This appeal does not involve child custody or visitation.

M. This appeal involves the possibility of settlement.

DATED this 31st day of January, 2019.

BIGHORN LAW

By: /s/ Kimball Jones

KIMBALL JONES, ESQ.

Nevada Bar No.: 12982

716 S. Jones Blvd.

Las Vegas, Nevada 89107

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Tucson, Arizona 85718

Attorneys for Plaintiffs/Appellants

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 **BIGHORN LAW**, and on the 31st day of January, 2019, I served the foregoing **CASE APPEAL**
4 **STATEMENT** as follows:

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

7 ☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage
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10 number(s) shown below and in the confirmation sheet filed herewith. Consent to
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18 *Attorneys for Defendants*

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

CASE SUMMARY**CASE NO. A-14-709851-C****Jane Doe, Plaintiff(s)****vs.****Western Property Holdings LLC, Defendant(s)**§
§
§
§
§Location: **Department 4**Judicial Officer: **Earley, Kerry**Filed on: **11/14/2014**Cross-Reference Case **A709851**

Number:

CASE INFORMATION**Statistical Closures**

10/25/2016 Stipulated Dismissal

Case Type: **Employment Tort**Case
Status: **10/26/2016 Reopened****DATE****CASE ASSIGNMENT****Current Case Assignment**

Case Number	A-14-709851-C
Court	Department 4
Date Assigned	11/14/2014
Judicial Officer	Earley, Kerry

PARTY INFORMATION

		<i>Lead Attorneys</i>
Plaintiff	Jane Doe I	Anderson, Ryan M. <i>Retained</i> 702-333-1111(W)
	Jane Doe II	Anderson, Ryan M. <i>Retained</i> 702-333-1111(W)
	Jane Doe III	Anderson, Ryan M. <i>Retained</i> 702-333-1111(W)
	Jane Doe IV	Anderson, Ryan M. <i>Retained</i> 702-333-1111(W)
	Jane Doe V	Anderson, Ryan M. <i>Retained</i> 702-333-1111(W)
Defendant	Cheetas Gentleman Club Removed: 05/01/2015 Inactive	
	La Fuente Inc	Hartwell, Doreen M. Spears <i>Retained</i> 702-850-1074(W)
	Western Property Holdings LLC	Hartwell, Doreen M. Spears <i>Retained</i> 702-850-1074(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX**









11/14/2014

EVENTS

Case Opened

CASE SUMMARY

CASE NO. A-14-709851-C

11/14/2014	 Filed Under Seal Filed By: Plaintiff Jane Doe I <i>Complaint</i>
11/14/2014	 Filed Under Seal Filed By: Plaintiff Jane Doe I <i>Initial Appearance Fee Disclosure</i>
02/25/2015	 Filed Under Seal Filed By: Plaintiff Jane Doe I <i>Ex-Parte Motion For Leave To Removal Of Plaintiff's Name</i>
03/06/2015	 Filed Under Seal Filed By: Plaintiff Jane Doe I <i>Supplemental Ex-Parte Motion for Leave to Remove Plaintiff's Name to Allow Amendment as Jane Doe Dancer</i>
03/06/2015	 Filed Under Seal Filed By: Plaintiff Jane Doe I <i>Ex-Parte Motion to Enlarge Time for Service</i>
04/03/2015	 Filed Under Seal Filed By: Plaintiff Jane Doe I <i>Plaintiff's Supplemental Brief in Support of Plaintiff's Ex-Parte Motion for Leave to Remove Plaintiff's Name to Allow Amendment as Jane Doe Dancer</i>
04/22/2015	 Filed Under Seal Filed By: Plaintiff Jane Doe I <i>Order Granting Motion to Enlarge Time for Service</i>
04/22/2015	 Filed Under Seal Filed By: Plaintiff Jane Doe I <i>Order Allowing Removal of Plaintiff's Name to Allow Amendment as Jane Doe</i>
04/24/2015	 Filed Under Seal Filed By: Plaintiff Jane Doe I <i>Notice of Entry of Order</i>
04/24/2015	 Filed Under Seal Filed By: Plaintiff Jane Doe I <i>Notice of Entry of Order</i>
05/01/2015	 Amended Complaint Filed By: Plaintiff Jane Doe I <i>Plaintiffs' First Amended Class Action Complaint</i>
05/13/2015	 Affidavit of Service Filed By: Plaintiff Jane Doe I <i>Affidavit/Declaration of Service of Western Property Holdings, LLC</i>
05/13/2015	 Affidavit of Service Filed By: Plaintiff Jane Doe I <i>Affidavit/Declaration of Service of La Fuente, Inc.</i>














CASE SUMMARY

CASE NO. A-14-709851-C

05/13/2015	 Summons Issued <i>Summons - (Western Property Holdings LLC)</i>
05/13/2015	 Summons Issued <i>Summons - (La Fuente Inc)</i>
05/28/2015	 Notice of Association of Counsel Filed By: Plaintiff Jane Doe I <i>Notice of Association of Counsel</i>
06/09/2015	 Answer to Amended Complaint Filed By: Defendant La Fuente Inc <i>Defendant La Fuente, Inc.'s Answer to Plaintiff's First Amended Class Action Complaint</i>
06/09/2015	 Initial Appearance Fee Disclosure Filed By: Defendant La Fuente Inc <i>Initial Appearance Fee Disclosure of Defendant La Fuente, Inc.</i>
06/09/2015	 Answer to Amended Complaint Filed By: Defendant Western Property Holdings LLC <i>Defendant Western Property Holdings, LLC's Answer to Plaintiff's First Amended Class Action Complaint</i>
06/09/2015	 Initial Appearance Fee Disclosure Filed By: Defendant La Fuente Inc <i>Initial Appearance Fee Disclosure of Defendant Western Property Holdings, LLC</i>
07/29/2015	 Motion Filed By: Defendant La Fuente Inc <i>Motion to Associate Counsel</i>
07/29/2015	 Motion Filed By: Defendant La Fuente Inc <i>Motion to Associate Counsel</i>
07/29/2015	 Motion Filed By: Defendant La Fuente Inc <i>Motion to Associate Counsel</i>
07/29/2015	 Motion to Associate Counsel Filed By: Plaintiff Jane Doe I <i>Motion to Associate Counsel</i>
09/23/2015	 Order Granting Motion Filed By: Defendant Western Property Holdings LLC <i>Order Granting Motion to Associate Counsel</i>
09/23/2015	 Notice of Entry of Order Filed By: Plaintiff Jane Doe I <i>Notice of Entry of Order Granting Plaintiffs' Motion to Associate Counsel</i>
09/23/2015	 Order Granting Motion Filed By: Plaintiff Jane Doe I <i>Order Granting Plaintiffs' Motion to Associate Counsel</i>














CASE SUMMARY

CASE NO. A-14-709851-C

09/24/2015	 Notice of Entry of Order Filed By: Defendant La Fuente Inc <i>Notice of Entry of Order</i>
11/13/2015	 Notice of Early Case Conference Filed By: Plaintiff Jane Doe I <i>Notice of Early Case Conference</i>
12/23/2015	 Early Case Conference Report Filed By: Defendant La Fuente Inc <i>Defendants' Early Case Conference Report</i>
02/03/2016	 Individual Case Conference Report Filed By: Plaintiff Jane Doe I <i>Individual Case Conference Report</i>
02/17/2016	 Amended Individual Case Conference Report Filed By: Plaintiff Jane Doe I <i>Amended Individual Case Conference Report</i>
02/29/2016	 Motion Filed By: Plaintiff Jane Doe I <i>PLAINTIFFS' MOTION TO CORRECT THE REGISTER OF ACTIONS AND SEAL ALL COURT DOCUMENTS FILED PRIOR TO THE AMENDED COMPLAINT</i>
03/04/2016	 Motion to Compel Filed By: Defendant La Fuente Inc <i>Motion to Compel Arbitration and for Other Miscellaneous Relief</i>
03/16/2016	 Motion Filed By: Plaintiff Jane Doe I <i>Plaintiffs' Motion For Leave To Proceed Pseudonymously And For Protective Order</i>
03/17/2016	 Opposition and Countermotion Filed By: Defendant La Fuente Inc <i>Defendants' Opposition to Plaintiffs' Motion to Correct Register of Actions and Seal Court Records and Defendants' Countermotion to Prohibit Plaintiffs from Proceeding Under the Pseudonym "Jane Doe Dancers"</i>
03/18/2016	 Notice to Appear for Discovery Conference <i>Notice to Appear for Discovery Conference</i>
03/29/2016	 Opposition Filed By: Plaintiff Jane Doe I <i>Plaintiffs' Opposition To Defendant's Motion To Compel Arbitration</i>
04/01/2016	 Stipulation and Order Filed by: Plaintiff Jane Doe I <i>Stipulation and Order to Consolidate Hearings</i>
04/01/2016	 Stipulation Filed by: Plaintiff Jane Doe I <i>Stipulation for Interim Protective Order Regarding Identities of Jane Doe Dancers I-V</i>

CASE SUMMARY

CASE NO. A-14-709851-C

04/01/2016	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Jane Doe I <i>Notice of Entry of Stipulation and Order</i>
04/04/2016	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Jane Doe I <i>Notice of Entry of Stipulation and Order</i>
04/08/2016	 Opposition to Motion Filed By: Defendant La Fuente Inc <i>DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO PROCEED PSEUDONYMOUSLY AND FOR PROTECTIVE ORDER</i>
04/20/2016	 Reply in Support Filed By: Defendant La Fuente Inc <i>Defendants' Reply Brief in Support of Their Motion to Compel Arbitration, to Compel the Names of Individuals Asserting Claims Against Defendants and to File Exhibit Under SEal</i>
04/20/2016	 Reply in Support Filed By: Plaintiff Jane Doe I <i>Reply in Support of Plaintiffs' Motion for Leave to Proceed Pseudonymously and for Protective</i>
04/29/2016	 Notice of Rescheduling <i>Notice of Rescheduling of Hearings</i>
05/03/2016	 Initial Appearance Fee Disclosure Filed By: Plaintiff Jane Doe II <i>First Amended Initial Appearance Fee Disclosure</i>
06/14/2016	 Notice of Rescheduling <i>Notice of Rescheduling of Hearing</i>
06/30/2016	 Motion for Withdrawal Filed By: Defendant La Fuente Inc <i>Motion to Withdraw As Counsel of Record</i>
07/12/2016	 Motion Filed By: Plaintiff Jane Doe IV <i>Plaintiffs' Motion For Voluntary Dismissal Without Prejudice Of Jane Doe Dancer IV Pursuant To N.R.C.P 41(A)(2)</i>
08/05/2016	 Notice of Non Opposition Filed By: Plaintiff Jane Doe IV <i>(8/8/16 Withdrawn) Notice of No Opposition to Plaintiff's Motion for Volutary Dismissal without Prejudice of Jane Doe Dancer IV Pursuant to N.R.C.P. 41 (a) (2)</i>
08/08/2016	 Notice of Withdrawal Filed By: Plaintiff Jane Doe IV <i>Notice of Withdrawal of Plaintiff's Notice of No Oppostition to Plaintiff's Motion for Voluntary Dismissal without Prejudice of Jane Doe Dancer IV Pursuant to N.R.C.P. 41 (a)(2)</i>
08/08/2016	 Certificate of Service

CASE SUMMARY

CASE NO. A-14-709851-C

	Filed by: Plaintiff Jane Doe II <i>Certificate of Service</i>
08/18/2016	 Supplement Filed by: Plaintiff Jane Doe II <i>Supplemental Exhibit To Plaintiffs' Opposition To Defendant's Motion To Compel Arbitration</i>
08/22/2016	 Stipulation and Order Filed by: Plaintiff Jane Doe I <i>Stipulation and Order to Continue Hearing Date</i>
08/23/2016	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Jane Doe II <i>Notice of Entry of Stipulation and Order</i>
08/25/2016	 Opposition Filed By: Defendant Western Property Holdings LLC <i>Defendants' Response to Plaintiffs' Supplemental Exhibit to Plaintiffs' Opposition to Defendants' Motion to Compel Abitration</i>
08/26/2016	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Jane Doe I <i>Notice of Entry of Stipulation and Order</i>
08/26/2016	 Stipulation and Order for Dismissal Without Prejudice Filed By: Plaintiff Jane Doe II <i>Stipulation and Order for Dismissal of All Claims By Plaintiff Jane Doe Dancer IV Without Prejudice and to Vacate Hearing</i>
10/25/2016	 Order to Statistically Close Case <i>Civil Order To Statistically Close Case</i>
11/04/2016	 Stipulation and Order Filed by: Plaintiff Jane Doe I <i>Stipulation for Protective Order Regarding Identities of Plaintiffs Jane Doe Dancers</i>
11/04/2016	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Jane Doe I <i>Notice of Entry of Stipulation and Order</i>
12/14/2016	 Joint Case Conference Report Filed By: Plaintiff Jane Doe I <i>Joint Case Conference Report</i>
12/19/2016	 Order Filed By: Defendant La Fuente Inc <i>Order on Defendant's Motion to Compel Arbitration and For Other Miscellaneous Relief</i>
12/22/2016	 Notice of Entry Filed By: Defendant Western Property Holdings LLC <i>NOTICE OF ENTRY OF ORDER ON DEFENDANTS' MOTION TO COMPEL ARBITRATION AND FOR OTHER MISCELLANEOUS RELIEF</i>
02/07/2017	 Scheduling Order

CASE SUMMARY

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Scheduling Order

02/14/2017	 Order Setting Civil Jury Trial <i>Order Setting Civil Jury Trial</i>
05/30/2017	 Motion for Class Certification Filed By: Plaintiff Jane Doe II <i>Plaintiff Jane Doe Dancer III s Motion for Class Certification</i>
06/16/2017	 Opposition to Motion Filed By: Defendant La Fuente Inc <i>Defendants' Oppositin to Plaintiff Jane Doe Dancer III's Motion for Class Certification</i>
06/28/2017	 Reply in Support Filed By: Plaintiff Jane Doe I; Plaintiff Jane Doe II; Plaintiff Jane Doe III; Plaintiff Jane Doe IV; Plaintiff Jane Doe V <i>Reply in Support of Plaintiff Jane Doe Dancer III s Motion for Class Certification</i>
07/13/2017	 Motion to Withdraw As Counsel Filed By: Defendant La Fuente Inc <i>Motion to Withdraw as Counsel of Record</i>
08/08/2017	 Reporters Transcript Filed By: Defendant La Fuente Inc <i>Reporter's Transcript of Proceedings July 5, 2017</i>
08/16/2017	 Motion to Compel Filed By: Plaintiff Jane Doe III <i>Plaintiff Jane Doe Dancer III s Motion to Compel Defendant s Responses to Discovery on Order Shortening Time</i>
08/23/2017	 Motion to Compel <i>Plaintiff Jane Doe Dancer III s Motion to Compel Defendant s Responses to Discovery</i>
08/28/2017	 Motion to Extend Discovery <i>Defendants' Motion to Extend Discovery Deadline (First Request)</i>
09/11/2017	 Opposition <i>Plaintiff Jane Doe Dancer III s Opposition to Defendant s Motion to Extend Discovery Deadline (First Request)</i>
09/21/2017	 Order Granting Motion Filed By: Defendant Western Property Holdings LLC; Defendant La Fuente Inc <i>Order Granting Motion to Withdraw As Counsel of Record (Stephen Brown)</i>
09/22/2017	 Notice of Entry of Order Filed By: Defendant La Fuente Inc <i>Notice of Entry of Order Granting Motion to Withdraw</i>
10/12/2017	 Order <i>Order on Plaintiff Jane Doe Dancer III's Motion for Class Certification</i>
10/16/2017	 Notice of Entry of Order <i>Notice of Entry of Order</i>

CASE SUMMARY

CASE NO. A-14-709851-C

12/07/2017	 Motion for Sanctions <i>Plaintiff Jane Doe Dancer III s Motion for Sanctions Against Defendant in Accordance with NRCP 37(C), for Spoliations Sanctions and for Attorney s Fees and Costs</i>
12/08/2017	 Motion <i>Plaintiff Jane Doe Dancer III s Amended Motion for Sanctions Against Defendant in Accordance with NRCP 37(C), for Spoliations Sanctions and For Attorney s Fees and Costs</i>
12/21/2017	 Discovery Commissioners Report and Recommendations <i>Discovery Commissioner's Report and Recommendations</i>
12/26/2017	 Stipulation Filed by: Defendant La Fuente Inc <i>Stipulation to Extend Time For Defendants to File Opposition to Motion for Sanctions</i>
12/28/2017	 Notice of Entry of Decision and Order <i>Notice of Entry of Decision and Order</i>
01/01/2018	 Opposition Filed By: Defendant Western Property Holdings LLC; Defendant La Fuente Inc <i>Defendants' Opposition to Plaintiff Jane Doe Dancer III's Amended Motion for Sanctions</i>
01/05/2018	 Reply in Support <i>Reply in Support of Plaintiff Jane Doe Dancer III's Motion for Sanctions Against Defendant in Accordance with NRCP 37(C), for Spoliation Sanctions, and for Attorney s Fees and Costs</i>
01/09/2018	 Notice <i>Notice of Scheduling Settlement Conference</i>
01/22/2018	 Memorandum <i>Plaintiff's Memorandum of Attorney's Fees and Costs</i>
02/08/2018	 Opposition Filed By: Defendant Western Property Holdings LLC; Defendant La Fuente Inc <i>Defendants Opposition To Plaintiff s Memorandum Of Attorney s Fees And Costs</i>
03/14/2018	 Motion for Summary Judgment Filed By: Defendant Western Property Holdings LLC; Defendant La Fuente Inc <i>Defendants Motion For Summary Judgment</i>
03/14/2018	 Discovery Commissioners Report and Recommendations <i>Discovery Commissioner's Report and Recommendations</i>
03/14/2018	 Notice of Entry of Decision and Order <i>Notice of Entry of Decision and Order</i>
04/05/2018	 Discovery Commissioners Report and Recommendations <i>Discovery Commissioner's Report and Recommendations</i>
04/06/2018	 Notice of Entry of Decision and Order <i>Notice of Entry of Decision and Order</i>

CASE SUMMARY

CASE NO. A-14-709851-C

04/09/2018	 Recorders Transcript of Hearing <i>Recorders Transcript of Hearing - Court Call - Status Check - heard on March 2, 2018</i>
05/14/2018	 Opposition to Motion For Summary Judgment <i>Plaintiffs Opposition to Defendants Motion for Summary Judgment</i>
05/15/2018	 Errata <i>Errata to Plaintiffs Cross-Motion for Summary Judgment on Employee Status and Opposition to Defendants Motion for Summary Judgment</i>
05/29/2018	 Opposition Filed By: Defendant La Fuente Inc <i>Defendants' Opposition to Plaintiffs' Motion for Summary Judgment</i>
06/08/2018	 Notice of Rescheduling <i>Notice of Rescheduling</i>
06/27/2018	 Motion for Sanctions Filed By: Plaintiff Jane Doe I; Plaintiff Jane Doe II; Plaintiff Jane Doe III; Plaintiff Jane Doe IV; Plaintiff Jane Doe V <i>Plaintiff s Motion for Discovery Sanctions and Adverse Presumption</i>
06/27/2018	 Notice <i>Notice of Supplemental Authority Re: Plaintiffs Cross-Motion for Summary Judgment</i>
06/28/2018	 Discovery Commissioners Report and Recommendations <i>Discovery Commissioner's Report and Recommendations</i>
06/28/2018	 Notice of Entry of Decision and Order <i>Notice of Entry of Decision and Order</i>
07/16/2018	 Opposition to Motion Filed By: Defendant Western Property Holdings LLC; Defendant La Fuente Inc <i>Defendants' Opposition to Plaintiffs' Motion for Discovery Sanctions and Request for Hearing on August 8, 2018</i>
07/25/2018	 Notice of Hearing <i>Notice of Rescheduling of Hearing</i>
08/01/2018	 Reply in Support <i>Reply in Support of Plaintiffs Cross-Motion for Summary Judgment on Employee Status</i>
08/01/2018	 Reply in Support <i>Reply in Support of Plaintiff s Motion for Discovery Sanctions and Adverse Presumption</i>
08/10/2018	 Amended Order Setting Jury Trial <i>Amended Order Setting Civil Jury Trial</i>
09/05/2018	 Supplemental Brief Filed By: Plaintiff Jane Doe I <i>Supplemental Brief in Support of Plaintiffs Cross-Motion for Summary Judgment on Employee Status</i>

CASE SUMMARY

CASE NO. A-14-709851-C

09/05/2018	 Supplement Filed by: Defendant La Fuente Inc <i>Defendants' Supplemental Memorandum in Response to Hearing Conducted on August 8, 2018</i>
09/19/2018	 Motion for Order <i>Plaintiffs Motion for Order on Proposed Jury Instructions and Fees and Costs</i>
09/19/2018	 Motion for Attorney Fees and Costs <i>Plaintiffs Motion for Fees and Costs in Pursuing Spoliated Materials</i>
09/20/2018	 Response <i>Plaintiffs Response to Defendants Supplemental Memorandum</i>
10/08/2018	 Opposition to Motion Filed By: Defendant La Fuente Inc <i>DEFENDANTS OPPOSITION TO PLAINTIFFS MOTION FOR FEES AND COSTS IN PURSUING SPOLIATED MATERIALS</i>
10/08/2018	 Opposition to Motion Filed By: Defendant La Fuente Inc <i>Defendants' Opposition to Plaintiff's' Motion for Order on Proposed Jury Instruction and Fees and Costs</i>
10/17/2018	 Reply in Support <i>Reply in Support of Plaintiffs Motion for Fees and Costs in Pursuing Spoliated Materials</i>
10/24/2018	 Reply in Support <i>Reply in Support of Plaintiffs Motion for Order on Proposed Jury Instructions and Fees and Costs</i>
01/04/2019	 Order Granting Motion Filed By: Defendant Western Property Holdings LLC; Defendant La Fuente Inc <i>Order Granting Defendants Motion For Summary Judgement and Denying Plaintiffs Countermotion for Summary Judgement</i>
01/04/2019	 Notice of Entry of Order Filed By: Defendant Western Property Holdings LLC; Defendant La Fuente Inc <i>Notice of Entry of Order Granting Defendants' Motion for Summary Judgment</i>
01/24/2019	 Discovery Commissioners Report and Recommendations <i>Discovery Commissioner's Report and Recommendations</i>
01/25/2019	 Notice of Entry of Decision and Order <i>Notice of Entry of Decision and Order</i>
01/31/2019	 Notice of Appeal <i>Notice of Appeal</i>
01/31/2019	 Case Appeal Statement <i>Case Appeal Statement</i>

DISPOSITIONS


08/26/2016	Order of Dismissal Without Prejudice (Judicial Officer: Earley, Kerry)
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CASE SUMMARY

CASE NO. A-14-709851-C

	Debtors: Western Property Holdings LLC (Defendant), Cheetas Gentleman Club (Defendant), La Fuente Inc (Defendant) Creditors: Jane Doe IV (Plaintiff) Judgment: 08/26/2016, Docketed: 09/02/2016
03/14/2018	Sanctions (Judicial Officer: Earley, Kerry) Debtors: Western Property Holdings LLC (Defendant), La Fuente Inc (Defendant) Creditors: Jane Doe II (Plaintiff) Judgment: 03/14/2018, Docketed: 03/14/2018 Comment: In Part
01/04/2019	Summary Judgment (Judicial Officer: Earley, Kerry) Debtors: Jane Doe I (Plaintiff), Jane Doe II (Plaintiff), Jane Doe III (Plaintiff), Jane Doe IV (Plaintiff), Jane Doe V (Plaintiff) Creditors: Western Property Holdings LLC (Defendant), Cheetas Gentleman Club (Defendant), La Fuente Inc (Defendant) Judgment: 01/04/2019, Docketed: 01/04/2019 Comment: In Part/ Certain claims

HEARINGS

04/01/2015	 Motion for Leave (9:00 AM) (Judicial Officer: Earley, Kerry) 04/01/2015, 04/06/2015 <i>Ex-Parte Motion For Leave To Removal Of Plaintiff's Name To Allow Amendment As Jane Doe Dancer</i> Continued for Chambers Decision; Minute Order - No Hearing Held; Journal Entry Details: <i>Plaintiff's Ex-Parte Motion For Leave To Remove Plaintiff's Name To Allow Amendment As Jane Doe Dancer, having come before the Court on April 1, 2015, the Court having reviewed the papers and pleadings on file, including the supplemental briefing requested by the Court, and the oral argument of Plaintiff's counsel, is hereby GRANTED. CLERK S NOTE: A copy of this Minute Order was distributed to the following parties via e-mail: Daniel Price, Esq. [daniel@morrisanderson.com]. (KD 4/20/15) ;</i> Continued for Chambers Decision; Minute Order - No Hearing Held; Journal Entry Details: <i>Mr. Price argued in support of the Motion, stating that the Defendant did not want her real name on public documents. Court noted there was no legal basis to grant the Motion under NRCP 17(a), and the case had to proceed under the real party in interest. Mr. Price requested leave to submit supplemental briefing. COURT ORDERED, Motion CONTINUED to Department IV's Chambers Calendar to allow Mr. Price to submit supplemental briefing. As to the Ex Parte Motion To Enlarge Time, Mr. Price argued in support of the Motion, stating that he wanted to ensure the proper Plaintiff was named prior to having the summons and complaint served. COURT ORDERED, Motion to Enlarge Time GRANTED for SIXTY (60) DAYS ONLY, from the date of the entry of the instant Order. CONTINUED TO: 4/6/15 (CHAMBERS CALENDAR) ;</i>
08/31/2015	CANCELED Motion to Associate Counsel (3:00 AM) (Judicial Officer: Earley, Kerry) <i>Vacated</i> <i>Def't's Motion Associate Counsel</i>
08/31/2015	CANCELED Motion to Associate Counsel (3:00 AM) (Judicial Officer: Earley, Kerry) <i>Vacated</i> <i>Def't's Motion Associate Counsel</i>
08/31/2015	CANCELED Motion to Associate Counsel (3:00 AM) (Judicial Officer: Earley, Kerry) <i>Vacated</i> <i>Def't's Motion Associate Counsel</i>
08/31/2015	CANCELED Motion to Associate Counsel (3:00 AM) (Judicial Officer: Earley, Kerry) <i>Vacated</i>

CASE SUMMARY

CASE NO. A-14-709851-C

Plaintiff's Motion to Associate Counsel

09/08/2015



Minute Order (3:00 AM) (Judicial Officer: Earley, Kerry)

Deft's Motion To Associate Counsel...Deft's Motion To Associate Counsel...Deft's Motion To Associate Counsel...Plaintiff's Motion To Associate Counsel --- GRANTED BY MINUTE ORDER 9/8/15

Minute Order - No Hearing Held;

Journal Entry Details:

These motions came before the court on August 31, 2015 for Plaintiff's singular Motion to Associate Counsel and Defendants three separate Motions to Associate Counsel. Having reviewed the arguments and authorities in the pleadings submitted, COURT ORDERS Plaintiff's Motion to Associate Counsel Michael John Rusing GRANTED. Further, COURT ORDERS Defendants Motions to Associate Counsel Stephen Whitfield Brown, Dean R. Fuchs, and William Scott Schulten, Esq. GRANTED. Counsels for Plaintiff and Defendant to prepare and submit their respective orders specifically naming each counsel to be associated. CLERK'S NOTE: A copy of this minute order distributed to Doreen Spears Hartwell, Esq. [doreen@hartwellthalacker.com], Laura J. Thalacker, Esq. [laura@hartwellthalacker.com], Ryan M. Anderson, Esq. [ryan@morrisandersonlaw.com], Jacqueline Bretell, Esq. [jacqueline@morrisandersonlaw.com], Daniel R. Price, Esq. [daniel@morrisandersonlaw.com], and Michael J. Rusing, Esq. [rusinglopez@rllaz.com]. (KD 9/11/15) ;

04/19/2016



Discovery Conference (9:00 AM) (Judicial Officer: Bulla, Bonnie)

MINUTES

CANCELED Discovery Conference (10/25/2016 at 9:30 AM) (Judicial Officer: Bulla, Bonnie)

Vacated - per Commissioner

Matter Continued;

Journal Entry Details:

Colloquy regarding delays. COMMISSIONER RECOMMENDED, Ms. Hartwell to PAY \$50.00 contribution to Legal Aid Center of Southern Nevada (Clark County Pro Bono Project) for failing to provide a courtesy copy of the report to the Discovery Commissioner; payment held in ABEYANCE pending Defendants' motion to compel arbitration. COMMISSIONER RECOMMENDED, Discovery Conference is CONTINUED. Counsel to advise the Discovery Commissioner if the case is remanded to arbitration 5/10/16 9:00 a.m. Discovery Conference - Further Proceedings;

SCHEDULED HEARINGS

CANCELED Discovery Conference (10/25/2016 at 9:30 AM) (Judicial Officer: Bulla, Bonnie)

Vacated - per Commissioner

08/01/2016



Motion to Withdraw as Counsel (3:00 AM) (Judicial Officer: Earley, Kerry)

W. Scott Schulten Esq's Motion to Withdraw As Counsel of Record for Defendants La Fuente and Western Property Holdings

Minute Order - No Hearing Held; W. Scott Schulten Esq's Motion to Withdraw As Counsel of Record for Defendants La Fuente and Western Property Holdings

Journal Entry Details:

A Motion to Withdraw as Counsel was filed on June 30, 2016 by Wm. Scott Schulten, Esq., counsel for Defendants La Fuerte Western Property Holdings. The matter was subsequently placed on the civil calendar of Department IV. Having received no Opposition to the matter and pursuant to EDCR 2.20 and for good cause showing, the Court hereby GRANTS the Motion to Withdraw. Defense counsel shall prepare the Order in accordance with EDCR 7.21, notifying the former client of all pending dates and providing the last known address and telephone number of Defendant within the proposed Order. CLERK'S NOTE: The above minute order has been distributed to: Wm. Scott Schulten, Esq., (s.schulten@swtlaw.com) and Ryan M. Anderson, Esq., (ryan@morrisandandersonlaw.com). aw;

08/17/2016

Motion (9:00 AM) (Judicial Officer: Earley, Kerry)

Plaintiffs' Motion to Correct the Register of Actions and Seal All Court Documents Filed Prior to the Amended Complaint

per minute order

CASE SUMMARY

CASE NO. A-14-709851-C

	Motion Granted;
08/17/2016	<p>Motion to Compel (9:00 AM) (Judicial Officer: Earley, Kerry)</p> <p>08/17/2016, 09/12/2016</p> <p><i>Defendants La Fuente Inc and Western Property Holdings LLC's Motion to Compel Arbitration and for Other Miscellaneous Relief</i></p> <p>per minute order</p> <p>Matter Continued;</p> <p>Granted in Part;</p> <p>per minute order</p> <p>Matter Continued;</p> <p>Granted in Part;</p>
08/17/2016	<p>Motion for Leave (9:00 AM) (Judicial Officer: Earley, Kerry)</p> <p><i>Plaintiffs' Motion for Leave to Proceed Pseudonymously and for Protective Order</i></p> <p>per minute order</p> <p>Motion Granted;</p>
08/17/2016	<p>Opposition and Countermotion (9:00 AM) (Judicial Officer: Earley, Kerry)</p> <p><i>Defendants' Opposition to Plaintiffs' Motion to Correct Register of Actions and Seal Court Records and Defendants' Countermotion to Prohibit Plaintiffs from Proceeding Under the Pseudonym "Jane Doe Dancers"</i></p> <p>per minute order</p> <p>Denied;</p>
08/17/2016	<p> All Pending Motions (9:00 AM) (Judicial Officer: Earley, Kerry)</p> <p>Matter Heard;</p> <p>Journal Entry Details:</p> <p><i>PLTFS' MOTION FOR LEAVE TO PROCEED PSEUDONYMOUSLY AND FOR PROTECTIVE ORDER: Court stated she has reviewed all documents, does not have an issue as to the pleadings filed in Odyssey and as far as the names, they have to be produced in discovery. Mr. Sterling stated "Jane Doe" status was just assumed and is a pure question of the law with respect of there classification. Further, counsel stated he is concerned these young woman's names are out in public. Mr. Hartwell argued he does not believe burden has been met. Further, as to proceeding as "Jane Doe", Mr. Hartwell stated if the Court wants that, the parties can come up with something for the pleadings so the names are not listed. Court stated she does not want discovery hampered and no game playing. Colloquy. COURT ORDERED, motion GRANTED based on the restrictions the Court advised of in open court. Counsel to get together as to the protective order incorporating what was done in the previous protective order. Ms. Hartwell requested to include the Court is in no way restricting disclosure amongst the parties. COURT SO ORDERED. PLTFS' MOTION TO CORRECT THE REGISTER OF ACTIONS AND SEAL ALL COURT DOCUMENTS FILED PRIOR TO THE AMENDED COMPLAINT: Statement by Mr. Sterling. COURT ORDERED, motion GRANTED. Odyssey to read "Jane Doe I" only. No AKA's or KNA's to be listed. DEFTS' OPPOSITION TO PLTFS' MOTION TO CORRECT REGISTER OF ACTIONS AND SEAL COURT RECORDS AND DEFTS' COUNTERMOTION TO PROHIBIT PLTFS' FROM PROCEEDING UNDER THE PSEUDONYM "JANE DOE DANCERS": COURT ORDERED, countermotion DENIED. DEFTS' LA FUENTE INC AND WESTERN PROPERTY HOLDINGS LLC'S MOTION TO COMPEL ARBITRATION AND FOR OTHER MISCELLANEOUS RELIEF: Court inquired if Pltfs' claims are within the scope of the arbitration policy. Ms. Hartwell stated with regards to wage and hour claims. Further, Ms. Hartwell argued if you want to work at the club, arbitration agreement is entered pursuant to the Federal Arbitration Act that governs which is very broad. Pltfs' alleging they have issues with regards with their employment at the club based on not being paid overtime and not being treated as employees for wages. Colloquy. Additional argument by Ms. Hartwell. Mr. Sterling agreed this is a matter of contract interpretation and argued not an adhesion contract, it was a form prepared by the parties seeking to enforce it. Further, Mr. Sterling argued this is a poorly written contract, unclear and ambiguous. As to paragraph 4, Mr. Sterling stated the rules for arbitration of a covered claim will be AAA Arbitration Employment Rules. Additionally, Mr. Sterling stated rules were selected because they deal with claims by employees against employers and it will not allow this case to be heard under those rules. Mr. Sterling argued all claims are employees bring within the context of the existing employment relationship. Further, no claim can arise under the ADEA unless you are an employee. Court noted document combined independent contractors and employees they had and who they considered at that time. Ms. Hartwell</i></p>

CASE SUMMARY**CASE NO. A-14-709851-C**

argued in order to work there it is the policy of club to sign arbitration policy and only enforceable if signed. Further, Jane Doe I was already working at the club prior to signing arbitration agreement and argued there is nothing ambiguous with contract. Additionally, Ms. Hartwell argued Federal law trumps State law and if there were inconsistencies between Federal law and Nevada law on an agreement that says Federal law applies then Federal law would trump. Colloquy. Further argument by Ms. Hartwell. Statement by Mr. Sterling. Court inquired was there a meaningful opportunity for the entertainer to agree to the terms and what was going on at time of execution. Further, the Court noted all agree it is an adhesion contract and it was a take it or leave it situation. Ms. Hartwell stated based on agreement itself, states will not be enforceable until signed and a signature shall be required for policy to be applicable. Further, Ms. Hartwell argued Jane Doe I was already working prior to signing contract. If she chose not to read it, that is not procedural impropriety. Additionally, Ms. Hartwell argued entertainers are business owners, everyone not the same in terms of with regards to their education and knowledge. Colloquy. Ms. Hartwell further argued nothing said she was required to execute agreement and after she signed, she continued to perform. Further, Ms. Hartwell argued this does not rise to procedural unconscionability. Mr. Sterling argued this is a flexible equitable doctrine. Further, Mr. Sterling advised Judge Cory in his order specifically addressed the interplay between the individual facts that are limited to the affidavits and then the general applicability of the unconscionability of this contract in the abstract as a matter of law. Additional argument by Mr. Sterling. Ms. Hartwell argued there was no surprise, document reads arbitration agreement and in Nevada, it is presumed document was read. As to substantive unconscionability, Ms. Hartwell stated all rules and law apply just a different form. If entitled in State Court, they are entitled to in arbitration. Further, if the club decides they no longer want arbitration policy, they can terminate policy and does not prejudice the Pltfs. With regards to the rules that apply, parties can agree to govern their dispute under what ever rules they choose. The parties can agree to resolve whatever potential issues they have however they choose. Additionally, Ms. Hartwell argued the Pltfs' want to be and insist on being independent contractors and do not consider themselves employees, do not want to be employees and the do not feel by signing this document, they waive any type of protection. Mr. Sterling stated AAA Employment Arbitration Laws are very generous to employees and the problem with the designation of the rules is, it speaks to the intent of the parties and is entirely different issue. The scope of this was intended to apply to employees within the employment context and argued it is clear because they chose rules that cannot apply to this case. Additional arguments by counsel. **COURT ORDERED, matter CONTINUED** to this Court's chamber calendar for decision. Mr. Sterling advised two of the Pltfs' don't want to be named, want to be class members but do not want to be class reps. Colloquy regarding pending motion to dismiss. Mr. Sterling advised he will stipulate to dismiss two Jane Doe's and request to withdraw motion set for October 5, 2016, at this time. **COURT SO ORDERED. 9/12/16 DEFTS' LA FUENTE INC AND WESTERN PROPERTY HOLDINGS LLC'S MOTION TO COMPEL ARBITRATION AND FOR OTHER MISCELLANEOUS RELIEF...DECISION;**

09/12/2016

Status Check (3:00 AM) (Judicial Officer: Earley, Kerry)

Status Check: Decision
Decision Made;

09/12/2016

**All Pending Motions (3:00 AM)** (Judicial Officer: Earley, Kerry)

Minute Order - No Hearing Held;
Journal Entry Details:

DEFTS' LA FUENTE INC AND WESTERN PROPERTY HOLDINGS LLC'S MOTION TO COMPEL ARBITRATION AND FOR OTHER MISCELLANEOUS RELIEF...STATUS CHECK: **DECISION** Having reviewed the matter, along with all points and authorities submitted by counsel, as well as oral argument presented August 17, 2016, the court hereby issues its decision on Defendants La Fuente Inc. and Western Property Holdings LLC's Motion to Compel Arbitration and for Other Miscellaneous Relief. First, the court **FINDS** that the Arbitration Policy (hereinafter *The Policy*) implemented by La Fuente, Inc., doing business as Cheetahs Las Vegas, and signed by its dancers applies to the dancers, and that their claims in the instant case are covered under *The Policy*. The plain language contained in Section 2 of *The Policy* indicates the broad scope of the potential claims governed by *The Policy*, as follows: 2. Covered claims include, but are not limited to, claims that arose before and/or after this policy went into effect, arising under the Age Discrimination in Employment Act (ADEA), Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA)[,] the Fair Labor Standards Act (FLSA), 42 U.S.C. 1981, including amendments to all the foregoing statutes, the Employee Polygraph Protection Acts, Employment Retirement Income Security Act (ERISA), Occupational Health and Safety Act

CASE SUMMARY

CASE NO. A-14-709851-C

(OSHA), and/or common law regulating employment termination, misappropriation, breach of the duty of loyalty, the law of contract or the law of tort, including, but not limited to, claims for malicious prosecution, intentional/negligent infliction of emotional distress or defamation. The covered claims thus consist not only of several specific employment-related claims, but also the catchall provision of claims arising under the law of contract or the law of tort. As the Plaintiffs claims arise from a dispute regarding whether their contractual relationship with Cheetahs constitutes that of an employee-employer relationship as opposed to an independent contractor relationship, these claims fall squarely under Section 2 s catchall provision. A reading of Section 2 that would exclude the instant claims from arbitration is too narrow a reading and is inconsistent with Nevada s policy of construing arbitration clauses in favor of granting arbitration. Nevada courts encourage arbitration and [will] liberally construe arbitration clauses in favor of granting arbitration. *Tallman v. Eighth Judicial Dist. Ct.*, 131 Nev. Adv. Op. 71, 359 P.3d 113, 119 (2015), citing *State ex rel. Masto*, 125 Nev. at 44, 199 P.3d at 832. Plaintiffs argument that The Policy was ambiguous or unclear is unpersuasive. Section 16 of the policy specifically refers to dancers and entertainers, so there can be no credible confusion on the part of any dancer that the Policy applied to her. Second, the court FINDS The Policy is not unconscionable and is enforceable. Plaintiffs arguments that The Policy is an adhesion contract and thus unconscionable and unenforceable is contrary to Nevada law regarding adhesion contracts in employment cases. See *Kindred v. Second Judicial Dist. Ct.*, 116 Nev. 405, 411, 996 P.2d 903, 907 (2000) (stating We have never applied the adhesion contract doctrine to employment cases.) However, contracts can be found unconscionable and thus unenforceable. Nevada law requires a showing of both procedural and substantive unconscionability. *D.R. Horton, Inc. v. Green*, 120 Nev. 549, 553-54, 96 P.3d 1159, 1162 (2004). Procedural unconscionability focuses on such inequalities between the parties as to age, intelligence, and relative bargaining power. Plaintiffs argue The Policy was unilaterally drafted by the Defendants, gave no meaningful opportunity to negotiate, and that Defendants chose the terms of the contract, which gave rise to unequal bargaining power between the parties. These factors however merely describe the nature of an adhesion contract and do not by themselves establish procedural unconscionability. Further, The Policy was a stand-alone document, as opposed to an arbitration clause buried within some larger document. Its heading, ARBITRATION POLICY[,] CHEETAHS was prominently displayed in capitalized, bold print, and unlikely to be overlooked. The Plaintiffs arguments that they did not or could not understand that they were signing an agreement to arbitrate potential claims against the Defendants is unpersuasive. As to substantive unconscionability, which focuses on the one-sidedness of contract terms, Plaintiffs argue that they were not given adequate time to review The Policy, that Defendants did not set aside time to answer questions about The Policy, that the Defendants reserved the sole right to terminate or modify the arbitration policy, and that the Plaintiffs felt threatened due to the implication that the dancers must pay their own fees and costs at arbitration. However, Plaintiffs were free to find other employment rather than agree to be bound by the terms of The Policy. While Plaintiffs may have possessed less bargaining power than Defendants, Plaintiffs have failed to assert facts demonstrating that they were at such a disadvantage that they were essentially forced to accept initial or continued employment with Defendants, subject to The Policy. There is also no evidence presented to indicate that Plaintiffs attempted take the time to thoroughly discuss The Policy with Defendants. Rather, Plaintiffs signed the agreement and posed no relevant questions about The Policy s scope or intent. While the Defendants did reserve the right to terminate or modify The Policy, such action could occur only after providing thirty (30) days notice to the Plaintiffs, wherein Plaintiffs could choose to accept the modifications, leave the employment of the club, or challenge the pending changes. Finally, the implication that the dancers must pay their own fees and costs is belied by the plain language of Section 11: Each party shall bear their own attorney s fees, costs, and filings, except as may be ordered by the arbitrator pursuant the arbitration rules. Plaintiffs cite no authority for the proposition that all prevailing party fee-shifting scenarios must be articulated within an arbitration agreement, and this court does not find that provision so ambiguous as to be unenforceable. Thus, Defendant s Motion to Compel Arbitration is GRANTED in part and DENIED in part. Counsel for Defendants to prepare the Order, to be approved as to form and content by counsel for the Plaintiffs. While Defendant s Motion to Compel Arbitration requested disclosure of the names of Plaintiffs identified as Jane Doe Dancers II and IV along with sanctions for the Plaintiff s failure to do so, the court finds this request is MOOT due pursuant to stipulation on this issue by counsel during oral argument. CLERK'S NOTE: The above minute order has been distributed to: P. Andrew Sterling, Esq., (msterling@rllaz.com), Michael H. Rusing, Esq., (mrusing@rllaz.com) and Doreen Spears Hartwell, Esq., (Doreen@HartwellThalacker.com). aw;

10/05/2016

CANCELED Motion to Dismiss (9:00 AM) (Judicial Officer: Earley, Kerry)

Vacated - per Judge

Plaintiffs' Motion For Voluntary Dismissal Without Prejudice Of Jane Doe Dancer IV

CASE SUMMARY

CASE NO. A-14-709851-C

Pursuant To N.R.C.P 41(A)(2)

10/25/2016

CANCELED Discovery Conference (9:30 AM) (Judicial Officer: Bulla, Bonnie)
Vacated - per Commissioner

07/05/2017



Motion for Class Certification (9:00 AM) (Judicial Officer: Becker, Nancy)

Plaintiff Jane Doe Dancer III's Motion for Class Certification

Granted;

Journal Entry Details:

Ms. Calvert argued regarding dancers who had worked after 2012 who did not sign the agreement with the arbitration clause and whether or not it applied retroactively. Ms. Calvert argued regarding attorney fees stated those fees will be mandated if plaintiff is successful and plaintiff assumes success in all the claims as pled. Further arguments in support of class action certification. Colloquy regarding what evidence plaintiff has that indicates this would come close to the \$10,000.00 amount for district court action. Ms. Hartwell referenced this Court's prior ruling regarding arbitration regarding plaintiff. Ms. Hartwell referenced the performers who didn't sign the agreement. Ms. Hartwell further argued plaintiff is time-barred and argued plaintiff does not meet the numerosity requirement. Court stated defendant is in control of that information regarding the number of performers. Further arguments. Additionally, Ms. Hartwell argued that whatever plaintiff saw in 2014 cannot be used as evidence. Lastly, Ms. Hartwell argued whether this Court has subject matter jurisdiction. Following further arguments by Ms. Calvert, COURT stated its findings and ORDERED, motion GRANTED. Counsel to prepare findings of fact.;

08/14/2017



Motion to Withdraw as Counsel (3:00 AM) (Judicial Officer: Earley, Kerry)

Stephen W. Brown's Motion to Withdraw as Counsel of Record for Defendants La Fuente Inc and Western Property Holdings LLC

Motion Granted;

Journal Entry Details:

This matter came before the court for Defendants La Fuente and Western Property Holdings s Motion to Withdraw as Counsel of Record, filed by counsel Stephen W. Brown, Esq. on July 13, 2017. Having received no Opposition to the matter and pursuant to EDCR 2.20 and for good cause showing, the Court hereby GRANTS Defendants Motion. Defendants counsel shall prepare the Order in accordance with EDCR 7.21 and EDCR 7.40, notifying the former client of all pending dates and providing the last known address and telephone number of Defendant within the proposed Order. A Status Check is hereby set for September 6, 2017 at 9:00 a.m. for Defendant to obtain new counsel. CLERK'S NOTE: A copy of the foregoing minute order has been electronically distributed to: Stephen W. Brown, Esq. (swbrown@littler.com); Ryan Anderson, Esq. (ryan@morrisandersonlaw.com); Michael J. Rusing, Esq. (mrusing@rllaz.com); Laura J. Thalacker, Esq. (Laura@hartwellthalacker.com). (8-14-17 ks) ;

08/23/2017

CANCELED Motion to Compel (9:30 AM) (Judicial Officer: Bulla, Bonnie)

Vacated - per Commissioner

Plaintiff Jane Doe Dancer III s Motion to Compel Defendant s Responses to Discovery on Order Shortening Time

09/06/2017



Status Check: Confirmation of Counsel (9:00 AM) (Judicial Officer: Herndon, Douglas W.)

09/06/2017, 10/04/2017

Status Check: Confirmation of Counsel

Matter Continued;

Matter Heard;

Journal Entry Details:

Court stated an order was signed indicating that Stephen Brown, Esq. has been withdraw, however, other defense counsel is still in place. COURT ORDERED, matter OFF CALENDAR. ;

Matter Continued;

Matter Heard;

Journal Entry Details:

No parties present. COURT ORDERED, matter CONTINUED. CONTINUED TO: 10/4/17 9:00 AM;

CASE SUMMARY

CASE NO. A-14-709851-C

09/27/2017



Motion to Compel (9:00 AM) (Judicial Officer: Bulla, Bonnie)

Plaintiff Jane Doe Dancer III's Motion to Compel Defendant's Response to Discovery
Granted;

Journal Entry Details:

No Opposition to Motion; it was served, and Deft filed a Motion to Extend Discovery. Pltf filed a limited Opposition to that Motion. COMMISSIONER RECOMMENDED, motion is GRANTED; supplemental answers to outstanding written discovery due by 10-26-17. Commissioner will consider attorney fees and costs based on compliance for having to bring the Motion; Ms. Calvert to prepare a Memorandum of fees and apply the Brunzell factors. Status Check SET. Commissioner advised Ms. Calvert to let counsel know. Ms. Calvert to prepare the Report and Recommendations, and counsel to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution. 11-7-17 10:00 a.m. Status Check: Compliance / Attorney fees CLERK'S NOTE: On 10-13-17, a copy of this minute order was placed in the attorney folder(s) of: Doreen Hartwell - Hartwell Thalacker;

09/29/2017



Motion to Extend Discovery (9:00 AM) (Judicial Officer: Bulla, Bonnie)

Defendants Motion to Extend Discovery Deadline (First Request)

Granted; Defendants Motion to Extend Discovery Deadline (First Request)

Journal Entry Details:

1-2-18 Trial date; dates in Motion don't work, and dispositive motions must be heard by 11-22-17. Ms. Calvert stated counsel discussed compelling information, but it is not in electronic format. Ms. Hartwell stated documents go back ten years, Defense counsel is working with the client on discovery, but it will take awhile based on document format. No Order for class certification yet per Ms. Hartwell. COMMISSIONER RECOMMENDED, motion is GRANTED; discovery cutoff EXTENDED to 11-27-17; file dispositive motions no later than 11-22-17. If counsel make a Motion properly before the District Court Judge and the Trial date is continued, counsel can ask the Court for discovery deadlines, and Commissioner's Recommendation will be vacated. Commissioner will try to let the Court know a Stipulation or Motion may be filed. If Commissioner's deadlines are vacated, counsel must send a letter to Commissioner Bulla. Ms. Hartwell to prepare the Report and Recommendations, and Ms. Calvert to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution.;

11/07/2017



Status Check: Compliance (10:00 AM) (Judicial Officer: Bulla, Bonnie)

Matter Heard;

Journal Entry Details:

Ms. Calvert revised the 9-27-17 Report and Recommendation, and it should be in transit. Memorandum of Fees was to be submitted. As a gesture of good will Ms. Calvert did not seek fees. Colloquy re: production of documents; 16,000 documents are being reviewed in Atlanta, scanned, and uploaded to a secure website. Ms. Calvert communicated with out of state counsel several times, but Ms. Calvert hasn't received anything. Counsel submitted a Stipulation to push out the Trial date, and counsel agreed to a Settlement Conference with a Judge. Ms. Spears Hartwell stated there was a death in the office, and another employee was involved in the shooting so production has been slow. Ms. Calvert requested Interrogatories supplemented; depositions are done. If counsel cannot agree on deadlines, have a 2,34 conference and contact Commissioner by conference call, submit a 2.35 Stipulation, or bring a Motion to Extend Discovery. No further action today.;

11/30/2017

CANCELED Status Check: Compliance (3:00 AM) (Judicial Officer: Bulla, Bonnie)

Vacated - per Commissioner

DCRR 9-27-17

11/30/2017

Status Check: Compliance (3:00 AM) (Judicial Officer: Bulla, Bonnie)

DCRR 9-29-17

Matter Continued;

complied

12/13/2017



Pretrial/Calendar Call (11:00 AM) (Judicial Officer: Earley, Kerry)

Matter Heard;

Journal Entry Details:

CASE SUMMARY

CASE NO. A-14-709851-C

Kimball Jones, Esq., present on behalf of Plaintiff. Ms. Calvert noted a stipulation was submitted and they were told they need firm date put in the stipulation in order to do a settlement conference. Upon Court's inquiry, Mr. Jones requested a Senior Judge and stated Judge Barker previously ruled on a decision in this case. Court noted that shouldn't be a problem; however, if they are assigned to Judge Barker, then they can mention the history. COURT ORDERED, trial dates VACATED and RESET; Status Check regarding Settlement Conference SET. Counsel stated they will let opposing counsel know of new dates set. 03/28/18 9:00 AM STATUS CHECK: SETTLEMENT CONFERENCE 05/09/18 11:00 AM PRETRIAL/CALENDAR CALL 05/21/18 9:00 AM JURY TRIAL;

01/02/2018

CANCELED Jury Trial (1:30 PM) (Judicial Officer: Earley, Kerry)
Vacated - per Judge

01/10/2018



Motion for Sanctions (9:00 AM) (Judicial Officer: Bulla, Bonnie)

Plaintiff Jane Doe Dancer III's Motion for Sanctions Against Deft in Accordance with NRCPC 37(C), for Spoliations Sanctions and for Attorney's Fees and Costs

Granted in Part; Plaintiff Jane Doe Dancer III's Motion for Sanctions Against Deft in Accordance with NRCPC 37(C), for Spoliations Sanctions and for Attorney's Fees and Costs
Journal Entry Details:

Commissioner addressed the lack of communication between counsel. Argument by Mr. Jones; discussion re: Exhibit 17 in the initial Motion. Mr. Jones stated one group is in Arbitration, and one group did not sign Arbitration Agreement. Colloquy. Ms. Hartwell indicated the records produced to Pltf's counsel were the state of the records. Commissioner REQUIRED everyone be e-served including out of state counsel. Commissioner encouraged everyone to use the Court e-service system. COMMISSIONER RECOMMENDED, by 1-31-18 all Contracts that out of state counsel has in his possession must be sent to in state counsel and lead counsel. Mr. Jones requested documents on a flash drive. COMMISSIONER SO RECOMMENDED. Mr. Jones will pay for a flash drive. Colloquy re: Interrogatories 10, 11, and 15, but corresponding Requests to Produce are unknown. COMMISSIONER RECOMMENDED, motion is GRANTED IN PART; alternative relief is provided, and Motion to Compel is GRANTED; 1) no later than 1-31-18, produce Arbitration Agreements currently in Deft's possession, and Deft can charge Pltf with reasonable copy costs under Rule 34(d); 2) full and complete names and last known addresses, hours that Dancers worked, and whatever information shows payment of Dancers from 2010 through 2014. Mr. Jones stated Dancers paid the club. COMMISSIONER RECOMMENDED, by 1-31-18, provide accounting paid / received for each Dancer; 3) for Dancers 2014 to present, Deft must go through and check receipts and check if Dancers had an Arbitration Agreement or not; Deft is REQUIRED to organize it in a legible fashion, and information is due 1-31-18; supplemental signed and verified Interrogatories and Request to Produce implicated are due by 2-16-18. Commissioner Will Not move the Trial date. COMMISSIONER RECOMMENDED, Motion for Spoliation is DENIED WITHOUT PREJUDICE; Attorney fees and costs for having to bring the Motion for Sanctions are GRANTED (treated as a Motion to Compel), and include Reply, and today's argument. Mr. Jones will prepare a Memorandum of Fees and Costs and apply the Brunzell factors. COMMISSIONER RECOMMENDED, logbook and Arbitration Agreements due by 1-31-18, but everything else due 2-16-18; Status Check SET, and out of state counsel for Both Sides must participate by Court Call. Mr. Jones / Ms. Calvert to prepare the Report and Recommendations, and Ms. Hartwell to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution. 2-21-18 10:00 a.m. Status Check ;

02/21/2018



Status Check (10:00 AM) (Judicial Officer: Bulla, Bonnie)

02/21/2018, 03/02/2018

COURT CALL - Status Check

Matter Continued;

Matter Heard; COURT CALL - Status Check

Journal Entry Details:

Dean Fuchs, Esquire, for Western Property Holdings LLC. Commissioner looked at all the facts and circumstances, however, Commissioner is not inclined to award fees as a substantial amount of documents were produced. Argument by Mr. Jones re: no meaningful supplementation for one Class; argument re: no identification of who did not have an Arbitration agreement. Upon Commissioner's inquiry, Class 1 - November 14, 2010 to the present (unjust enrichment claims - Dancers did not sign Arbitration agreements) and Class 2 - November 2012 to the present (minimum wage/compensation claim - Dancers did not sign Arbitration agreements). Mr. Fuchs produced everything that Commissioner directed Deft to

CASE SUMMARY**CASE NO. A-14-709851-C**

produce. Argument by Mr. Fuchs. Colloquy re: Commissioner's rulings from 1-10-18. Mr. Fuchs stated Deft produced what they have. If Deft does not have documents, Commissioner needs a sworn statement from someone in the Company, and provide a sworn statement to Plaintiff. If Plaintiff's counsel finds out otherwise, Commissioner advised Plaintiff's counsel to bring a Motion, and there will be consequences. Mr. Fuchs stated documents that existed at one point were destroyed in flood damage. Commissioner Directed Mr. Fuchs to put information in a sworn statement with a contemporaneous receipt or confirmation, and find out what Deft has. Colloquy. Mr. Jones discussed stage fees, log book with stage names, and comparing information with Sheriff's cards. Commissioner gave Mr. Fuchs time to find out what Deft has or doesn't have, and supplement by separate Affidavit and explain documents, and explain the flood. Commissioner advised counsel to work out a date for a Rule 34 inspection which can be set with less than 30 days notice on agreement by counsel. Colloquy re: Interrogatories 10, 11, 15 were discussed 1-10-18 (Interrogatory 22 was not in the previous Minute Order). COMMISSIONER RECOMMENDED, supplement Interrogatory 11 for Dancers at the Club and include names and addresses of Dancers. Commissioner will revisit and take a more critical look at the Memorandum of Fees and Costs. COMMISSIONER RECOMMENDED, Status Check SET. 3-30-18 9:00 a.m. Status Check;

Matter Continued;

Matter Heard; COURT CALL - Status Check

Journal Entry Details:

No Court Call. Ms. Calvert stated a continuance was requested as Ms. Spears Hartwell is in Trial. Counsel agreed to 3-2-18. COMMISSIONER RECOMMENDED, matter CONTINUED. Ms. Calvert will advise opposing counsel of the continuance date. Discovery staff contacted Court Call. 3-2-18 9:00 a.m. Status Check;

02/28/2018

**Settlement Conference (9:00 AM)** (Judicial Officer: Saitta, Nancy)

Not Settled;

Journal Entry Details:

Matter not settled.;

03/08/2018

CANCELED Status Check: Compliance (3:00 AM) (Judicial Officer: Bulla, Bonnie)*Vacated - per Commissioner*

03/28/2018

**Status Check (9:00 AM)** (Judicial Officer: Earley, Kerry)*Status Check: Settlement Conference*

Matter Heard;

Journal Entry Details:

Courts stated it was its understanding there was no settlement. Ms. Hartwell stated they were just hoping to get a deadline on the Motion for Summary Judgment. Court noted there was an issue with the Stipulation and Order; it was vague and it needed specific dates. Counsel advised they do not want to extend discovery; it was closed November 27, 2017 and the only dates they need is for the dispositive motions and trial date. COURT ORDERED, trial date SET; Deft's Motion for Summary Judgment RESET to June 13, 2018 and dispositive motion deadline is May 15, 2018. Counsel anticipate one week for trial based on the Court's calendar. 7/18/18 11:00 AM CALENDAR CALL 7/30/18 9:00 AM JURY TRIAL ;

03/30/2018

**Status Check (9:00 AM)** (Judicial Officer: Bulla, Bonnie)

Matter Heard;



Journal Entry Details:

Dean Fuchs, Esquire, for Defts. The case did not resolve, and counsel will move forward to Trial. Ms. Calvert confirmed a site inspection was held, but counsel hasn't received any explanations or responses, or a response to Interrogatory #11. All documents were produced in Deft's possession, and Ms. Hartwell Spears was present at the site inspection; argument by counsel. Mr. Fuchs prepared a Declaration for the client to sign, revisions were made, and Mr. Fuchs expects to file it shortly. Mr. Fuchs is in Florida due to his Mother's health condition, and Mr. Fuchs will take care of Interrogatory #11 when he is back in town. Commissioner advised Plaintiffs' counsel any Motion for Rule 37 sanctions including terminating sanctions would be filed before the Judge. Commissioner will not take further action. COMMISSIONER RECOMMENDED, supplement Interrogatory 11 and provide a Declaration as soon as possible, and provide any other outstanding discovery discussed in a proper 2.34 conference by 4-18-18 (Rescind 4-13-18). Mr. Jones to prepare the Report and Recommendations, and Ms. Hartwell Spears to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

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	<i>contribution. Submit a cover letter if Mr. Jones cannot obtain a signature.;</i>
05/09/2018	CANCELED Pretrial/Calendar Call (11:00 AM) (Judicial Officer: Hardcastle, Kathy) <i>Vacated</i>
05/21/2018	CANCELED Jury Trial (9:00 AM) (Judicial Officer: Earley, Kerry) <i>Vacated</i>
05/24/2018	 Status Check: Compliance (3:00 AM) (Judicial Officer: Bulla, Bonnie) Matter Continued; Complied Journal Entry Details: <i>The 3-30-18 Report and Recommendation remains outstanding. Mr. Jones was given the responsibility to submit the Report and Recommendation from the 3-30-18 hearing. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a sanction. COMMISSIONER RECOMMENDED, matter CONTINUED to an in chambers status check. CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Kimball Jones, Esq. (Morris Anderson); Lauren Calvert, Esq. (Morris Anderson); Doreen M. Spears Hartwell, Esq. (Hartwell Thalacker, Ltd.);</i>
08/08/2018	CANCELED Motion for Summary Judgment (9:00 AM) (Judicial Officer: Bonaventure, Joseph T.) <i>Vacated - per Law Clerk</i> <i>Defendants' Motion for Summary Judgment</i>
08/08/2018	 Motion (9:00 AM) (Judicial Officer: Earley, Kerry) 08/08/2018, 08/23/2018 <i>Plaintiff's Motion for Discovery Sanctions and Adverse Presumption</i> Continued; Granted; Journal Entry Details: <i>Colloquy regarding attorney fees and costs that Commissioner Bulla previously ordered. Court noted there were two reasons the hearing was continued, one of which was to get clarification on the sanctions ordered by Commissioner Bulla. Court advised the second reason the hearing was continued, was to obtain the supplemental affidavit from Diana Pontrelli. Court noted that there was no supplemental affidavit received. Arguments by counsel. COURT ORDERED, motion GRANTED. Court further set the following briefing schedule: Plaintiff's order for attorney fees and costs DUE 09/13/18, Defendant's opposition DUE 09/27/18, Plaintiff's reply DUE 10/02/18. COURT FURTHER ORDERED, matter SET. ADDITIONALLY, COURT ORDERED, calendar call and jury trial VACATED. 10/04/18 9:00 AM HEARING: ORDER FOR DISCOVERY SANCTIONS;</i> Continued; Granted; Journal Entry Details: <i>Dean Fuchs, Pro Hac, also present. Colloquy regarding Terry v Sapphire case. Argument by Mr. Sterling regarding the difference between the statutory wage claim and constitutional wage claim. Argument by Mr. Fuchs. Colloquy regarding Neville vs. Eighth Judicial District Court case. Further arguments by counsel. COURT ORDERED, a briefing schedule as follows: Defendant's Opposition DUE 08/17/18, Opening Brief DUE 09/05/18, Opposition DUE 09/20/18. Colloquy regarding Defense counsel producing legible documents in a timely manner. COURT FURTHER ORDERED, an affidavit by Diana Potrelli be done regarding the number of documents and what was destroyed. COURT ORDERED matters SET. CONTINUED TO: 08/23/18 9:00 AM 10/04/18 9:00 AM DEFENDANT'S MOTION FOR SUMMARY JUDGMENT 10/04/18 9:00 AM PLAINTIFF'S COUNTERMOTION FOR SUMMARY JUDGMENT;</i>
08/08/2018	CANCELED Motion for Summary Judgment (9:00 AM) (Judicial Officer: Earley, Kerry) <i>Vacated - per Law Clerk</i> <i>Defendants La Fuente, Inc. and Western Properties Holdings, LLC's Motion for Summary Judgment</i>
09/26/2018	CANCELED Pretrial/Calendar Call (11:00 AM) (Judicial Officer: Earley, Kerry)

CASE SUMMARY

CASE NO. A-14-709851-C

	<i>Vacated - Superseding Order</i>
09/27/2018	CANCELED Calendar Call (9:00 AM) (Judicial Officer: Earley, Kerry) <i>Vacated - per Judge</i>
10/04/2018	Motion for Summary Judgment (9:00 AM) (Judicial Officer: Earley, Kerry) <i>Defendant's Motion for Summary Judgment</i> Granted;
10/04/2018	Countermotion (9:00 AM) (Judicial Officer: Earley, Kerry) <i>Plaintiff's Countermotion for Summary Judgment</i> Denied;
10/04/2018	Hearing (9:00 AM) (Judicial Officer: Earley, Kerry) <i>Hearing: Order for Discovery Sanctions</i> Matter Heard;
10/04/2018	 All Pending Motions (9:00 AM) (Judicial Officer: Earley, Kerry) Matter Heard; Journal Entry Details: <i>HEARING: ORDER FOR DISCOVERY SANCTIONS...PLAINTIFF'S COUNTERMOTION FOR SUMMARY JUDGMENT... DEFENDANT'S MOTION FOR SUMMARY JUDGMENT</i> <i>Court noted there were new arguments regarding case law and whether statute would apply to the amendment claim. Court noted it reviewed the supplemental briefs, case law, and read the transcript. Court determined the Thomas case was not applicable for determining whether a person is or is not an employee or independent contractor. Ms. Hartwell argued the dancers were independent contractors pursuant to statute. Court noted argument was limited to determining under the statute whether the dancers are presumed to be an independent contractors, and certain criteria must be met. Ms. Hartwell stated reasons why the dancers would be considered independent contractors. Mr. Sterling and Mr. Jones argued regarding house rules; stated the house rules have changed over time. Mr. Jones stated there is unfairness in that all the names of Plaintiffs are not known at this time. Argument by counsel regarding Defendants' Motion for Summary Judgment. Court stated a decision will be issued in a minute order today. ;</i>
10/04/2018	 Minute Order (2:00 PM) (Judicial Officer: Earley, Kerry) Minute Order - No Hearing Held; Journal Entry Details: <i>This matter came before the Court on both Plaintiff Jane Doe and Defendant La Fuente, Inc. s competing Motions for Summary Judgment on Employee/Independent Contractor Status. Having reviewed the matter, including all points, authorities, exhibits, and supplemental briefing, as well as oral argument from counsel, the Court hereby GRANTS Defendant s Motion for Summary Judgment. The Court uses the test set forth within NRS 608.0155 to determine whether the Plaintiff is an independent contractor and finds that NRS 608.0155(a), 608.0155(b), and 608.0155(c)(1) through (3) apply to the Plaintiff. Thus, Defendant is entitled to a judgment as a matter of law, since no genuine issue of material fact remains regarding the issue that Plaintiff is an independent contractor pursuant to NRS 608.0155. Plaintiff s Counter Motion is hereby DENIED. Counsel for Defendant to prepare and submit the order, to be approved as to form and content by Plaintiff s counsel. CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Kimball Jones, Esq. (Bighorn Law), Andrew Sterling, Esq. (rusinglopez@rllaz.com) and Doreen Hartwell, Esq. (dhartwell@lionelsawyer.com) //ev 10/4/18;</i>
10/08/2018	CANCELED Jury Trial (9:00 AM) (Judicial Officer: Earley, Kerry) <i>Vacated - Superseding Order</i>
10/15/2018	CANCELED Jury Trial (10:00 AM) (Judicial Officer: Earley, Kerry) <i>Vacated - per Judge</i>
10/24/2018	 Motion for Fees (9:00 AM) (Judicial Officer: Bulla, Bonnie) <i>Plaintiffs Motion for Fees and Costs in Pursuing Spoliated Materials</i> Granted; COURT CALL - Plaintiffs' Motion for Fees and Costs in Pursuing Spoliated

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Materials

Journal Entry Details:

Commissioner stated the Court Granted Summary Judgment. Mr. Jones stated the case will be on Appeal with other similar cases, but the fees and costs are still to be paid, and there is a Hearing before the Judge. Mr. Jones stated fees and costs were Granted as well as a rebuttable presumption. Arguments by counsel. Commissioner DEFERRED the Motion to the District Court Judge, and the Judge will consider it when the Judge decides fees and costs. Mr. Jones stated the District Court Judge told counsel to split fees and costs, and bring fees and costs up until April, already Recommended by Commissioner. Counsel were ordered by the Court to bring it back to the Discovery Commissioner. Arguments by counsel. COMMISSIONER RECOMMENDED, motion is UNDER ADVISEMENT, and Commissioner will issue a Decision. CLERK'S NOTE: See Minute Order on 11-13-18. jl;

11/01/2018



Motion (9:00 AM) (Judicial Officer: Earley, Kerry)

Plaintiff's Motion for Order on Proposed Jury Instructions and Fees and Costs

Granted in Part;

Journal Entry Details:

Mr. Fuchs and Mr. Sterling present via Court Call. Court noted the summary judgment was granted, and trial date was vacated, however these motions were filed after the summary judgment. Mr. Sterling stated the jury instructions were moot, and the remaining issue were fees and costs; argued there were no specific allegation that time entries were duplicative or improper in the opposition. Ms. Hartwell argued there was no way opposing counsel incurred over \$30,000 in attorney's fees for the Motion. Court noted it was aware of the arguments and positions of both counsel. Court determined it would wait to review Commissioner Bulla's ruling prior to making a ruling on the Motion. COURT ORDERED, matter TAKEN UNDER ADVISEMENT.;

11/13/2018



Minute Order (11:55 AM) (Judicial Officer: Bulla, Bonnie)

Minute Order regarding the 10-24-18 Hearing

Minute Order - No Hearing Held; Regarding the 10-24-18 Hearing

Journal Entry Details:

The Discovery Commissioner having taken the above matter under advisement and having reviewed the prior hearing minutes, Report and Recommendations and applicable pleadings, as well as argument of counsel, recommends that the Plaintiffs' Motion for Fees and Costs in Pursuing Spoliated Materials be granted. As a preliminary matter, the Commissioner takes the opportunity to set out the relevant procedural history. The Plaintiffs filed an initial motion to compel which was heard by the Commissioner on 9/27/17. At this hearing, the Commissioner stated her intention to award attorney fees and costs and Plaintiffs' counsel was instructed to prepare a Memorandum of Fees and Costs, applying the Brunzell factors. At the follow up hearing, Plaintiffs' counsel withdrew her request for fees and costs as a "gesture of good will" and none were awarded. Subsequently, on 12/7/17, the Plaintiffs filed a Motion for Sanctions against Defendants in accordance with NRCP 37[c] for Spoliation Sanctions and Attorney Fees and Costs for the Defendants' failure to produce discovery as previously ordered. This motion was heard on 1/10/18. At the hearing, the Commissioner denied the Motion for Spoliation Sanctions without Prejudice and granted the Motion for Attorney Fees and Costs. Defendants were given additional time to comply with the Discovery Commissioner's recommendations regarding document production, and Plaintiffs were instructed to file a Memorandum of Fees and Costs for having to bring the Motion for Sanctions, which the Commissioner essentially treated as a Motion to Compel, and apply the Brunzell factors. Of note, the Report and Recommendations from this hearing was filed on 3/14/18 and then again on 4/5/18. On January 22, 2018, Plaintiffs filed their Memorandum of Fees and Costs, which included attorney fees in the amount of \$14,110.50 and costs in the amount of \$10.50 (filing fees). Defendants objected to the Plaintiffs' memorandum on 2/8/18. A follow up hearing to address the Plaintiffs' requested fees and costs was scheduled for 2/21/18, but had to be continued to 3/2/18 as Defendants' counsel failed to appear because she was in trial. In the interim, on 2/28/18, the parties engaged in a settlement conference. The case did not settle. At the 3/2/18 hearing to address the award of fees from the 1/10/18 hearing, the Commissioner declined to award the entire amount of fees requested by Plaintiffs in light of Defendants' compliance and the number of documents that in fact were produced. The Plaintiffs, however, remained concerned that additional documents responsive to their requests remained outstanding. A site inspection of the location of the documents was agreed to by the parties and scheduled. Therefore, the Commissioner continued the matter for further compliance, and agreed to re-review the Memorandum of Fees and Costs submitted by the Plaintiffs. When the parties returned for the follow up hearing on 3/30/18, it was apparent that there were potential

CASE SUMMARY**CASE NO. A-14-709851-C**

issues involving spoliation. In light of the sanctions requested (case terminating sanctions), the Commissioner deferred any forthcoming Rule 37 sanctions to the District Court Judge, including any award of attorney fees and costs, and declined to take further action at that time. Subsequently, on or about 10/4/18, the District Court Judge granted Defendants' Motion for Summary Judgment. Following this, the Plaintiffs filed Motions for Fees and Costs related to their unsuccessful efforts to obtain discovery, which Plaintiffs claim based on the site inspection was spoliated. One motion was filed before the District Court Judge and the other before the Discovery Commissioner. It is the understanding of the Commissioner that she is to consider Plaintiff's request for attorney fees and costs up until April 2018 for their efforts to obtain evidence that ultimately did not exist, and the Judge will consider the attorney fees and costs requested after that date. See October 24, 2018 minutes. It should be noted that at this point only monetary sanctions are available as a sanction for Defendants' failure to produce evidence since summary judgment has been granted in favor of the Defendants, thereby precluding imposition of evidentiary-type sanctions. Based on the foregoing, the Discovery Commissioner reviewed Plaintiffs' Memorandums for Fees and Costs filed on 1/22/18 and 9/9/18. Preliminarily, the Commissioner accepts and adopts the Plaintiffs' analysis of the Brunzell factors and agrees to the Plaintiffs' hourly rates of \$400 an hour for Kimball Jones, \$375 and \$320 an hour for P. Andrew Sterling. With respect to the requested costs, the Commissioner also accepts Plaintiffs' costs contained within both memorandums with the exception of parking, which she routinely does not allow. Although the Plaintiffs could have ordered a more cost-effective disc of the hearing instead of a transcript, the Commissioner decided to permit the costs associated with the transcript of the 3/30/18 hearing, as this was the hearing that the sanction part of the motion was deferred to the Judge, and therefore relevant to the resolution of Plaintiffs' request for sanctions. Thus, the Commissioner recommends reimbursing Plaintiffs their costs in the amount of \$178.22. With respect to the attorney fees, the Commissioner did not include fees associated with preparing Reports and Recommendations (required), the memorandums of fees and costs (required), administrative-type tasks, or entries after 3/31/18, which would be outside of the time frame of Commissioner Bulla's focus. In summary, the Commissioner only allowed for the recovery of attorney fees related to the Motion for Sanctions filed in January 2018, and to the follow up hearings and activities related to the discovery of Defendants' documents. Based on the foregoing, the Commissioner recommends reimbursing Plaintiffs their attorney fees from the following entries set forth in the 1/22/18 memorandum: 12/9/17; 12/24/17; 1/1/18; 1/4/18; and, 1/10/18. The total of these attorney fees are in the amount of \$4312.50. Further, the Commissioner recommends reimbursing Plaintiffs their attorney fees from the following entries set forth in the 9/19/18 memorandum, which are not duplicative of those recommended above: 1/10/18 (KJ); 1/31/18; 2/19/18 (two entries); 2/20/18 (second entry); 2/21/18 (first entry); 3/2/18 (both entries); 3/6/18 (KJ); 3/6/18; 3/13/18; 3/14/18 (four entries); 3/15/18; and, 3/20/18 (two entries, one LC and one KJ). The total of these attorney fees are in amount of \$7565. Therefore, the Commissioner recommends that Plaintiffs be awarded costs in the amount of \$178.22, and attorney fees in the amount of \$11,877.50, for a total award of \$12,055.72. The total amount will be due and owing from the Defendants, not their attorneys, to the Plaintiff within thirty (30) days after the Report and Recommendations is signed by the District Court Judge. Mr. Jones is to prepare the Report and Recommendations, to include the analysis of the Brunzell factors set forth in both memorandums, and Defense counsel is to approve as to form and content. The Report is due within 10 days after being served with these minutes. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Jennifer Lott, to all registered parties for Odyssey File & Serve. jl;

02/01/2019

**Minute Order (3:00 AM)** (Judicial Officer: Earley, Kerry)

Minute Order - No Hearing Held;

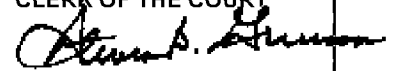
Journal Entry Details:

The District Court, having taken the Plaintiff's Motion for Order on Proposed Jury Instructions and Fees and Costs under advisement until the Discovery Commissioner ruled on Plaintiff's Motion for Sanctions and Fees and Costs pertaining to the fees and costs prior to April 2018, renders its ruling pertaining to fees and costs after April 2018 on this matter. Having reviewed all points, authorities, and exhibits, as well as considering the oral arguments of counsel at the previous hearing and after an analysis of the Brunzell factors, The Court finds that Plaintiff is not entitled to costs incurred for an Airline Ticket for P. Andrew Sterling to attend the hearing totaling \$379.96, Parking totaling \$13.00, and a Taxi totaling \$56.55. The Court further finds, in relation to the attorney's fees requested by The Law Offices of Bighorn Law, that Plaintiff is not entitled to fee entry dated 05/04/2018 and titled "Reviewed and Finalized DCR&R from 03/30/2018" totaling \$160.00 and fee entry dated 06/11/2018 and titled "Prepared Memo of Fees and Costs" totaling \$320.00. The Court further finds, in relation to the attorney's fees requested by the Law Offices of Rusing, Lopez & Lizardi, PLLC, the Plaintiff is not entitled to the full fee entry dated 08/08/2018 totaling 11.8 hours titled "Prepare for and attend hearing;"

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the Court will allow 3.5 hours for this entry. Therefore, the Court finds that Plaintiff shall be awarded costs in the amount of \$6.00, and attorney fees in the amount of \$29,493.50, for a total award of \$29,499.50. The total amount will be due and owing from the Defendants, not their attorneys, to the Plaintiff within thirty (30) days after the Order is served on Defendants. Counsel for Plaintiff to prepare the Order, to include the analysis of the Brunzell factors as set forth in its Motion, to be approved as to form and content by counsel for Defendant. The Order is due within ten (10) days of this Minute Order. CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Ryan Andersen, Esq. (ryan@bighornlaw.com) and Doreen Hartwell, Esq. (doreen@hartwellthalacker.com). //ev 2/1/19;



ORDR

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*Attorneys for La Fuente Inc. and
Western Properties Holdings, LLC*

**DISTRICT COURT
CLARK COUNTY NEVADA**

Jane Doe Dancer, I
Through V, et al.

Case No.: A-14-709851-C

Dept. No. IV

Plaintiff,

vs.

La Fuente, Inc. et al.

Defendants.

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT AND DENYING
PLAINTIFFS' COUNTER-MOTION
FOR SUMMARY JUDGMENT**

This matter is before the Court on Defendants La Fuente, Inc. and Western Properties Holdings, LLCs' motion for summary judgment pursuant to NRCP 56 against Plaintiffs, and Plaintiffs' counter-motion for summary judgment. Doreen Spears Hartwell, Esq. of Hartwell Thalacker, Ltd present on behalf of defendants; Kimball Jones, Esq. of Big Horn Law and P. Andrew Sterling, Esq. of Rusing, Lopez & Lizardi, PLLC present on behalf of Plaintiffs; after review of the pleadings, the motion briefs and having heard oral argument from counsel; for

1 good cause shown, the Court rules as follows:

2 The Court makes the following Findings of Facts and Conclusions of Law:

3 1. The primary issue presented in this civil action is whether Plaintiffs are
4 conclusively presumed to be independent contractors as a matter of law pursuant to NRS
5 608.0155, which has been thoroughly briefed and argued by counsel for the parties on August 8
6 and on October 4, 2018.

7 2. Many of the same issues presented in this civil action have previously been
8 decided by other divisions of this Court in cases involving exotic dancers seeking to recover
9 wages from Gentlemen's clubs and which are presently on appeal to the Nevada Supreme Court.
10 *See: Barber, et al. v. D. 2801 Westwood, Inc. d/b/a Treasures Gentlemen's Club and Steakhouse,*
11 *Supreme Court Case No. 74183 and Franlin v. Russell Road Food and Beverage, LLC, Supreme*
12 *Court Case No. 74332.*

13 3. Rather than stay this civil action pending the outcome of those appeals, the Court
14 finds this civil action ripe for a ruling on the parties' summary judgment motions.

15 4. Defendants seek summary judgment on the ground that Plaintiffs are not entitled
16 to relief under the Nevada Minimum Wage Amendment (NEV. CONST., Art. XV, Sec. 16(A)
17 ("MWA")) or NRS Chapter 608 because, they contend, Plaintiffs are independent contractors as
18 a matter of law.

19 5. Defendants claim they are entitled to summary judgment on any claim asserted
20 for damages accruing prior to November 14, 2012 because those claims are time-barred by the
21 statute of limitations.

22 6. Finally, Defendants contend that Plaintiffs' claims for unjust enrichment incurred
23 prior to November 14, 2012, are time-barred.

24 7. Plaintiffs contend that NRS Chap. 608, and in particular, NRS 608.0155, does not
25 apply to this civil action because they have asserted minimum wage claims under the MWA
26 which falls outside the scope of NRS Chap. 608.

27 8. Plaintiffs also contend that they are employees as a matter of law under the
28 traditional "economic realities test" used in *Terry v. Sapphire Gentlemen's Club*, 336 P.3d 951,

1 955, 130 Nev. Adv. Op. 87, *4 (Nev. 2014).

2 9. Plaintiffs argue that this Court should follow the reasoning of *Terry*, even though
3 it was abrogated with the enactment of SB 224 by the Nevada legislature for the specific purpose
4 of rejecting the Nevada Supreme Court's use of the economic realities test for purposes of
5 Nevada's state wage and hour laws in *Terry*.

6 10. The MWA states that "[e]ach employer shall pay a wage to each employee of not
7 less than the hourly rates set forth in this section." NEV. CONST. art. XV, §16(A). By its own
8 language the MWA applies only to "employees" and not independent contractors or other types
9 of non-employees. *Perry v. Terrible Herbst, Inc.*, 383 P.3d 257, 262, 132 Nev. Adv. Op. 75, *10
10 (Oct 27, 2016).

11 11. Plaintiffs take issue with the application of NRS § 608.0155 in this case because it
12 creates a conclusive presumption (to those who qualify) that they are independent contractors,
13 and, that, Plaintiffs contend, has the effect of "narrowing" the class of workers who would
14 otherwise be considered "employees" under the MWA.

15 12. The Nevada Legislature enacted NRS § 608.0155 after *Terry* to clarify the
16 analytical framework for determining independent contractor status, and because nowhere in the
17 MWA does the term "independent contractor" appear, and the Court cannot assume that the
18 Legislature did not know the legal difference between an "employee" and an "independent
19 contractor."

20 13. Nowhere in the MWA does it require that the economic realities test be utilized to
21 define what constitutes an "employee," nor does it create the presumption of an employee. NEV
22 CONST. Art. XV, Sec. 16.

23 14. The MWA does not contain a definition of the term "independent contractor." *Id.*
24 This definition was provided only with the enactment of NRS § 608.0155.

25 15. The MWA applies only when a worker is an employee, and since the MWA
26 poorly defines the term "employee," the analysis required by NRS 608.0155 is required to
27 determine whether or not the MWA applies.

28 ///

1 16. Importantly, neither the MWA nor NRS Chap. 608 contains any presumption that
2 a worker is an employee; the only presumption in Nevada law is for an independent contractor.
3 NRS § 608.0155(2).

4 17. Before the Court can determine whether Plaintiffs have viable claims under the
5 MWA, it must determine whether or not they are conclusively presumed independent contractors
6 under NRS 608.0155, and if they are determined to be conclusively presumed to be independent
7 contractors, then, *a fortiori*, they fall outside the MWA's definition of "employee."

8 18. In interpreting the meaning of the word "employee" as used in the MWA, this
9 Court must first look to the MWA's language and give that language its plain effect, unless the
10 language is ambiguous. The Supreme Court has already observed that the MWA's use of the
11 word "employee" is vague. *Terry*, 336 P.3d at 955. Therefore, the Supreme Court looked for the
12 "most closely analogous" statute to aid in interpreting "employee" and distinguishing it from
13 other business relationships, like that of independent contractor. *Perry*, 383 P.3d at 262; *Thomas*
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15 19. In 2015, a year after *Terry* was decided, the Nevada Legislature remedied that
16 ambiguity by passing S.B. 224, which clarified what it meant to be an "employee." S.B. 224,
17 now codified at NRS § 608.0155 creates a five-part test that, when met, results in a "conclusive
18 presumption" that a worker is an independent contractor.

19 20. Section 7 of S.B. 224 expressly states that it was intended to have retroactive
20 effect, which is permissible because S.B. 224 merely clarified how the Legislature always
21 understood and intended existing law to read.

22 21. NRS § 608.0155 sets forth a specific set of criteria for persons conclusively
23 presumed to be an independent contractor.

24 22. NRS § 608.0155 provides, in pertinent part, that a person is "conclusively
25 presumed" to be an independent contractor if:

26 (a) Unless the person is a foreign national who is legally present in the United States, the
27 person possesses or has applied for an employer identification number or social security number
28 or has filed an income tax return for a business or earnings from self-employment with the

1 Internal Revenue Service in the previous year;

2 (b) The person is required by the contract with the principal to hold any necessary state
3 business registration or local business license and to maintain any necessary occupational
4 license, insurance or bonding; and

5 (c) the person satisfies three or more of the following criteria:

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

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

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

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

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

20 23. NRS § 608.0155 now provides the Court with specific guidance to draw a
21 distinction between workers who are “employees” and those who are conclusively presumed to
22 be “independent contractors.”

23 24. Plaintiffs are exotic dancers/entertainers who currently or formerly performed at a
24 topless gentlemen’s club owned by La Fuente, Inc. d/b/a Cheetahs Las Vegas. (*See* Jane Doe
25 Dancer III Deposition Transcript dated 3.17.17 (“Jane Doe Dancer III Depo.”) (Jane Doe Dancer
26 III Dep. at pp. 15-28 (MSJ015-28); JLH Dancer Deposition Transcript dated 3.17.17 (“JLH
27 Dancer Depo.”) at pp. 22, 27, 39-40 (MSJ145, 150, 172-73)).

28 25. At all relevant times, Cheetahs dancers were required by law to have a business
license issued by the Nevada Secretary of State to perform as an exotic dancer. (Jane Doe
Dancer III Depo. 20-22, 73:7-9 (MSJ020-22, MSJ073; JLH Dancer Depo. at pp. 18:24 – 19:8,
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1 Transcript dated 3.16.17 ("Pontrelli Depo.") at 29:23 (MSJ288).

2 26. Jane Doe Dancer III and Dancer JLH had state-issued business licenses as sole
3 proprietors when they performed at Cheetahs. *Id.*; *see also*: Jane Doe Dancer III's Amended
4 Answers to Defs' Interrogatories, No. 10 (MSJ405); *see also* Dancer JLH's Answers to Defs'
5 Interrogatories, No. 10 & 21 (MSJ420, MSJ426-427). Dancers personally obtained and paid
6 \$200 for their own business licenses. (Jane Doe Dancer III Depo. at pp. 21, 107-108 (MSJ021,
7 MSJ107-8), Depo. Ex. 3 (MSJ123); Dancer JLH Depo. at pp. 47-48 (MSJ171-72); Dancer JLH's
8 Answer to Defs' Interrogatories, No. 21 (MSJ426)).

9 27. Both Jane Doe Dancer III and Dancer JLH have Social Security Numbers. (Jane
10 Doe Dancer III Depo. Ex. 2, p.1; JLH Dancer Depo. at pp. 96-97; JLH Dancer Depo. Ex. 1, p.3).

11 28. Jane Doe Dancer III understood that for the purpose of her business license, she
12 was considered (and considered herself) an independent contractor. (Jane Doe Dancer III Depo.
13 at pp. 22:13, 86:22 – 87:18 (MSJ022, MSJ086-87)).

14 29. In order to perform at Cheetahs (or at any other gentlemen's club), exotic dancers
15 like Jane Doe Dancer III must have a sheriff's card. (Jane Doe Dancer III Depo. at p. 23; Dancer
16 JLH Depo. at pp. 19:9-12, 34:6-7, 47 (MSJ143, MSJ158, MSJ171); Pontrelli Depo. at pp. 27:17-
17 22, 29:23 (MSJ286, MSJ288).

18 30. Cheetahs dancers sign a Dancer Performance Lease when they begin performing
19 at the Club. (Jane Doe Dancer III Depo. at pp. 70-72, 98-99 (MSJ070-72; Dep. Exs. 1 & 2
20 (MSJ117-22); Pontrelli Depo. at pp. 42:21-21, 53:8-19 (MSJ301, MSJ312); Pontrelli Depo. Ex. 1
21 & 2 (MSJ397, MSJ400)).

22 31. The purpose of the Dancer Performance Lease is to establish a contractual
23 relationship between Cheetahs and its entertainers, and to grant the entertainer permission to
24 perform on the club's premises. (Pontrelli Depo. at pp. 42:17 – 43:2, 46:12-15 (MSJ301-2,
25 MSJ305).

26 32. The Dancer Performance Lease signed by Cheetahs dancers expressly provides
27 that Cheetahs "shall have no right to direct and/or control the nature, content, character, manner
28 or means of PERFORMER's performances. PERFORMER acknowledges and agrees, however,

1 to perform live nude and/or semi-nude entertainment consistent with the type of entertainment
2 regularly performed on the PREMISES.” (Jane Doe III Depo., Ex. 1, Section 10 (MSJ118)).

3 33. Dancers at Cheetahs are not assigned to work any particular shift. (Jane Doe
4 Dancer III Depo. at 29:22).

5 34. Cheetahs dancers are not required to work any specific days, and can determine
6 for themselves what dates and shifts they wish to perform. (Jane Doe Dancer III Depo. at 30:10
7 (MSJ030); Dancer JLH Depo. at 47 (MSJ171); Pontrelli Depo. at pp. 27:2-7, 28:21 - 29:3
8 (MSJ286-89). Dancer JLH chose to work about 20 days per month, but would work more if a
9 convention was in town. (Dancer JLH Depo. at pp. 31:1-13 (MSJ155)). She would typically
10 work a few days before her personal bills were coming due. *Id.* at 61 (MSJ185).

11 35. At Cheetahs, entertainers can work as long as they wish. (Jane Doe Dancer III
12 Depo. at pp. 29:25 – 30:2, 38 (MSJ029-030)). Entertainers had the discretion to arrive and leave
13 Cheetahs when they wished. (*Id.*; Jane Doe Dancer III Depo. at pp. 30, 38; Dancer JLH Depo. at
14 pp. 41:20-24 (MSJ165); Pontrelli Depo. at pp. 27:2-7 (MSJ286)).

15 36. If entertainers work at least six (6) consecutive hours at Cheetahs, they get a
16 discount on their house fee. (Pontrelli Depo. at pp. 57:17-23, 59:9-13).

17 37. Cheetahs dancers are not required to perform exclusively at Cheetahs, and they
18 are free to perform at other gentlemen’s clubs if they wish to do so. (Jane Doe Dancer III Depo.
19 at pp. 31:5-22 (MSJ031); Dancer JLH Depo. at 30:19-22 (MSJ154)).

20 38. Cheetahs dancers may attend school or hold other jobs while performing at
21 Cheetahs. (Jane Doe Dancer III Depo. at pp. 56:15-21 (MSJ056); Dancer JLH Depo. at pp. 32,
22 73 (MSJ156, MSJ194)).

23 39. Cheetahs dancers are free to take time off from performing at Cheetahs at their
24 discretion. (Jane Doe Dancer III Depo. at 32 (MSJ156)).

25 40. Cheetahs dancers are not asked or required to disclose to Cheetahs their earnings
26 from performing at Cheetahs. (Jane Doe Dancer III Depo. at 37:5-10 (MSJ037); Dancer JLH
27 Depo. at 99 (MSJ223)).

28 41. Cheetahs dancers are free to perform on stage, on the floor of the club, or in its

1 VIP area. (Jane Doe Dancer III Depo. at 40 (MSJ040)). Dancers are not required to perform on
2 stage or in the VIP area if they do not wish to do so. (Dancer JLH Depo. at pp. 38:24, 46, 49:7-9
3 (MSJ162, MSJ170, MSJ173); Jane Doe Dancer III Depo. at pp. 43:3-4, 60:9-12 (MSJ043,
4 MSJ060)).

5 42. Cheetahs dancers are free to perform as many dances as they can convince
6 customers to purchase from them. (Jane Doe Dancer III Depo. at 42:13-18 (MSJ042)).

7 43. On the floor of the club, Cheetahs dancers are free to pick and choose the
8 customers for whom they want to perform. (Jane Doe Dancer III Depo. at 60:5-8 (MSJ060)).

9 44. Cheetahs dancers can perform as they please. (Jane Doe Dancer III Depo. 60)
10 (MSJ060)("[On stage, you] can pretty much do whatever you want."); Dancer JLH Depo. at pp.
11 74 – 76 (MSJ198-200).

12 45. Cheetahs dancers are free to opt-out of the club's stage rotation. (Jane Doe
13 Dancer III Depo. at 60:13-15 (MSJ060); Dancer JLH Depo. at pp. 38:24, 46 (MSJ162,
14 MSJ170)).

15 46. Cheetahs dancers are free to sit and mingle with the club's customers. (Jane Doe
16 Dancer III Depo. at 60:16-18 (MSJ060)).

17 CONCLUSIONS OF LAW

18 47. The standard for summary judgment is that no genuine issues of material fact and
19 the moving party is entitled to judgment as a matter of law. NRCP 56 (c).

20 48. Plaintiffs concede that Defendants meet the requirements of NRS § 608.155 (a),
21 (b), and (c) (3), which are also evidenced by the undisputed facts identified above in paragraphs
22 25 through 29, and 32.

23 49. The Court concludes as a matter of law that there are no genuine issues of
24 material fact regarding whether Plaintiffs have "control over the time the work is performed"
25 under NRS 608.155 (c)(1) based on their sworn testimony, as well as the sworn testimony of La
26 Fuente's manager and the other documentary evidence, contained in paragraphs 30 through 39.

27 50. The Court further concludes as a matter of law that there are no genuine issues of
28 material fact regarding whether Plaintiffs' have "control and discretion over the means and

1 manner of the performance of any work and the result of the work” under NRS 608.155 (c)(2)
2 based on Plaintiffs’ sworn testimony, as well as other sworn testimony and documentary
3 evidence, contained in paragraphs 40 through 46.

4 51. The Court concludes as a matter of law that Defendants satisfy the criteria
5 required by NRS 608.155(a), (b), and (c)(1)(2) and(3) to be presumptively considered
6 independent contractors as a matter of law.

7 Therefore , for good cause shown,

8 IT IS HEREBY ORDERED that Defendants’ Motion for Summary Judgment is granted
9 because Plaintiffs are conclusively presumed to be independent contractors and are precluded
10 from making any wage claims under the MWA or NRS Chapter 608.

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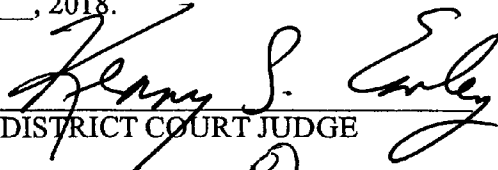
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1 IT IS FURTHER ORDERED that Plaintiff's Countermotion for Summary Judgment is
2 denied.

3 Dated: this 9 day of Nov., 2018.

4 
5 DISTRICT COURT JUDGE
6 (B)


7 Submitted by:

8 SCHULTEN WARD TURNER & WEISS, LLP

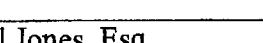
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12 Atlanta, GA 30303

13 and

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15 Nevada Bar. No. 7525
16 Laura J. Thalacker, Esq.
17 Nevada Bar No. 5522
18 Hartwell Thalacker, Ltd
19 11920 Southern Highlands Pkwy, Suite 201
20 Las Vegas, NV 89141
21 Attorneys for La Fuente Inc. and
22 Western Properties Holdings, LLC

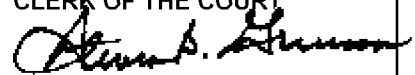
23 Approved as to form/content 

24 BIG HORN LAW

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26 Kimball Jones, Esq.
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28 716 S. Jones Blvd.
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30 Michael J. Rusing, Esq.
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37 Attorneys for Plaintiffs Jane Doe Dancers I - V



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Doreen@HartwellThalacker.com
Attorneys for Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

JANE DOE DANCER, I through V,
Individually, and on behalf of Class of
Similarly Situated Individuals,

Plaintiffs,

v.

LA FUENTE, INC., an active Nevada
Corporation, WESTERN PROPERTY
HOLDINGS, LLC, an active Nevada
Limited Liability Company (all d/b/a/
CHEETAHS LAS VEGAS and/or THE
NEW CHEETAHS GENTLEMAN'S
CLUB), DOE CLUB OWNER, I—X,
DOE EMPLOYER, I—X, ROE CLUB
OWNER, I-X, ROE EMPLOYER, I-X,

Defendants.

CASE NO. A-14-709851-C
Dept. No. 4

Notice of Entry of Order Granting
Defendants' Motion For Summary
Judgment

To: Plaintiffs and their counsel of record:

Please take notice that the attached Order Granting Defendants' Motion for Summary

///

///

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///

Judgment and Denying Plaintiffs' Countermotion for Summary Judgment was entered on January 4, 2019.

Hartwell Thalacker, Ltd.

/s/ Doreen Spears Hartwell
LAURA J. THALACKER
Nevada Bar No. 5522
DOREEN SPEARS HARTWELL
Nevada Bar No. 7525
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Attorneys for Defendants

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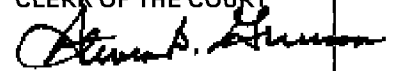
CERTIFICATE OF SERVICE

I certify that on the 4th day of January, 2019, a true and correct copy of the above Notice of Entry of Order Granting Defendants' Motion For Summary Judgment **was served via Odyssey electronic-service to the following:**

Kimball Jones, Esq.
Big Horn Law
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Attorneys for Plaintiffs

P. Andrew Sterling, Esq.
Rushing Lopez & Lizardi, PLLC
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Attorneys for Plaintiff

/s/ Doreen Spears Hartwell
An Employee of Hartwell Thalacker,



ORDR

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and

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d.fuchs@swtwlaw.com

*Attorneys for La Fuente Inc. and
Western Properties Holdings, LLC*

**DISTRICT COURT
CLARK COUNTY NEVADA**

Jane Doe Dancer, I
Through V, et al.

Case No.: A-14-709851-C

Dept. No. IV

Plaintiff,

vs.

La Fuente, Inc. et al.

Defendants.

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT AND DENYING
PLAINTIFFS' COUNTER-MOTION
FOR SUMMARY JUDGMENT**

This matter is before the Court on Defendants La Fuente, Inc. and Western Properties Holdings, LLCs' motion for summary judgment pursuant to NRCP 56 against Plaintiffs, and Plaintiffs' counter-motion for summary judgment. Doreen Spears Hartwell, Esq. of Hartwell Thalacker, Ltd present on behalf of defendants; Kimball Jones, Esq. of Big Horn Law and P. Andrew Sterling, Esq. of Rusing, Lopez & Lizardi, PLLC present on behalf of Plaintiffs; after review of the pleadings, the motion briefs and having heard oral argument from counsel; for

1 good cause shown, the Court rules as follows:

2 The Court makes the following Findings of Facts and Conclusions of Law:

3 1. The primary issue presented in this civil action is whether Plaintiffs are
4 conclusively presumed to be independent contractors as a matter of law pursuant to NRS
5 608.0155, which has been thoroughly briefed and argued by counsel for the parties on August 8
6 and on October 4, 2018.

7 2. Many of the same issues presented in this civil action have previously been
8 decided by other divisions of this Court in cases involving exotic dancers seeking to recover
9 wages from Gentlemen's clubs and which are presently on appeal to the Nevada Supreme Court.
10 *See: Barber, et al. v. D. 2801 Westwood, Inc. d/b/a Treasures Gentlemen's Club and Steakhouse,*
11 *Supreme Court Case No. 74183 and Franlin v. Russell Road Food and Beverage, LLC, Supreme*
12 *Court Case No. 74332.*

13 3. Rather than stay this civil action pending the outcome of those appeals, the Court
14 finds this civil action ripe for a ruling on the parties' summary judgment motions.

15 4. Defendants seek summary judgment on the ground that Plaintiffs are not entitled
16 to relief under the Nevada Minimum Wage Amendment (NEV. CONST., Art. XV, Sec. 16(A)
17 ("MWA")) or NRS Chapter 608 because, they contend, Plaintiffs are independent contractors as
18 a matter of law.

19 5. Defendants claim they are entitled to summary judgment on any claim asserted
20 for damages accruing prior to November 14, 2012 because those claims are time-barred by the
21 statute of limitations.

22 6. Finally, Defendants contend that Plaintiffs' claims for unjust enrichment incurred
23 prior to November 14, 2012, are time-barred.

24 7. Plaintiffs contend that NRS Chap. 608, and in particular, NRS 608.0155, does not
25 apply to this civil action because they have asserted minimum wage claims under the MWA
26 which falls outside the scope of NRS Chap. 608.

27 8. Plaintiffs also contend that they are employees as a matter of law under the
28 traditional "economic realities test" used in *Terry v. Sapphire Gentlemen's Club*, 336 P.3d 951,

1 955, 130 Nev. Adv. Op. 87, *4 (Nev. 2014).

2 9. Plaintiffs argue that this Court should follow the reasoning of *Terry*, even though
3 it was abrogated with the enactment of SB 224 by the Nevada legislature for the specific purpose
4 of rejecting the Nevada Supreme Court's use of the economic realities test for purposes of
5 Nevada's state wage and hour laws in *Terry*.

6 10. The MWA states that "[e]ach employer shall pay a wage to each employee of not
7 less than the hourly rates set forth in this section." NEV. CONST. art. XV, §16(A). By its own
8 language the MWA applies only to "employees" and not independent contractors or other types
9 of non-employees. *Perry v. Terrible Herbst, Inc.*, 383 P.3d 257, 262, 132 Nev. Adv. Op. 75, *10
10 (Oct 27, 2016).

11 11. Plaintiffs take issue with the application of NRS § 608.0155 in this case because it
12 creates a conclusive presumption (to those who qualify) that they are independent contractors,
13 and, that, Plaintiffs contend, has the effect of "narrowing" the class of workers who would
14 otherwise be considered "employees" under the MWA.

15 12. The Nevada Legislature enacted NRS § 608.0155 after *Terry* to clarify the
16 analytical framework for determining independent contractor status, and because nowhere in the
17 MWA does the term "independent contractor" appear, and the Court cannot assume that the
18 Legislature did not know the legal difference between an "employee" and an "independent
19 contractor."

20 13. Nowhere in the MWA does it require that the economic realities test be utilized to
21 define what constitutes an "employee," nor does it create the presumption of an employee. NEV
22 CONST. Art. XV, Sec. 16.

23 14. The MWA does not contain a definition of the term "independent contractor." *Id.*
24 This definition was provided only with the enactment of NRS § 608.0155.

25 15. The MWA applies only when a worker is an employee, and since the MWA
26 poorly defines the term "employee," the analysis required by NRS 608.0155 is required to
27 determine whether or not the MWA applies.

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1 16. Importantly, neither the MWA nor NRS Chap. 608 contains any presumption that
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4 17. Before the Court can determine whether Plaintiffs have viable claims under the
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6 under NRS 608.0155, and if they are determined to be conclusively presumed to be independent
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24 22. NRS § 608.0155 provides, in pertinent part, that a person is "conclusively
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3 business registration or local business license and to maintain any necessary occupational
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23 24. Plaintiffs are exotic dancers/entertainers who currently or formerly performed at a
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2 26. Jane Doe Dancer III and Dancer JLH had state-issued business licenses as sole
3 proprietors when they performed at Cheetahs. *Id.*; *see also*: Jane Doe Dancer III's Amended
4 Answers to Defs' Interrogatories, No. 10 (MSJ405); *see also* Dancer JLH's Answers to Defs'
5 Interrogatories, No. 10 & 21 (MSJ420, MSJ426-427). Dancers personally obtained and paid
6 \$200 for their own business licenses. (Jane Doe Dancer III Depo. at pp. 21, 107-108 (MSJ021,
7 MSJ107-8), Depo. Ex. 3 (MSJ123); Dancer JLH Depo. at pp. 47-48 (MSJ171-72); Dancer JLH's
8 Answer to Defs' Interrogatories, No. 21 (MSJ426)).

9 27. Both Jane Doe Dancer III and Dancer JLH have Social Security Numbers. (Jane
10 Doe Dancer III Depo. Ex. 2, p.1; JLH Dancer Depo. at pp. 96-97; JLH Dancer Depo. Ex. 1, p.3).

11 28. Jane Doe Dancer III understood that for the purpose of her business license, she
12 was considered (and considered herself) an independent contractor. (Jane Doe Dancer III Depo.
13 at pp. 22:13, 86:22 – 87:18 (MSJ022, MSJ086-87)).

14 29. In order to perform at Cheetahs (or at any other gentlemen's club), exotic dancers
15 like Jane Doe Dancer III must have a sheriff's card. (Jane Doe Dancer III Depo. at p. 23; Dancer
16 JLH Depo. at pp. 19:9-12, 34:6-7, 47 (MSJ143, MSJ158, MSJ171); Pontrelli Depo. at pp. 27:17-
17 22, 29:23 (MSJ286, MSJ288).

18 30. Cheetahs dancers sign a Dancer Performance Lease when they begin performing
19 at the Club. (Jane Doe Dancer III Depo. at pp. 70-72, 98-99 (MSJ070-72; Dep. Exs. 1 & 2
20 (MSJ117-22); Pontrelli Depo. at pp. 42:21-21, 53:8-19 (MSJ301, MSJ312); Pontrelli Depo. Ex. 1
21 & 2 (MSJ397, MSJ400)).

22 31. The purpose of the Dancer Performance Lease is to establish a contractual
23 relationship between Cheetahs and its entertainers, and to grant the entertainer permission to
24 perform on the club's premises. (Pontrelli Depo. at pp. 42:17 – 43:2, 46:12-15 (MSJ301-2,
25 MSJ305).

26 32. The Dancer Performance Lease signed by Cheetahs dancers expressly provides
27 that Cheetahs "shall have no right to direct and/or control the nature, content, character, manner
28 or means of PERFORMER's performances. PERFORMER acknowledges and agrees, however,

1 to perform live nude and/or semi-nude entertainment consistent with the type of entertainment
2 regularly performed on the PREMISES.” (Jane Doe III Depo., Ex. 1, Section 10 (MSJ118)).

3 33. Dancers at Cheetahs are not assigned to work any particular shift. (Jane Doe
4 Dancer III Depo. at 29:22).

5 34. Cheetahs dancers are not required to work any specific days, and can determine
6 for themselves what dates and shifts they wish to perform. (Jane Doe Dancer III Depo. at 30:10
7 (MSJ030); Dancer JLH Depo. at 47 (MSJ171); Pontrelli Depo. at pp. 27:2-7, 28:21 - 29:3
8 (MSJ286-89). Dancer JLH chose to work about 20 days per month, but would work more if a
9 convention was in town. (Dancer JLH Depo. at pp. 31:1-13 (MSJ155)). She would typically
10 work a few days before her personal bills were coming due. *Id.* at 61 (MSJ185).

11 35. At Cheetahs, entertainers can work as long as they wish. (Jane Doe Dancer III
12 Depo. at pp. 29:25 – 30:2, 38 (MSJ029-030)). Entertainers had the discretion to arrive and leave
13 Cheetahs when they wished. (*Id.*; Jane Doe Dancer III Depo. at pp. 30, 38; Dancer JLH Depo. at
14 pp. 41:20-24 (MSJ165); Pontrelli Depo. at pp. 27:2-7 (MSJ286)).

15 36. If entertainers work at least six (6) consecutive hours at Cheetahs, they get a
16 discount on their house fee. (Pontrelli Depo. at pp. 57:17-23, 59:9-13).

17 37. Cheetahs dancers are not required to perform exclusively at Cheetahs, and they
18 are free to perform at other gentlemen’s clubs if they wish to do so. (Jane Doe Dancer III Depo.
19 at pp. 31:5-22 (MSJ031); Dancer JLH Depo. at 30:19-22 (MSJ154)).

20 38. Cheetahs dancers may attend school or hold other jobs while performing at
21 Cheetahs. (Jane Doe Dancer III Depo. at pp. 56:15-21 (MSJ056); Dancer JLH Depo. at pp. 32,
22 73 (MSJ156, MSJ194)).

23 39. Cheetahs dancers are free to take time off from performing at Cheetahs at their
24 discretion. (Jane Doe Dancer III Depo. at 32 (MSJ156)).

25 40. Cheetahs dancers are not asked or required to disclose to Cheetahs their earnings
26 from performing at Cheetahs. (Jane Doe Dancer III Depo. at 37:5-10 (MSJ037); Dancer JLH
27 Depo. at 99 (MSJ223)).

28 41. Cheetahs dancers are free to perform on stage, on the floor of the club, or in its

1 VIP area. (Jane Doe Dancer III Depo. at 40 (MSJ040)). Dancers are not required to perform on
2 stage or in the VIP area if they do not wish to do so. (Dancer JLH Depo. at pp. 38:24, 46, 49:7-9
3 (MSJ162, MSJ170, MSJ173); Jane Doe Dancer III Depo. at pp. 43:3-4, 60:9-12 (MSJ043,
4 MSJ060)).

5 42. Cheetahs dancers are free to perform as many dances as they can convince
6 customers to purchase from them. (Jane Doe Dancer III Depo. at 42:13-18 (MSJ042)).

7 43. On the floor of the club, Cheetahs dancers are free to pick and choose the
8 customers for whom they want to perform. (Jane Doe Dancer III Depo. at 60:5-8 (MSJ060)).

9 44. Cheetahs dancers can perform as they please. (Jane Doe Dancer III Depo. 60)
10 (MSJ060)("[On stage, you] can pretty much do whatever you want."); Dancer JLH Depo. at pp.
11 74 – 76 (MSJ198-200).

12 45. Cheetahs dancers are free to opt-out of the club's stage rotation. (Jane Doe
13 Dancer III Depo. at 60:13-15 (MSJ060); Dancer JLH Depo. at pp. 38:24, 46 (MSJ162,
14 MSJ170)).

15 46. Cheetahs dancers are free to sit and mingle with the club's customers. (Jane Doe
16 Dancer III Depo. at 60:16-18 (MSJ060)).

17 CONCLUSIONS OF LAW

18 47. The standard for summary judgment is that no genuine issues of material fact and
19 the moving party is entitled to judgment as a matter of law. NRCP 56 (c).

20 48. Plaintiffs concede that Defendants meet the requirements of NRS § 608.155 (a),
21 (b), and (c) (3), which are also evidenced by the undisputed facts identified above in paragraphs
22 25 through 29, and 32.

23 49. The Court concludes as a matter of law that there are no genuine issues of
24 material fact regarding whether Plaintiffs have "control over the time the work is performed"
25 under NRS 608.155 (c)(1) based on their sworn testimony, as well as the sworn testimony of La
26 Fuente's manager and the other documentary evidence, contained in paragraphs 30 through 39.

27 50. The Court further concludes as a matter of law that there are no genuine issues of
28 material fact regarding whether Plaintiffs' have "control and discretion over the means and

1 manner of the performance of any work and the result of the work” under NRS 608.155 (c)(2)
2 based on Plaintiffs’ sworn testimony, as well as other sworn testimony and documentary
3 evidence, contained in paragraphs 40 through 46.

4 51. The Court concludes as a matter of law that Defendants satisfy the criteria
5 required by NRS 608.155(a), (b), and (c)(1)(2) and(3) to be presumptively considered
6 independent contractors as a matter of law.

7 Therefore , for good cause shown,

8 IT IS HEREBY ORDERED that Defendants’ Motion for Summary Judgment is granted
9 because Plaintiffs are conclusively presumed to be independent contractors and are precluded
10 from making any wage claims under the MWA or NRS Chapter 608.

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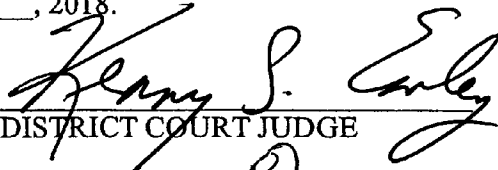
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1 IT IS FURTHER ORDERED that Plaintiff's Countermotion for Summary Judgment is
2 denied.

3 Dated: this 9 day of Nov., 2018.

4
5 
DISTRICT COURT JUDGE
6 (B)


Submitted by:

7 SCHULTEN WARD TURNER & WEISS, LLP

8 
9 Dean R. Fuchs, Esq. (admitted PHV)
260 Peachtree Street NW, Suite 2700
Atlanta, GA 30303

10 and

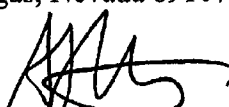
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15 Western Properties Holdings, LLC

16 Approved as to form/content 

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26

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

April 01, 2015

A-14-709851-C Jane Doe, Plaintiff(s)
vs.
Western Property Holdings LLC, Defendant(s)

April 01, 2015 9:00 AM Motion for Leave

HEARD BY: Earley, Kerry **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Kristin Duncan

RECORDER:

REPORTER:

PARTIES

PRESENT: Price, Daniel R. Attorney

JOURNAL ENTRIES

- Mr. Price argued in support of the Motion, stating that the Defendant did not want her real name on public documents. Court noted there was no legal basis to grant the Motion under NRCP 17(a), and the case had to proceed under the real party in interest. Mr. Price requested leave to submit supplemental briefing. COURT ORDERED, Motion CONTINUED to Department IV's Chambers Calendar to allow Mr. Price to submit supplemental briefing.

As to the Ex Parte Motion To Enlarge Time, Mr. Price argued in support of the Motion, stating that he wanted to ensure the proper Plaintiff was named prior to having the summons and complaint served. COURT ORDERED, Motion to Enlarge Time GRANTED for SIXTY (60) DAYS ONLY, from the date of the entry of the instant Order.

CONTINUED TO: 4/6/15 (CHAMBERS CALENDAR)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

April 06, 2015

A-14-709851-C Jane Doe, Plaintiff(s)
vs.
Western Property Holdings LLC, Defendant(s)

April 06, 2015 3:00 AM Motion for Leave

HEARD BY: Earley, Kerry **COURTROOM:** No Location

COURT CLERK: Kristin Duncan

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Plaintiff s Ex-Parte Motion For Leave To Remove Plaintiff s Name To Allow Amendment As Jane Doe Dancer, having come before the Court on April 1, 2015, the Court having reviewed the papers and pleadings on file, including the supplemental briefing requested by the Court, and the oral argument of Plaintiff s counsel, is hereby GRANTED.

CLERK S NOTE: A copy of this Minute Order was distributed to the following parties via e-mail: Daniel Price, Esq. [daniel@morrisanderson.com]. (KD 4/20/15)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

April 19, 2016

A-14-709851-C Jane Doe, Plaintiff(s)
vs.
Western Property Holdings LLC, Defendant(s)

April 19, 2016 9:00 AM Discovery Conference

HEARD BY: Bulla, Bonnie **COURTROOM:** RJC Level 5 Hearing Room

COURT CLERK: Alan Castle

RECORDER: Francesca Haak

REPORTER:

PARTIES

PRESENT: Hartwell, Doreen M. Spears Attorney
Price, Daniel R. Attorney

JOURNAL ENTRIES

- Colloquy regarding delays. COMMISSIONER RECOMMENDED, Ms. Hartwell to PAY \$50.00 contribution to Legal Aid Center of Southern Nevada (Clark County Pro Bono Project) for failing to provide a courtesy copy of the report to the Discovery Commissioner; payment held in ABEYANCE pending Defendants' motion to compel arbitration. COMMISSIONER RECOMMENDED, Discovery Conference is CONTINUED. Counsel to advise the Discovery Commissioner if the case is remanded to arbitration

5/10/16 9:00 a.m. Discovery Conference - Further Proceedings

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort**COURT MINUTES****August 01, 2016**

A-14-709851-C Jane Doe, Plaintiff(s)
vs.
Western Property Holdings LLC, Defendant(s)

August 01, 2016	3:00 AM	Motion to Withdraw as Counsel	W. Scott Schulten Esq's Motion to Withdraw As Counsel of Record for Defendants La Fuente and Western Property Holdings
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HEARD BY: Earley, Kerry**COURTROOM:** Chambers**COURT CLERK:** April Watkins**RECORDER:****REPORTER:**

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- A Motion to Withdraw as Counsel was filed on June 30, 2016 by Wm. Scott Schulten, Esq., counsel for Defendants La Fuente Western Property Holdings. The matter was subsequently placed on the civil calendar of Department IV. Having received no Opposition to the matter and pursuant to EDCR 2.20 and for good cause showing, the Court hereby GRANTS the Motion to Withdraw. Defense counsel shall prepare the Order in accordance with EDCR 7.21, notifying the former client of all pending dates and providing the last known address and telephone number of Defendant within the proposed Order.

CLERK'S NOTE: The above minute order has been distributed to: Wm. Scott Schulten, Esq., (s.schulten@swtwlaw.com) and Ryan M. Anderson, Esq., (ryan@morrisandandersonlaw.com). aw

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

August 17, 2016

A-14-709851-C Jane Doe, Plaintiff(s)
vs.
Western Property Holdings LLC, Defendant(s)

August 17, 2016 9:00 AM All Pending Motions

HEARD BY: Earley, Kerry **COURTROOM:** RJC Courtroom 16B

COURT CLERK: April Watkins

RECORDER:

REPORTER: Loree Murray

PARTIES

PRESENT: Hartwell, Doreen M. Spears Attorney
 Rusing, Michael J., ESQ Attorney
 Sterling, P. Andrew Attorney

JOURNAL ENTRIES

- PLTFS' MOTION FOR LEAVE TO PROCEED PSEUDONYMOUSLY AND FOR PROTECTIVE ORDER:

Court stated she has reviewed all documents, does not have an issue as to the pleadings filed in Odyssey and as far as the names, they have to be produced in discovery. Mr. Sterling stated "Jane Doe" status was just assumed and is a pure question of the law with respect of there classification. Further, counsel stated he is concerned these young woman's names are out in public. Mr. Hartwell argued he does not believe burden has been met. Further, as to proceeding as "Jane Doe", Mr. Hartwell stated if the Court wants that, the parties can come up with something for the pleadings so the names are not listed. Court stated she does not want discovery hampered and no game playing. Colloquy. COURT ORDERED, motion GRANTED based on the restrictions the Court advised of in open court. Counsel to get together as to the protective order incorporating what was done in the previous protective order. Ms. Hartwell requested to include the Court is in no way restricting disclosure amongst the parties. COURT SO ORDERED.

PLTFS' MOTION TO CORRECT THE REGISTER OF ACTIONS AND SEAL ALL COURT

DOCUMENTS FILED PRIOR TO THE AMENDED COMPLAINT:

Statement by Mr. Sterling. COURT ORDERED, motion GRANTED. Odyssey to read "Jane Doe I" only. No AKA's or KNA's to be listed.

DEFTS' OPPOSITION TO PLTFS' MOTION TO CORRECT REGISTER OF ACTIONS AND SEAL COURT RECORDS AND DEFTS' COUNTERMOTION TO PROHIBIT PLTFS' FROM PROCEEDING UNDER THE PSEUDONYM "JANE DOE DANCERS":

COURT ORDERED, countermotion DENIED.

DEFTS' LA FUENTE INC AND WESTERN PROPERTY HOLDINGS LLC'S MOTION TO COMPEL ARBITRATION AND FOR OTHER MISCELLANEOUS RELIEF:

Court inquired if Pltfs' claims are within the scope of the arbitration policy. Ms. Hartwell stated with regards to wage and hour claims. Further, Ms. Hartwell argued if you want to work at the club, arbitration agreement is entered pursuant to the Federal Arbitration Act that governs which is very broad. Pltfs' alleging they have issues with regards with their employment at the club based on not being paid overtime and not being treated as employees for wages. Colloquy. Additional argument by Ms. Hartwell. Mr. Sterling agreed this is a matter of contract interpretation and argued not an adhesion contract, it was a form prepared by the parties seeking to enforce it. Further, Mr. Sterling argued this is a poorly written contract, unclear and ambiguous. As to paragraph 4, Mr. Sterling stated the rules for arbitration of a covered claim will be AAA Arbitration Employment Rules. Additionally, Mr. Sterling stated rules were selected because they deal with claims by employees against employers and it will not allow this case to be heard under those rules. Mr. Sterling argued all claims are employees bring within the context of the existing employment relationship. Further, no claim can arise under the ADEA unless you are an employee. Court noted document combined independent contractors and employees they had and who they considered at that time. Ms. Hartwell argued in order to work there it is the policy of club to sign arbitration policy and only enforceable if signed. Further, Jane Doe I was already working at the club prior to signing arbitration agreement and argued there is nothing ambiguous with contract. Additionally, Ms. Hartwell argued Federal law trumps State law and if there were inconsistencies between Federal law and Nevada law on an agreement that says Federal law applies then Federal law would trump. Colloquy. Further argument by Ms. Hartwell. Statement by Mr. Sterling. Court inquired was there a meaningful opportunity for the entertainer to agree to the terms and what was going on at time of execution. Further, the Court noted all agree it is an adhesion contract and it was a take it or leave it situation. Ms. Hartwell stated based on agreement itself, states will not be enforceable until signed and a signature shall be required for policy to be applicable. Further, Ms. Hartwell argued Jane Doe I was already working prior to signing contract. If she chose not to read it, that is not procedural impropriety. Additionally, Ms. Hartwell argued entertainers are business owners, everyone not the same in terms of with regards to their education and knowledge. Colloquy. Ms. Hartwell further argued nothing said she was required to execute agreement and after she signed, she continued to perform. Further, Ms. Hartwell argued this does not rise to procedural unconscionability. Mr.

Sterling argued this is a flexible equitable doctrine. Further, Mr. Sterling advised Judge Cory in his order specifically addressed the interplay between the individual facts that are limited to the affidavits and then the general applicability of the unconscionability of this contract in the abstract as a matter of law. Additional argument by Mr. Sterling. Ms. Hartwell argued there was no surprise, document reads arbitration agreement and in Nevada, it is presumed document was read. As to substantive unconscionability, Ms. Hartwell stated all rules and law apply just a different form. If entitled in State Court, they are entitled to in arbitration. Further, if the club decides they no longer want arbitration policy, they can terminate policy and does not prejudice the Pltfs. With regards to the rules that apply, parties can agree to govern their dispute under what ever rules they choose. The parties can agree to resolve whatever potential issues they have however they choose. Additionally, Ms. Hartwell argued the Pltfs' want to be and insist on being independent contractors and do not consider themselves employees, do not want to be employees and the do not feel by signing this document, they waive any type of protection. Mr. Sterling stated AAA Employment Arbitration Laws are very generous to employees and the problem with the designation of the rules is, it speaks to the intent of the parties and is entirely different issue. The scope of this was intended to apply to employees within the employment context and argued it is clear because they chose rules that cannot apply to this case. Additional arguments by counsel. COURT ORDERED, matter CONTINUED to this Court's chamber calendar for decision. Mr. Sterling advised two of the Pltfs' don't want to be named, want to be class members but do not want to be class reps. Colloquy regarding pending motion to dismiss. Mr. Sterling advised he will stipulate to dismiss two Jane Doe's and request to withdraw motion set for October 5, 2016, at this time. COURT SO ORDERED.

9/12/16 DEFTS' LA FUENTE INC AND WESTERN PROPERTY HOLDINGS LLC'S MOTION TO COMPEL ARBITRATION AND FOR OTHER MISCELLANEOUS RELIEF...DECISION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

September 12, 2016

A-14-709851-C Jane Doe, Plaintiff(s)
vs.
Western Property Holdings LLC, Defendant(s)

September 12, 2016 3:00 AM All Pending Motions

HEARD BY: Earley, Kerry **COURTROOM:** Chambers

COURT CLERK: April Watkins

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- DEFTS' LA FUENTE INC AND WESTERN PROPERTY HOLDINGS LLC'S MOTION TO COMPEL ARBITRATION AND FOR OTHER MISCELLANEOUS RELIEF...STATUS CHECK: DECISION

Having reviewed the matter, along with all points and authorities submitted by counsel, as well as oral argument presented August 17, 2016, the court hereby issues its decision on Defendants La Fuente Inc. and Western Property Holdings LLC s Motion to Compel Arbitration and for Other Miscellaneous Relief.

First, the court FINDS that the Arbitration Policy (hereinafter The Policy) implemented by La Fuente, Inc., doing business as Cheetahs Las Vegas, and signed by its dancers applies to the dancers, and that their claims in the instant case are covered under The Policy. The plain language contained in Section 2 of The Policy indicates the broad scope of the potential claims governed by The Policy, as follows:

2. Covered claims include, but are not limited to, claims that arose before and/or after this policy went into effect, arising under the Age Discrimination in Employment Act (ADEA), Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA)[,] the Fair Labor Standards Act (FLSA), 42 U.S.C. 1981, including amendments to all the

foregoing statutes, the Employee Polygraph Protection Acts, Employment Retirement Income Security Act (ERISA), Occupational Health and Safety Act (OSHA), and/or common law regulating employment termination, misappropriation, breach of the duty of loyalty, the law of contract or the law of tort, including, but not limited to, claims for malicious prosecution, intentional/negligent infliction of emotional distress or defamation.

The covered claims thus consist not only of several specific employment-related claims, but also the catchall provision of claims arising under the law of contract or the law of tort. As the Plaintiffs claims arise from a dispute regarding whether their contractual relationship with Cheetahs constitutes that of an employee-employer relationship as opposed to an independent contractor relationship, these claims fall squarely under Section 2's catchall provision. A reading of Section 2 that would exclude the instant claims from arbitration is too narrow a reading and is inconsistent with Nevada's policy of construing arbitration clauses in favor of granting arbitration. Nevada courts encourage arbitration and [will] liberally construe arbitration clauses in favor of granting arbitration. *Tallman v. Eighth Judicial Dist. Ct.*, 131 Nev. Adv. Op. 71, 359 P.3d 113, 119 (2015), citing *State ex rel. Masto*, 125 Nev. at 44, 199 P.3d at 832. Plaintiffs' argument that The Policy was ambiguous or unclear is unpersuasive. Section 16 of the policy specifically refers to dancers and entertainers, so there can be no credible confusion on the part of any dancer that the Policy applied to her.

Second, the court FINDS The Policy is not unconscionable and is enforceable. Plaintiffs' arguments that The Policy is an adhesion contract and thus unconscionable and unenforceable is contrary to Nevada law regarding adhesion contracts in employment cases. See *Kindred v. Second Judicial Dist. Ct.*, 116 Nev. 405, 411, 996 P.2d 903, 907 (2000) (stating "We have never applied the adhesion contract doctrine to employment cases.") However, contracts can be found unconscionable and thus unenforceable. Nevada law requires a showing of both procedural and substantive unconscionability. *D.R. Horton, Inc. v. Green*, 120 Nev. 549, 553-54, 96 P.3d 1159, 1162 (2004).

Procedural unconscionability focuses on such inequalities between the parties as to age, intelligence, and relative bargaining power. Plaintiffs argue The Policy was unilaterally drafted by the Defendants, gave no meaningful opportunity to negotiate, and that Defendants chose the terms of the contract, which gave rise to unequal bargaining power between the parties. These factors however merely describe the nature of an adhesion contract and do not by themselves establish procedural unconscionability. Further, The Policy was a stand-alone document, as opposed to an arbitration clause buried within some larger document. Its heading, ARBITRATION POLICY[,], CHEETAHS was prominently displayed in capitalized, bold print, and unlikely to be overlooked. The Plaintiffs' arguments that they did not or could not understand that they were signing an agreement to arbitrate potential claims against the Defendants is unpersuasive.

As to substantive unconscionability, which focuses on the one-sidedness of contract terms, Plaintiffs argue that they were not given adequate time to review The Policy, that Defendants did not set aside time to answer questions about The Policy, that the Defendants reserved the sole right to terminate or modify the arbitration policy, and that the Plaintiffs felt threatened due to the implication that the dancers must pay their own fees and costs at arbitration. However, Plaintiffs were free to find other

employment rather than agree to be bound by the terms of The Policy. While Plaintiffs may have possessed less bargaining power than Defendants, Plaintiffs have failed to assert facts demonstrating that they were at such a disadvantage that they were essentially forced to accept initial or continued employment with Defendants, subject to The Policy. There is also no evidence presented to indicate that Plaintiffs attempted take the time to thoroughly discuss The Policy with Defendants. Rather, Plaintiffs signed the agreement and posed no relevant questions about The Policy's scope or intent. While the Defendants did reserve the right to terminate or modify The Policy, such action could occur only after providing thirty (30) days notice to the Plaintiffs, wherein Plaintiffs could choose to accept the modifications, leave the employment of the club, or challenge the pending changes. Finally, the implication that the dancers must pay their own fees and costs is belied by the plain language of Section 11: Each party shall bear their own attorney's fees, costs, and filings, except as may be ordered by the arbitrator pursuant the arbitration rules. Plaintiffs cite no authority for the proposition that all prevailing party fee-shifting scenarios must be articulated within an arbitration agreement, and this court does not find that provision so ambiguous as to be unenforceable.

Thus, Defendant's Motion to Compel Arbitration is GRANTED in part and DENIED in part. Counsel for Defendants to prepare the Order, to be approved as to form and content by counsel for the Plaintiffs.

While Defendant's Motion to Compel Arbitration requested disclosure of the names of Plaintiffs identified as Jane Doe Dancers II and IV along with sanctions for the Plaintiff's failure to do so, the court finds this request is MOOT due pursuant to stipulation on this issue by counsel during oral argument.

CLERK'S NOTE: The above minute order has been distributed to: P. Andrew Sterling, Esq., (msterling@rllaz.com), Michael H. Rusing, Esq., (mrusing@rllaz.com) and Doreen Spears Hartwell, Esq., (Doreen@HartwellThalacker.com). aw

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

July 05, 2017

A-14-709851-C	Jane Doe, Plaintiff(s) vs. Western Property Holdings LLC, Defendant(s)
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July 05, 2017	9:00 AM	Motion for Class Certification
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HEARD BY: Becker, Nancy

COURTROOM: RJC Courtroom 16B

COURT CLERK: Shelly Landwehr

RECORDER:

REPORTER: Loree Murray

PARTIES

PRESENT:	CALVERT, LAUREN	Attorney
	Hartwell, Doreen M. Spears	Attorney

JOURNAL ENTRIES

- Ms. Calvert argued regarding dancers who had worked after 2012 who did not sign the agreement with the arbitration clause and whether or not it applied retroactively. Ms. Calvert argued regarding attorney fees stated those fees will be mandated if plaintiff is successful and plaintiff assumes success in all the claims as pled. Further arguments in support of class action certification. Colloquy regarding what evidence plaintiff has that indicates this would come close to the \$10,000.00 amount for district court action.

Ms. Hartwell referenced this Court's prior ruling regarding arbitration regarding plaintiff. Ms. Hartwell referenced the performers who didn't sign the agreement. Ms. Hartwell further argued plaintiff is time-barred and argued plaintiff does not meet the numerosity requirement. Court stated defendant is in control of that information regarding the number of performers. Further arguments. Additionally, Ms. Hartwell argued that whatever plaintiff saw in 2014 cannot be used as evidence. Lastly, Ms. Hartwell argued whether this Court has subject matter jurisdiction.

Following further arguments by Ms. Calvert, COURT stated its findings and ORDERED, motion GRANTED. Counsel to prepare findings of fact.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

August 14, 2017

A-14-709851-C Jane Doe, Plaintiff(s)
vs.
Western Property Holdings LLC, Defendant(s)

**August 14, 2017 3:00 AM Motion to Withdraw as
Counsel**

HEARD BY: Earley, Kerry

COURTROOM: Chambers

COURT CLERK: Kory Schlitz

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- This matter came before the court for Defendants La Fuente and Western Property Holdings s Motion to Withdraw as Counsel of Record, filed by counsel Stephen W. Brown, Esq. on July 13, 2017. Having received no Opposition to the matter and pursuant to EDCR 2.20 and for good cause showing, the Court hereby GRANTS Defendants Motion. Defendants counsel shall prepare the Order in accordance with EDCR 7.21 and EDCR 7.40, notifying the former client of all pending dates and providing the last known address and telephone number of Defendant within the proposed Order. A Status Check is hereby set for September 6, 2017 at 9:00 a.m. for Defendant to obtain new counsel.

CLERK'S NOTE: A copy of the foregoing minute order has been electronically distributed to: Stephen W. Brown, Esq. (swbrown@littler.com); Ryan Anderson, Esq. (ryan@morrisandersonlaw.com); Michael J. Rusing, Esq. (mrusing@rllaz.com); Laura J. Thalacker, Esq. (Laura@hartwellthalacker.com). (8-14-17 ks)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

September 06, 2017

A-14-709851-C Jane Doe, Plaintiff(s)
vs.
Western Property Holdings LLC, Defendant(s)

September 06, 2017 9:00 AM

**Status Check:
Confirmation of Counsel**

HEARD BY: Earley, Kerry

COURTROOM: RJC Courtroom 16B

COURT CLERK: Elizabeth Vargas

RECORDER:

REPORTER: Loree Murray

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- No parties present. COURT ORDERED, matter CONTINUED.

CONTINUED TO: 10/4/17 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

September 27, 2017

A-14-709851-C Jane Doe, Plaintiff(s)
vs.
Western Property Holdings LLC, Defendant(s)

September 27, 2017 9:00 AM Motion to Compel

HEARD BY: Bulla, Bonnie **COURTROOM:** RJC Level 5 Hearing Room

COURT CLERK: Jennifer Lott

RECORDER: Francesca Haak

REPORTER:

PARTIES

PRESENT: CALVERT, LAUREN Attorney

JOURNAL ENTRIES

- No Opposition to Motion; it was served, and Deft filed a Motion to Extend Discovery. Pltf filed a limited Opposition to that Motion. COMMISSIONER RECOMMENDED, motion is GRANTED; supplemental answers to outstanding written discovery due by 10-26-17. Commissioner will consider attorney fees and costs based on compliance for having to bring the Motion; Ms. Calvert to prepare a Memorandum of fees and apply the Brunzell factors. Status Check SET. Commissioner advised Ms. Calvert to let counsel know. Ms. Calvert to prepare the Report and Recommendations, and counsel to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution.

11-7-17 10:00 a.m. Status Check: Compliance / Attorney fees

CLERK'S NOTE: On 10-13-17, a copy of this minute order was placed in the attorney folder(s) of:

Doreen Hartwell - Hartwell Thalacker

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort**COURT MINUTES****September 29, 2017**

A-14-709851-C Jane Doe, Plaintiff(s)
vs.
Western Property Holdings LLC, Defendant(s)

September 29, 2017	9:00 AM	Motion to Extend Discovery	Defendants Motion to Extend Discovery Deadline (First Request)
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HEARD BY: Bulla, Bonnie**COURTROOM:** RJC Level 5 Hearing Room**COURT CLERK:** Jennifer Lott**RECORDER:** Francesca Haak**REPORTER:****PARTIES**

PRESENT:	CALVERT, LAUREN	Attorney
	Hartwell, Doreen M. Spears	Attorney

JOURNAL ENTRIES

- 1-2-18 Trial date; dates in Motion don't work, and dispositive motions must be heard by 11-22-17. Ms. Calvert stated counsel discussed compelling information, but it is not in electronic format. Ms. Hartwell stated documents go back ten years, Defense counsel is working with the client on discovery, but it will take awhile based on document format. No Order for class certification yet per Ms. Hartwell.

COMMISSIONER RECOMMENDED, motion is GRANTED; discovery cutoff EXTENDED to 11-27-17; file dispositive motions no later than 11-22-17. If counsel make a Motion properly before the District Court Judge and the Trial date is continued, counsel can ask the Court for discovery deadlines, and Commissioner's Recommendation will be vacated. Commissioner will try to let the Court know a Stipulation or Motion may be filed. If Commissioner's deadlines are vacated, counsel must send a letter to Commissioner Bulla. Ms. Hartwell to prepare the Report and Recommendations, and Ms. Calvert to approve as to form and content. A proper report must be

timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

October 04, 2017

A-14-709851-C Jane Doe, Plaintiff(s)
vs.
Western Property Holdings LLC, Defendant(s)

**October 04, 2017 9:00 AM Status Check:
Confirmation of Counsel**

HEARD BY: Herndon, Douglas W. **COURTROOM:** RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Court stated an order was signed indicating that Stephen Brown, Esq. has been withdraw, however, other defense counsel is still in place. COURT ORDERED, matter OFF CALENDAR.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

November 07, 2017

A-14-709851-C Jane Doe, Plaintiff(s)
vs.
Western Property Holdings LLC, Defendant(s)

November 07, 2017 10:00 AM Status Check: Compliance

HEARD BY: Bulla, Bonnie **COURTROOM:** RJC Level 5 Hearing Room

COURT CLERK: Jennifer Lott

RECORDER: Francesca Haak

REPORTER:

PARTIES

PRESENT: CALVERT, LAUREN Attorney
Hartwell, Doreen M. Spears Attorney

JOURNAL ENTRIES

- Ms. Calvert revised the 9-27-17 Report and Recommendation, and it should be in transit. Memorandum of Fees was to be submitted. As a gesture of good will Ms. Calvert did not seek fees. Colloquy re: production of documents; 16,000 documents are being reviewed in Atlanta, scanned, and uploaded to a secure website. Ms. Calvert communicated with out of state counsel several times, but Ms. Calvert hasn't received anything. Counsel submitted a Stipulation to push out the Trial date, and counsel agreed to a Settlement Conference with a Judge. Ms. Spears Hartwell stated there was a death in the office, and another employee was involved in the shooting so production has been slow. Ms. Calvert requested Interrogatories supplemented; depositions are done. If counsel cannot agree on deadlines, have a 2,34 conference and contact Commissioner by conference call, submit a 2.35 Stipulation, or bring a Motion to Extend Discovery. No further action today.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

December 13, 2017

A-14-709851-C Jane Doe, Plaintiff(s)
vs.
Western Property Holdings LLC, Defendant(s)

December 13, 2017 11:00 AM Pretrial/Calendar Call

HEARD BY: Earley, Kerry **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Haly Pannullo

RECORDER:

REPORTER: Gina Shrader

PARTIES

PRESENT: CALVERT, LAUREN Attorney

JOURNAL ENTRIES

- Kimball Jones, Esq., present on behalf of Plaintiff.

Ms. Calvert noted a stipulation was submitted and they were told they need firm date put in the stipulation in order to do a settlement conference. Upon Court's inquiry, Mr. Jones requested a Senior Judge and stated Judge Barker previously ruled on a decision in this case. Court noted that shouldn't be a problem; however, if they are assigned to Judge Barker, then they can mention the history. COURT ORDERED, trial dates VACATED and RESET; Status Check regarding Settlement Conference SET. Counsel stated they will let opposing counsel know of new dates set.

03/28/18 9:00 AM STATUS CHECK: SETTLEMENT CONFERENCE

05/09/18 11:00 AM PRETRIAL/CALENDAR CALL

05/21/18 9:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort**COURT MINUTES****January 10, 2018**

A-14-709851-C Jane Doe, Plaintiff(s)
vs.
Western Property Holdings LLC, Defendant(s)

January 10, 2018	9:00 AM	Motion for Sanctions	Plaintiff Jane Doe Dancer III's Motion for Sanctions Against Deft in Accordance with NRCP 37(C), for Spoliations Sanctions and for Attorney's Fees and Costs
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HEARD BY: Bulla, Bonnie**COURTROOM:** RJC Level 5 Hearing Room**COURT CLERK:** Jennifer Lott**RECORDER:** Francesca Haak**REPORTER:****PARTIES**

PRESENT:	CALVERT, LAUREN	Attorney
	Hartwell, Doreen M. Spears	Attorney
	Jones, Kimball	Attorney

JOURNAL ENTRIES

- Commissioner addressed the lack of communication between counsel. Argument by Mr. Jones; discussion re: Exhibit 17 in the initial Motion. Mr. Jones stated one group is in Arbitration, and one group did not sign Arbitration Agreement. Colloquy. Ms. Hartwell indicated the records produced to Pltff's counsel were the state of the records. Commissioner REQUIRED everyone be e-served including out of state counsel. Commissioner encouraged everyone to use the Court e-service system. COMMISSIONER RECOMMENDED, by 1-31-18 all Contracts that out of state counsel has in his possession must be sent to in state counsel and lead counsel. Mr. Jones requested documents on a flash drive. COMMISSIONER SO RECOMMENDED. Mr. Jones will pay for a flash drive. Colloquy re: Interrogatories 10, 11, and 15, but corresponding Requests to Produce are unknown.

COMMISSIONER RECOMMENDED, motion is GRANTED IN PART; alternative relief is provided, and Motion to Compel is GRANTED; 1) no later than 1-31-18, produce Arbitration Agreements currently in Deft's possession, and Deft can charge Pltf with reasonable copy costs under Rule 34(d); 2) full and complete names and last known addresses, hours that Dancers worked, and whatever information shows payment of Dancers from 2010 through 2014. Mr. Jones stated Dancers paid the club.

COMMISSIONER RECOMMENDED, by 1-31-18, provide accounting paid / received for each Dancer; 3) for Dancers 2014 to present, Deft must go through and check receipts and check if Dancers had an Arbitration Agreement or not; Deft is REQUIRED to organize it in a legible fashion, and information is due 1-31-18; supplemental signed and verified Interrogatories and Request to Produce implicated are due by 2-16-18. Commissioner Will Not move the Trial date. COMMISSIONER RECOMMENDED, Motion for Spoliation is DENIED WITHOUT PREJUDICE; Attorney fees and costs for having to bring the Motion for Sanctions are GRANTED (treated as a Motion to Compel), and include Reply, and today's argument. Mr. Jones will prepare a Memorandum of Fees and Costs and apply the Brunzell factors. COMMISSIONER RECOMMENDED, logbook and Arbitration Agreements due by 1-31-18, but everything else due 2-16-18; Status Check SET, and out of state counsel for Both Sides must participate by Court Call.

Mr. Jones / Ms. Calvert to prepare the Report and Recommendations, and Ms. Hartwell to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution.

2-21-18 10:00 a.m. Status Check

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

February 21, 2018

A-14-709851-C Jane Doe, Plaintiff(s)
vs.
Western Property Holdings LLC, Defendant(s)

February 21, 2018 10:00 AM Status Check

HEARD BY: Bulla, Bonnie **COURTROOM:** RJC Level 5 Hearing Room

COURT CLERK: Jennifer Lott

RECORDER: Francesca Haak

REPORTER:

PARTIES

PRESENT: CALVERT, LAUREN Attorney

JOURNAL ENTRIES

- No Court Call. Ms. Calvert stated a continuance was requested as Ms. Spears Hartwell is in Trial. Counsel agreed to 3-2-18. COMMISSIONER RECOMMENDED, matter CONTINUED. Ms. Calvert will advise opposing counsel of the continuance date. Discovery staff contacted Court Call.

3-2-18 9:00 a.m. Status Check

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

February 28, 2018

A-14-709851-C Jane Doe, Plaintiff(s)
vs.
Western Property Holdings LLC, Defendant(s)

February 28, 2018 9:00 AM Settlement Conference

HEARD BY: Saitta, Nancy **COURTROOM:** No Location

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Matter not settled.

Mr. Fuchs stated documents that existed at one point were destroyed in flood damage. Commissioner Directed Mr. Fuchs to put information in a sworn statement with a contemporaneous receipt or confirmation, and find out what Deft has. Colloquy. Mr. Jones discussed stage fees, log book with stage names, and comparing information with Sheriff's cards. Commissioner gave Mr. Fuchs time to find out what Deft has or doesn't have, and supplement by separate Affidavit and explain documents, and explain the flood. Commissioner advised counsel to work out a date for a Rule 34 inspection which can be set with less than 30 days notice on agreement by counsel. Colloquy re: Interrogatories 10, 11, 15 were discussed 1-10-18 (Interrogatory 22 was not in the previous Minute Order). COMMISSIONER RECOMMENDED, supplement Interrogatory 11 for Dancers at the Club and include names and addresses of Dancers. Commissioner will revisit and take a more critical look at the Memorandum of Fees and Costs. COMMISSIONER RECOMMENDED, Status Check SET.

3-30-18 9:00 a.m. Status Check

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort**COURT MINUTES****March 28, 2018**

A-14-709851-C Jane Doe, Plaintiff(s)
 vs.
 Western Property Holdings LLC, Defendant(s)

March 28, 2018 9:00 AM Status Check

HEARD BY: Earley, Kerry **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Louisa Garcia

RECORDER:

REPORTER: Loree Murray

PARTIES

PRESENT: CALVERT, LAUREN Attorney
 Hartwell, Doreen M. Spears Attorney

JOURNAL ENTRIES

- Courts stated it was its understanding there was no settlement. Ms. Hartwell stated they were just hoping to get a deadline on the Motion for Summary Judgment. Court noted there was an issue with the Stipulation and Order; it was vague and it needed specific dates. Counsel advised they do not want to extend discovery; it was closed November 27, 2017 and the only dates they need is for the dispositive motions and trial date. COURT ORDERED, trial date SET; Deft's Motion for Summary Judgment RESET to June 13, 2018 and dispositive motion deadline is May 15, 2018. Counsel anticipate one week for trial based on the Court's calendar.

7/18/18 11:00 AM CALENDAR CALL

7/30/18 9:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort**COURT MINUTES****March 30, 2018**

A-14-709851-C Jane Doe, Plaintiff(s)
 vs.
 Western Property Holdings LLC, Defendant(s)

March 30, 2018 9:00 AM Status Check

HEARD BY: Bulla, Bonnie **COURTROOM:** RJC Level 5 Hearing Room

COURT CLERK: Jennifer Lott

RECORDER: Francesca Haak

REPORTER:

PARTIES

PRESENT: CALVERT, LAUREN Attorney
 Hartwell, Doreen M. Spears Attorney
 Jones, Kimball Attorney

JOURNAL ENTRIES

- Dean Fuchs, Esquire, for Defts.

The case did not resolve, and counsel will move forward to Trial. Ms. Calvert confirmed a site inspection was held, but counsel hasn't received any explanations or responses, or a response to Interrogatory #11. All documents were produced in Deft's possession, and Ms. Hartwell Spears was present at the site inspection; argument by counsel. Mr. Fuchs prepared a Declaration for the client to sign, revisions were made, and Mr. Fuchs expects to file it shortly. Mr. Fuchs is in Florida due to his Mother's health condition, and Mr. Fuchs will take care of Interrogatory #11 when he is back in town. Commissioner advised Plaintiffs' counsel any Motion for Rule 37 sanctions including terminating sanctions would be filed before the Judge. Commissioner will not take further action.

COMMISSIONER RECOMMENDED, supplement Interrogatory 11 and provide a Declaration as soon as possible, and provide any other outstanding discovery discussed in a proper 2.34 conference by 4-18-18 (Rescind 4-13-18). Mr. Jones to prepare the Report and Recommendations, and Ms.

Hartwell Spears to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution. Submit a cover letter if Mr. Jones cannot obtain a signature.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

May 24, 2018

A-14-709851-C Jane Doe, Plaintiff(s)
vs.
Western Property Holdings LLC, Defendant(s)

May 24, 2018 3:00 AM Status Check: Compliance

HEARD BY: Bulla, Bonnie **COURTROOM:** No Location

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The 3-30-18 Report and Recommendation remains outstanding. Mr. Jones was given the responsibility to submit the Report and Recommendation from the 3-30-18 hearing. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a sanction. COMMISSIONER RECOMMENDED, matter CONTINUED to an in chambers status check.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Kimball Jones, Esq. (Morris Anderson); Lauren Calvert, Esq. (Morris Anderson); Doreen M. Spears Hartwell, Esq. (Hartwell Thalacker, Ltd.).

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

August 08, 2018

A-14-709851-C	Jane Doe, Plaintiff(s)
	vs.
	Western Property Holdings LLC, Defendant(s)

August 08, 2018 9:00 AM Motion

HEARD BY: Earley, Kerry **COURTROOM:** RJC Courtroom 12D

COURT CLERK: Nancy Maldonado

RECORDER: Sharon Nichols

REPORTER:

PARTIES

PRESENT:	Hartwell, Doreen M. Spears	Attorney
	Jones, Kimball	Attorney
	Sterling, P. Andrew	Attorney

JOURNAL ENTRIES

- Dean Fuchs, Pro Hac, also present.

Colloquy regarding Terry v Sapphire case. Argument by Mr. Sterling regarding the difference between the statutory wage claim and constitutional wage claim. Argument by Mr. Fuchs. Colloquy regarding Neville vs. Eighth Judicial District Court case. Further arguments by counsel. COURT ORDERED, a briefing schedule as follows: Defendant's Opposition DUE 08/17/18, Opening Brief DUE 09/05/18, Opposition DUE 09/20/18. Colloquy regarding Defense counsel producing legible documents in a timely manner. COURT FURTHER ORDERED, an affidavit by Diana Potrelli be done regarding the number of documents and what was destroyed. COURT ORDERED matters SET.

CONTINUED TO: 08/23/18 9:00 AM

10/04/18 9:00 AM DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

10/04/18 9:00 AM PLAINTIFF'S COUNTERMOTION FOR SUMMARY JUDGMENT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

August 23, 2018

A-14-709851-C	Jane Doe, Plaintiff(s) vs. Western Property Holdings LLC, Defendant(s)
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August 23, 2018 9:00 AM Motion

HEARD BY: Earley, Kerry **COURTROOM:** RJC Courtroom 12D

COURT CLERK: Nancy Maldonado

RECORDER: Sharon Nichols

REPORTER:

PARTIES

PRESENT:	Hartwell, Doreen M. Spears Attorney Jones, Kimball Attorney
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JOURNAL ENTRIES

- Colloquy regarding attorney fees and costs that Commissioner Bulla previously ordered. Court noted there were two reasons the hearing was continued, one of which was to get clarification on the sanctions ordered by Commissioner Bulla. Court advised the second reason the hearing was continued, was to obtain the supplemental affidavit from Diana Pontrelli. Court noted that there was no supplemental affidavit received. Arguments by counsel. COURT ORDERED, motion GRANTED. Court further set the following briefing schedule: Plaintiff's order for attorney fees and costs DUE 09/13/18, Defendant's opposition DUE 09/27/18, Plaintiff's reply DUE 10/02/18. COURT FURTHER ORDERED, matter SET. ADDITIONALLY, COURT ORDERED, calendar call and jury trial VACATED.

10/04/18 9:00 AM HEARING: ORDER FOR DISCOVERY SANCTIONS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

October 04, 2018

A-14-709851-C	Jane Doe, Plaintiff(s)
	vs.
	Western Property Holdings LLC, Defendant(s)

October 04, 2018 9:00 AM All Pending Motions

HEARD BY: Earley, Kerry **COURTROOM:** RJC Courtroom 12D

COURT CLERK: Elizabeth Vargas

RECORDER: Sharon Nichols

REPORTER:

PARTIES

PRESENT:	Hartwell, Doreen M. Spears	Attorney
	Jones, Kimball	Attorney
	Sterling, P. Andrew	Attorney

JOURNAL ENTRIES

- HEARING: ORDER FOR DISCOVERY SANCTIONS...PLAINTIFF'S COUNTERMOTION FOR SUMMARY JUDGMENT... DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Court noted there were new arguments regarding case law and whether statute would apply to the amendment claim. Court noted it reviewed the supplemental briefs, case law, and read the transcript. Court determined the Thomas case was not applicable for determining whether a person is or is not an employee or independent contractor. Ms. Hartwell argued the dancers were independent contractors pursuant to statute. Court noted argument was limited to determining under the statute whether the dancers are presumed to be an independent contractors, and certain criteria must be met. Ms. Hartwell stated reasons why the dancers would be considered independent contractors. Mr. Sterling and Mr. Jones argued regarding house rules; stated the house rules have changed over time. Mr. Jones stated there is unfairness in that all the names of Plaintiffs are not known at this time. Argument by counsel regarding Defendants' Motion for Summary Judgment. Court stated a decision will be issued in a minute order today.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

October 04, 2018

A-14-709851-C Jane Doe, Plaintiff(s)
vs.
Western Property Holdings LLC, Defendant(s)

October 04, 2018 2:00 PM Minute Order

HEARD BY: Earley, Kerry **COURTROOM:** No Location

COURT CLERK: Elizabeth Vargas

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- This matter came before the Court on both Plaintiff Jane Doe and Defendant La Fuente, Inc. s competing Motions for Summary Judgment on Employee/Independent Contractor Status. Having reviewed the matter, including all points, authorities, exhibits, and supplemental briefing, as well as oral argument from counsel, the Court hereby GRANTS Defendant s Motion for Summary Judgment. The Court uses the test set forth within NRS 608.0155 to determine whether the Plaintiff is an independent contractor and finds that NRS 608.0155(a), 608.0155(b), and 608.0155(c)(1) through (3) apply to the Plaintiff. Thus, Defendant is entitled to a judgment as a matter of law, since no genuine issue of material fact remains regarding the issue that Plaintiff is an independent contractor pursuant to NRS 608.0155. Plaintiff s Counter Motion is hereby DENIED. Counsel for Defendant to prepare and submit the order, to be approved as to form and content by Plaintiff s counsel.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Kimball Jones, Esq. (Bighorn Law), Andrew Sterling, Esq. (rusinglopez@rllaz.com) and Doreen Hartwell, Esq. (dhartwell@lionelsawyer.com) // ev 10/4/18

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort**COURT MINUTES****October 24, 2018**

A-14-709851-C Jane Doe, Plaintiff(s)
 vs.
 Western Property Holdings LLC, Defendant(s)

October 24, 2018	9:00 AM	Motion for Fees	COURT CALL - Plaintiffs' Motion for Fees and Costs in Pursuing Spoliated Materials
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HEARD BY: Bulla, Bonnie**COURTROOM:** RJC Level 5 Hearing Room**COURT CLERK:** Jennifer Lott**RECORDER:** Francesca Haak**REPORTER:****PARTIES**

PRESENT:	Fuchs, Dean R.	Attorney
	Hartwell, Doreen M. Spears	Attorney
	Jones, Kimball	Attorney

JOURNAL ENTRIES

- Commissioner stated the Court Granted Summary Judgment. Mr. Jones stated the case will be on Appeal with other similar cases, but the fees and costs are still to be paid, and there is a Hearing before the Judge. Mr. Jones stated fees and costs were Granted as well as a rebuttable presumption. Arguments by counsel. Commissioner DEFERRED the Motion to the District Court Judge, and the Judge will consider it when the Judge decides fees and costs. Mr. Jones stated the District Court Judge told counsel to split fees and costs, and bring fees and costs up until April, already Recommended by Commissioner. Counsel were ordered by the Court to bring it back to the Discovery Commissioner. Arguments by counsel. COMMISSIONER RECOMMENDED, motion is UNDER ADVISEMENT, and Commissioner will issue a Decision.

CLERK'S NOTE: See Minute Order on 11-13-18. jl

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort**COURT MINUTES****November 13, 2018**

A-14-709851-C Jane Doe, Plaintiff(s)
 vs.
 Western Property Holdings LLC, Defendant(s)

November 13, 2018 11:55 AM Minute Order Regarding the 10-24-18 Hearing

HEARD BY: Bulla, Bonnie**COURTROOM:** No Location**COURT CLERK:** Jennifer Lott**RECORDER:****REPORTER:**

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The Discovery Commissioner having taken the above matter under advisement and having reviewed the prior hearing minutes, Report and Recommendations and applicable pleadings, as well as argument of counsel, recommends that the Plaintiffs' Motion for Fees and Costs in Pursuing Spoliated Materials be granted.

As a preliminary matter, the Commissioner takes the opportunity to set out the relevant procedural history. The Plaintiffs filed an initial motion to compel which was heard by the Commissioner on 9/27/17. At this hearing, the Commissioner stated her intention to award attorney fees and costs and Plaintiffs' counsel was instructed to prepare a Memorandum of Fees and Costs, applying the Brunzell factors. At the follow up hearing, Plaintiffs' counsel withdrew her request for fees and costs as a "gesture of good will" and none were awarded.

Subsequently, on 12/7/17, the Plaintiffs filed a Motion for Sanctions against Defendants in accordance with NRCP 37[c] for Spoliation Sanctions and Attorney Fees and Costs for the Defendants' failure to produce discovery as previously ordered. This motion was heard on 1/10/18. At the hearing, the Commissioner denied the Motion for Spoliation Sanctions without Prejudice and granted the Motion for Attorney Fees and Costs. Defendants were given additional time to comply

with the Discovery Commissioner's recommendations regarding document production, and Plaintiffs were instructed to file a Memorandum of Fees and Costs for having to bring the Motion for Sanctions, which the Commissioner essentially treated as a Motion to Compel, and apply the Brunzell factors. Of note, the Report and Recommendations from this hearing was filed on 3/14/18 and then again on 4/5/18.

On January 22, 2018, Plaintiffs filed their Memorandum of Fees and Costs, which included attorney fees in the amount of \$14,110.50 and costs in the amount of \$10.50 (filing fees). Defendants objected to the Plaintiffs' memorandum on 2/8/18. A follow up hearing to address the Plaintiffs' requested fees and costs was scheduled for 2/21/18, but had to be continued to 3/2/18 as Defendants' counsel failed to appear because she was in trial. In the interim, on 2/28/18, the parties engaged in a settlement conference. The case did not settle.

At the 3/2/18 hearing to address the award of fees from the 1/10/18 hearing, the Commissioner declined to award the entire amount of fees requested by Plaintiffs in light of Defendants' compliance and the number of documents that in fact were produced. The Plaintiffs, however, remained concerned that additional documents responsive to their requests remained outstanding. A site inspection of the location of the documents was agreed to by the parties and scheduled. Therefore, the Commissioner continued the matter for further compliance, and agreed to re-review the Memorandum of Fees and Costs submitted by the Plaintiffs.

When the parties returned for the follow up hearing on 3/30/18, it was apparent that there were potential issues involving spoliation. In light of the sanctions requested (case terminating sanctions), the Commissioner deferred any forthcoming Rule 37 sanctions to the District Court Judge, including any award of attorney fees and costs, and declined to take further action at that time.

Subsequently, on or about 10/4/18, the District Court Judge granted Defendants' Motion for Summary Judgment. Following this, the Plaintiffs filed Motions for Fees and Costs related to their unsuccessful efforts to obtain discovery, which Plaintiffs claim based on the site inspection was spoliated. One motion was filed before the District Court Judge and the other before the Discovery Commissioner. It is the understanding of the Commissioner that she is to consider Plaintiff's request for attorney fees and costs up until April 2018 for their efforts to obtain evidence that ultimately did not exist, and the Judge will consider the attorney fees and costs requested after that date. See October 24, 2018 minutes. It should be noted that at this point only monetary sanctions are available as a sanction for Defendants' failure to produce evidence since summary judgment has been granted in favor of the Defendants, thereby precluding imposition of evidentiary-type sanctions.

Based on the foregoing, the Discovery Commissioner reviewed Plaintiffs' Memorandums for Fees and Costs filed on 1/22/18 and 9/9/18. Preliminarily, the Commissioner accepts and adopts the Plaintiffs' analysis of the Brunzell factors and agrees to the Plaintiffs' hourly rates of \$400 an hour for Kimball Jones, \$375 and \$320 an hour for P. Andrew Sterling.

With respect to the requested costs, the Commissioner also accepts Plaintiffs' costs contained within

both memorandums with the exception of parking, which she routinely does not allow. Although the Plaintiffs could have ordered a more cost-effective disc of the hearing instead of a transcript, the Commissioner decided to permit the costs associated with the transcript of the 3/30/18 hearing, as this was the hearing that the sanction part of the motion was deferred to the Judge, and therefore relevant to the resolution of Plaintiffs' request for sanctions. Thus, the Commissioner recommends reimbursing Plaintiffs their costs in the amount of \$178.22.

With respect to the attorney fees, the Commissioner did not include fees associated with preparing Reports and Recommendations (required), the memorandums of fees and costs (required), administrative-type tasks, or entries after 3/31/18, which would be outside of the time frame of Commissioner Bulla's focus. In summary, the Commissioner only allowed for the recovery of attorney fees related to the Motion for Sanctions filed in January 2018, and to the follow up hearings and activities related to the discovery of Defendants' documents.

Based on the foregoing, the Commissioner recommends reimbursing Plaintiffs their attorney fees from the following entries set forth in the 1/22/18 memorandum: 12/9/17; 12/24/17; 1/1/18; 1/4/18; and, 1/10/18. The total of these attorney fees are in the amount of \$4312.50. Further, the Commissioner recommends reimbursing Plaintiffs their attorney fees from the following entries set forth in the 9/19/18 memorandum, which are not duplicative of those recommended above: 1/10/18 (KJ); 1/31/18; 2/19/18 (two entries); 2/20/18 (second entry); 2/21/18 (first entry); 3/2/18 (both entries); 3/6/18 (KJ); 3/6/18; 3/13/18; 3/14/18 (four entries); 3/15/18; and, 3/20/18 (two entries, one LC and one KJ). The total of these attorney fees are in amount of \$7565.

Therefore, the Commissioner recommends that Plaintiffs be awarded costs in the amount of \$178.22, and attorney fees in the amount of \$11,877.50, for a total award of \$12,055.72. The total amount will be due and owing from the Defendants, not their attorneys, to the Plaintiff within thirty (30) days after the Report and Recommendations is signed by the District Court Judge. Mr. Jones is to prepare the Report and Recommendations, to include the analysis of the Brunzell factors set forth in both memorandums, and Defense counsel is to approve as to form and content. The Report is due within 10 days after being served with these minutes.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Jennifer Lott, to all registered parties for Odyssey File & Serve. jl

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

February 01, 2019

A-14-709851-C	Jane Doe, Plaintiff(s) vs. Western Property Holdings LLC, Defendant(s)
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February 01, 2019 3:00 AM Minute Order

HEARD BY: Earley, Kerry **COURTROOM:** Chambers

COURT CLERK: Elizabeth Vargas

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The District Court, having taken the Plaintiff s Motion for Order on Proposed Jury Instructions and Fees and Costs under advisement until the Discovery Commissioner ruled on Plaintiff s Motion for Sanctions and Fees and Costs pertaining to the fees and costs prior to April 2018, renders its ruling pertaining to fees and costs after April 2018 on this matter.

Having reviewed all points, authorities, and exhibits, as well as considering the oral arguments of counsel at the previous hearing and after an analysis of the Brunzell factors, The Court finds that Plaintiff is not entitled to costs incurred for an Airline Ticket for P. Andrew Sterling to attend the hearing totaling \$379.96, Parking totaling \$13.00, and a Taxi totaling \$56.55. The Court further finds, in relation to the attorney s fees requested by The Law Offices of Bighorn Law, that Plaintiff is not entitled to fee entry dated 05/04/2018 and titled "Reviewed and Finalized DCR&R from 03/30/2018" totaling \$160.00 and fee entry dated 06/11/2018 and titled "Prepared Memo of Fees and Costs" totaling \$320.00. The Court further finds, in relation to the attorney s fees requested by the Law Offices of Rusing, Lopez & Lizardi, PLLC, the Plaintiff is not entitled to the full fee entry dated 08/08/2018 totaling 11.8 hours titled "Prepare for and attend hearing;" the Court will allow 3.5 hours for this entry.

Therefore, the Court finds that Plaintiff shall be awarded costs in the amount of \$6.00, and attorney

fees in the amount of \$29,493.50, for a total award of \$29,499.50. The total amount will be due and owing from the Defendants, not their attorneys, to the Plaintiff within thirty (30) days after the Order is served on Defendants. Counsel for Plaintiff to prepare the Order, to include the analysis of the Brunzell factors as set forth in its Motion, to be approved as to form and content by counsel for Defendant. The Order is due within ten (10) days of this Minute Order.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Ryan Andersen, Esq. (ryan@bighornlaw.com) and Doreen Hartwell, Esq. (doreen@hartwellthalacker.com). //ev
2/1/19



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

KIMBALL JONES, ESQ.
716 S. JONES BLVD.
LAS VEGAS, NV 89107

DATE: February 4, 2019
CASE: A-14-709851-C

RE CASE: JANE DOE DANCER, I THROUGH V vs. LA FUENTE, INC.; WESTERN
PROPERTY HOLDINGS, LLC DBA CHEETAHS LAS VEGAS, DBA THE NEW CHEETAHS
GENTLEMAN'S CLUB

NOTICE OF APPEAL FILED: January 31, 2019

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☐ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.**

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFFS' COUNTER-MOTION FOR SUMMARY JUDGMENT; NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

JANE DOE DANCER, I THROUGH V,

Plaintiff(s),

vs.

LA FUENTE, INC.; WESTERN PROPERTY HOLDINGS, LLC DBA CHEETAHS LAS VEGAS, DBA THE NEW CHEETAHS GENTLEMAN'S CLUB,

Defendant(s),

Case No: A-14-709851-C

Dept No: IV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 4 day of February 2019.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk