

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

JANE DOE DANCERS I, III and V,

Appellants,

vs.

LA FUENTE, INC.

Respondents.

No. 78078

Electronically Filed
Feb 27 2019 02:31 p.m.

Elizabeth A. Brown
Clerk of Supreme Court
DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

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

WARNING

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

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

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

1. Judicial District Eighth Department 4
County Clark Judge Kerry Earley
District Ct. Case No. A-14-709851-C

2. Attorney filing this docketing statement:

Attorney Kimball Jones, Esq. / P. Andrew Sterling Telephone (702) 333-1111/(520) 792-4800

Firm Bighorn Law / Rusing Lopez & Lizardi, PLLC

Address 716 South Jones Blvd. / 6363 North Swan Road, Suite 151
Las Vegas, Nevada 89107 / Tucson, Arizona 85718

Client(s) JANE DOE DANCERS, I, III & V, Appellants

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

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

Attorney Doreen Spears Hartwell, Esq. Telephone (702) 850-1074

Firm HARTWELL THALACKER, LTD.

Address 11920 Southern Highlands Parkway, Suite 201
Las Vegas, Nevada 89141

Client(s) LA FUENTE, INC., Respondent

Attorney Dean R. Fuchs, Esq. Telephone (404) 688-6800

Firm SCHULTEN WARD & TURNER, LLP

Address 260 Peachtree Street NW, Suite 2700
Atlanta, Georgia 30303

Client(s) LA FUENTE, INC., Respondent

(List additional counsel on separate sheet if necessary)

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

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

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

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

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

None.

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

None.

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

This 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.

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

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

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

Franklin v. Russell Road Food and Beverage, LLC, Supreme Court No. 74332.

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

Both appeals address summary judgments in favor of Defendants in putative class actions against owners of gentleman's clubs in Clark County, Nevada, for exotic dancers' claims under the Minimum Wage Amendment to the Nevada Constitution and for unjust enrichment.

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

☐ N/A

☒ Yes

☐ No

If not, explain:

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

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

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

☒ A substantial issue of first impression

☒ An issue of public policy

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

☐ A ballot question

If so, explain: This case requires an the interpretation of the Nevada Constitution's definition of "employee" and asks whether a statute can abridge or modify that definition.

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

Was it a bench or jury trial? Not Applicable

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

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from January 4, 2019

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

Not Applicable

16. Date written notice of entry of judgment or order was served January 4, 2019

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

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

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

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

Was service by:

☐ Delivery

☐ Mail

18. Date notice of appeal filed January 31, 2019

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

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

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

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

(a)

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

(b) Explain how each authority provides a basis for appeal from the judgment or order:

An appeal may be taken from a final judgment entered in a civil action or proceeding commenced in the court in which the judgment is rendered. NRAP 3A(b)(1). This Appeal arises from the District Court's Order Granting Defendants' Motion for Summary Judgment on January 4, 2019, and the Denial of Plaintiffs' Counter-Motion for Summary Judgment.

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

(a) Parties:

JANE DOE DANCERS, I through V, individually, and on behalf of Class of similarly situated individuals, Plaintiffs.

LA FUENTE, INC. and WESTERN PROPERTY HOLDINGS, LLC, Defendants.

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

Not Applicable

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

Appellants claims they are entitled to a minimum hourly wage and restitution of fees, fines and tip-outs paid to Defendants under the Minimum Wage Amendment and/or a theory of unjust enrichment, attorney's fees, and punitive damages. Summary judgment was entered in Defendants' favor on these claims on January 4, 2019.

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

Not Applicable

(b) Specify the parties remaining below:
None.

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

☐ Yes

☒ No

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

☐ Yes

☒ No

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

Orders are Independently Appealable under NRAP 3A(b)(1) and (2).

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

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


VERIFICATION

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

JANE DOE DANCERS I, III and V
Name of appellant

2/27/2019
Date

Kimball Jones, Esq.
Name of counsel of record


Signature of counsel of record

Clark County, State of Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 27th day of February, 2019, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

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

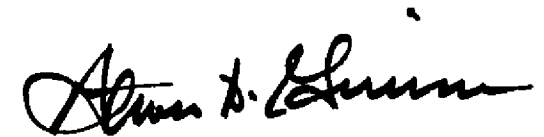
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Settlement Judge

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SCHULTEN WARD & TURNER, LLP
Attorneys for Respondent

Dated this 27th day of February, 2019


Signature



CLERK OF THE COURT

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Attorneys for Plaintiffs

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

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

14 Plaintiffs,

15 v.

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

20 Defendants.

CASE NO.: A-14-709851-C

DEPT.: 4

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

FAILURE TO PAY WAGES;
WAIT-TIME PENALTY; UNJUST
ENRICHMENT; ATTORNEY
FEES; EXEMPLARY &
PUNITIVE DAMAGES

DEMAND FOR JURY TRIAL

ARBITRATION EXEMPTION: CLASS
ACTION

1 **FIRST AMENDED CLASS ACTION COMPLAINT**

2 Plaintiffs JANE DOE DANCER, I through V, on behalf of themselves and a
3 class of all persons similarly situated allege as follows:

4 **JURISDICTION AND VENUE**

5 1. This Court has jurisdiction over the claims alleged herein pursuant to
6 Article XV, Section 16 of the Nevada Constitution (the “Minimum Wage
7 Amendment”), Chapter 608 of the Nevada Revised Statutes (the “Nevada Wage and
8 Hour Law” or “NWHL”), NRS § 14.065, and Rule 23 of the Nevada Rules of Civil
9 Procedure.

10 2. Venue is proper in this Court pursuant to NRS § 13.040 because
11 Defendants are located in Clark County, Nevada, and the acts, obligations, and debts
12 complained of in this Complaint occurred and arose in Clark County, Nevada.

13 **PARTIES AND JURISDICTION**

14 3. Plaintiff JANE DOE DANCER, I, was at all times relevant to this action a
15 resident of Clark County, Nevada and, at the present time and at various other
16 relevant times, has been employed by Defendants as an exotic dancer.

17 4. Plaintiff JANE DOE DANCER, II, was at all times relevant to this action a
18 resident of Clark County, Nevada and, at the present time and at various other
19 relevant times, has been employed by Defendants as an exotic dancer.

20 5. Plaintiff JANE DOE DANCER, III, was at all times relevant to this action
21 a resident of Clark County, Nevada and, at the present time and at various other
22 relevant times, has been employed by Defendants as an exotic dancer.

1 6. Plaintiff JANE DOE DANCER, IV, was at all times relevant to this action
2 a resident of Clark County, Nevada and, during 2014 and at other relevant times, has
3 been employed by Defendants as an exotic dancer.

4 7. Plaintiff JANE DOE DANCER, V, was at all times relevant to this action a
5 resident of Clark County, Nevada and, at all relevant times, has been employed by
6 Defendants as an exotic dancer.

7 8. Defendant LA FUENTE, INC., is an active Nevada Corporation.

8 9. Defendant WESTERN PROPERTY HOLDINGS, LLC, is an active
9 Nevada Limited Liability Company.

10 10. On information and belief, LA FUENTE, INC. and WESTERN
11 PROPERTY HOLDINGS, LLC are owners/operators of CHEETAHS LAS VEGAS
12 (a/k/a THE NEW CHEETAHS GENTLEMAN'S CLUB) ("CHEETAHS" or
13 "DEFENDANTS"). CHEETAHS is a "gentleman's club" and "topless cabaret" located
14 at 2112 Western Avenue, Las Vegas, NV 89102.

15 11. On information and belief, Defendant DOE CLUB OWNER is a resident
16 of Clark County, Nevada, and is owner/operator of CHEETAHS.

17 12. On information and belief, Defendant ROE CLUB OWNER is Nevada
18 business entity and is owner/operator of CHEETAHS.

19 13. On information and belief, Defendant DOE EMPLOYER is a resident of
20 Clark County, Nevada, and employed Plaintiff and the Class at CHEETAHS at all
21 times relevant to this action.
22

14. On information and belief, Defendant ROE EMPLOYER is a Nevada business entity and employed Plaintiff and the Class at CHEETAHS at all times relevant to this action.

15. The true names and capacities of Defendants sued as DOE, I-X, and ROE, I-X, are unknown to Plaintiff at this time, but may include such persons and entities as other owner/operators of CHEETAHS, and/or individual owners, shareholders, officers, directors, members, managing members, agents, principals, employers and/or employees of CHEETAHS, who may be liable to Plaintiff and the Class for the conduct described herein. Plaintiff will amend the Complaint when the true names, identities, and/or capacities of said defendants become known to Plaintiff.

16. Each of the Defendants above is referred to herein collectively as “Defendants” for purposes of this Complaint.

CLASS ACTION ALLEGATIONS

17. Plaintiffs bring this action pursuant to Rule 23 of the Nevada Rules of Civil Procedure on their own behalf and on behalf of a class of all persons similarly situated (the "Class").

18. The Class Period is the four-year period immediately preceding the filing of this Complaint for the First Cause of Action, the two-year period immediately preceding the filing of this Complaint for the Second and Third Causes of Action, and the three-year period immediately preceding the filing of this Complaint for the Fourth Cause of Action, and going forward into the future until entry of judgment in this action.

1 19. The Class consists of: All persons who work or have worked at
2 CHEETAHS as dancers and/or were employed by Defendants in Clark County,
3 Nevada as dancers at any time during the Class Period.

4 20. The Class is so numerous that it is impracticable to join all the Class
5 members before the Court. The exact number of Class members is unknown, but is
6 believed to be in excess of 3000 past and present, part-time and full-time dancers.

7 21. There are questions of law and fact common to the Class that
8 predominate over any questions solely affecting individual Class members including,
9 but not limited to, whether Defendants violated the Nevada Constitution and the
10 NWHL by classifying the Class as “independent contractors” as opposed to
11 employees and by not paying them any wages, and are thereby liable to the class
12 members.

13 22. Plaintiffs’ claims are typical of the claims of the Class. Plaintiffs, like
14 other members of the Class, were misclassified by Defendants as independent
15 contractors and denied their rights to a minimum wage under the Nevada
16 Constitution and the NWHL. Defendants’ misclassification was done pursuant to a
17 common business practice which affected all Class members in a similar way.
18 Plaintiffs challenge Defendants’ business practices under legal theories common to all
19 class members.

20 23. Plaintiffs will fairly and adequately protect the interests of the Class, and
21 there are no conflicts with respect to the claims herein between the Plaintiffs and the
22 Class.

1 24. Plaintiffs have retained competent counsel experienced in class action
2 litigation, and Plaintiffs and their counsel will vigorously pursue the claims of the
3 Class throughout this litigation.

4 25. Individual members of the Class have little interest in controlling the
5 prosecution of separate actions since the amounts of their claims are too small to
6 warrant the expense of prosecuting litigation of this volume and complexity.

7 26. The prosecution of separate actions by individual members of the Class
8 would create a risk of inconsistent or varying judgments or adjudications with respect
9 to individual members of the Class, which would establish incompatible standards of
10 conduct for the Defendants.

11 27. Defendants have acted and refused to act on grounds generally
12 applicable to the Class, thereby making necessary appropriate preliminary and
13 permanent injunctive relief with respect to the Class as a whole.

14 28. A class action is superior to other available methods for the fair and
15 efficient adjudication of this controversy.

16 29. Plaintiffs anticipate no difficulty in the management of this litigation.
17 Defendants' records should permit identification of and notice to the Class.

18 **FACTUAL ALLEGATIONS**

19 30. During the Class Period, Plaintiffs and each member of the Class were or
20 are employed by Defendants as topless dancers, hostesses, entertainers, erotic dancers
21 and/or strippers at CHEETAHS.

22

1 31. Plaintiffs and the Class were or are employees of Defendants within the
2 meaning of the Minimum Wage Amendment and the NWHL, notwithstanding any
3 designation given to their relationship by Defendants.

4 32. Defendants were or are the employer(s) of Plaintiffs and the Class within
5 the meaning of the Minimum Wage Amendment and the NWHL.

6 33. The employment duties of Plaintiffs and the Class include, among other
7 things, dancing and stripping on stage at CHEETAHS at the direction and control of
8 Defendants, and entertaining customers off-stage at the bars of CHEETAHS and on
9 couches and tables surrounding the bar (performing “couch dances” and/or “table
10 dances”) at the direction of Defendants.

11 34. Plaintiffs and the Class were required by Defendants to fulfill the
12 conditions of employment and to follow other rules and regulations prescribed by
13 Defendants, as specified in more detail below, or suffer termination or suspension of
14 employment or imposition of monetary fines and/or other penalties.

15 35. As a “gentlemen’s’ club” and “adult entertainment venue,” Defendants’
16 business success was dependent upon the work performed by the Plaintiffs and the
17 Class, which work was integral to the Defendants’ business operations.

18 36. As Defendants’ employees, Plaintiffs and the Class were and are entitled
19 to the minimum wage guaranteed by the Minimum Wage Amendment and the
20 NWHL.

21 37. At no time were Plaintiffs or the Class paid any wages by the Defendants
22 as required by the Minimum Wage Amendment and the NWHL.

1 38. Defendants required Plaintiffs and the Class, as a condition of
2 employment, regularly to pay fixed sums established by Defendants to Defendants'
3 management and other employees, including but not limited to, the "house mom(s),"
4 the Director/DJ, the manager, the bartenders and security guards/bouncers,
5 including, but not limited to, a fee to work a shift and another fee if Plaintiffs chose
6 not to dance on the stage.

7 39. Defendants controlled various aspects of Plaintiffs' employment at
8 CHEETAHS, including, but not limited to, the length of each shift, Plaintiffs' clothing
9 while at work (such as no street clothes in the presence of customers, the type and
10 style of footwear and lingerie and/or bra and panties), a requirement to remove their
11 tops when dancing on the stage, requirements related to physique and grooming, a
12 prohibition against physical contact with customers, limitations on what Plaintiffs
13 could say to customers, a requirement to dance on stage or pay a fee, and whether
14 Plaintiffs could chew gum or use a cellular telephone.

15 40. Defendants maintained and enforced an employment policy of imposing
16 monetary fines on Plaintiffs and the Class for lateness and/or misconduct.

17 41. Defendants have a statutory duty to inform Plaintiffs and the Class of
18 their legal rights guaranteed by the Minimum Wage Amendment and the NWHL.

19 42. At no time was a copy of an abstract of Nevada Wage and Hour Laws
20 entitled "Rules to be Observed by Employers" posted at CHEETAHS where Plaintiffs
21 and the Class worked.
22

1 43. At no time did Defendants inform Plaintiffs and the Class of their legal
2 rights pursuant to NRS 608.013.

3 44. By failing and refusing to comply with NRS 608.013, Defendants,
4 intentionally concealed from Plaintiffs and the Class that: a) their legal rights were
5 being violated by Defendants' conduct, b) they had and have the right as employees
6 to receive the hourly minimum wage prescribed by Nevada law for each hour
7 worked, and c) they need not pay Defendants and Defendants' other employees for
8 the right to work.

9 45. The damages sought by Plaintiffs and the Class for the claims asserted
10 herein exceed \$10,000 each, in an exact amount to be proven at trial.

11 **FIRST CAUSE OF ACTION**
12 **(Nev. Const. Art. XV, Sec. 16 -Failure to Pay Wages)**

13 46. Plaintiffs incorporate the foregoing allegations as though fully set forth
14 herein.

15 47. Plaintiffs and the Class during the Class Period rendered services to the
16 Defendants as employees as described herein.

17 48. The Minimum Wage Amendment expressly grants Plaintiffs and the
18 Class the right to bring an action against Defendants to enforce its provisions.

19 49. At all times during the Class Period, the Minimum Wage Amendment
20 requires Defendants to pay Plaintiffs and the Class a regular hourly wage.

21 50. Defendants have never paid Plaintiffs and the Class the constitutionally-
22 required minimum wage for hours worked.

1 51. Contrarily, Defendants required as a condition of employment that
2 Plaintiffs and the Class pay Defendants for the privilege of being employed, as
3 described herein.

4 52. There remains due, owing and unpaid by Defendants to Plaintiffs and
5 each member of the Class a sum, to be proven at trial, representing unpaid back
6 wages at no less than the rate specified in the Minimum Wage Amendment.

7 53. Defendants have failed and refused, and continue to fail and refuse, to
8 acknowledge the employee status of Plaintiffs and the Class and to pay all back wages
9 earned and unpaid.

10 54. Defendants were aware that Plaintiffs and the Class members were
11 entitled to a minimum wage guaranteed by the Minimum Wage Amendment.

12 55. Defendants' misclassification of Plaintiffs and the Class members as
13 "independent contractors" was willful and not the result of mistake or inadvertence.

14 56. Defendants intentionally misclassified Plaintiffs and the Class members
15 as independent contractors and improperly withheld payment of minimum wages to
16 them and disregarded state law so as to increase their profits.

17 57. Defendants' conduct described herein constitutes oppression, fraud
18 and/or malice and entitles Plaintiffs and the Class to exemplary and punitive
19 damages in an amount to be determined at trial.

20 58. Plaintiffs and the Class are entitled to an award of reasonable attorney
21 fees and costs upon successful prosecution of this case pursuant to the Minimum
22 Wage Amendment and NRS 608.140.

1 **WHEREFORE**, Plaintiffs and the Class pray for judgment on this cause of
2 action against Defendants as follows:

- 3 a. for back wages due Plaintiffs and the Class for work earned and unpaid,
4 in an amount to be proven at trial;
- 5 b. for pre- and post-judgment interest due on such sums at the highest rate
6 permitted by law;
- 7 c. for their attorney fees and costs;
- 8 d. for exemplary and punitive damages; and
- 9 e. for such other and further relief as may be fair and equitable under the
10 circumstances.

11 **SECOND CAUSE OF ACTION**
12 **(NRS 608.250 - Failure to Pay Wages)**

13 59. Plaintiffs incorporate the foregoing allegations as though fully set forth
14 herein.

15 60. Plaintiffs and the Class during the Class Period rendered services to the
16 Defendants as employees as described herein.

17 61. At all times during the Class Period, NRS 608.250 requires Defendants to
18 pay Plaintiffs and the Class a regular hourly wage.

19 62. Defendants have never paid Plaintiffs and the Class the required
20 statutory minimum wage for hours worked.

21

22

1 63. Contrarily, Defendants required as a condition of employment that
2 Plaintiffs and the Class pay Defendants for the privilege of being employed, as
3 described herein.

4 64. There remains due, owing and unpaid by Defendants to Plaintiffs and
5 each member of the Class a sum, to be proven at trial, representing unpaid back
6 wages at no less than the statutory rate.

7 65. Defendants have failed and refused, and continue to fail and refuse to
8 acknowledge the employee status of Plaintiffs and the Class and to pay all back wages
9 earned and unpaid.

10 66. Defendants were aware that Plaintiffs and the Class members were
11 entitled to a minimum wage guaranteed by Nevada's Minimum Wage Law.

12 67. Defendants' misclassification of Plaintiffs and the Class members as
13 "independent contractors" was willful and not the result of mistake or inadvertence.

14 68. Defendants intentionally misclassified Plaintiffs and the Class members
15 as independent contractors and improperly withheld payment of minimum wages to
16 them and disregarded state law so as to increase their profits.

17 69. Defendants' conduct described herein constitutes oppression, fraud
18 and/or malice and entitles Plaintiffs and the Class to exemplary and punitive
19 damages in an amount to be determined at trial.

20 70. Plaintiffs and the Class are entitled to an award of reasonable attorney
21 fees and costs upon successful prosecution of this case pursuant to the Minimum
22 Wage Amendment and NRS 608.140.

1 **WHEREFORE**, Plaintiffs and the Class pray for judgment on this cause of
2 action against Defendants as follows:

- 3 a. for back wages due Plaintiffs and the Class for work earned and unpaid,
4 in an amount to be proven at trial;
- 5 b. for pre- and post-judgment interest due on such sums at the highest rate
6 permitted by law;
- 7 c. for their attorney fees and costs;
- 8 d. for exemplary and punitive damages; and
- 9 e. for such other and further relief as may be fair and equitable under the
10 circumstances.

11 **THIRD CAUSE OF ACTION**
12 **(NRS 608.040-050 - Wait-Time Penalties)**

13 71. Plaintiffs incorporate the foregoing allegations as though fully set forth
14 herein.

15 72. Plaintiffs and other members of the Class were terminated from and/or
16 resigned employment with Defendants.

17 73. Upon such termination and resignation, Defendants were obligated,
18 pursuant to NRS 608.020-050, to pay all wages due and then owing, including wages
19 due and owing as described herein which Defendants failed to pay during the course
20 of employment.

21 74. Defendants failed to pay Plaintiffs and the Class who were terminated
22 and/or resigned employment within the time periods required by NRS 608.020-50.

1 75. Pursuant to NRS 608.040-050, the wages or compensation due and owing
2 Plaintiffs and the Class whose employment so ended, continues at the same rate from
3 the day she resigned, quit or was discharged until paid or for 30 days, whichever is
4 less.

5 76. Plaintiffs and the Class are entitled to a lien to secure the payment of the
6 penalty amount to which they were entitled pursuant to NRS 608.050.

7 77. Defendants have failed and refused, and continue to fail and refuse, to
8 acknowledge the employee status of Plaintiffs and the Class and to pay all back wages
9 earned and unpaid.

10 78. Defendants were aware that Plaintiffs and the Class members were
11 entitled to a minimum wage guaranteed by Nevada's Minimum Wage Law.

12 79. Defendants' misclassification of Plaintiffs and the Class members as
13 "independent contractors" was willful and not the result of mistake or inadvertence.

14 80. Defendants intentionally misclassified Plaintiffs and the Class members
15 as independent contractors and improperly withheld payment of minimum wages to
16 them and disregarded state law so as to increase their profits.

17 81. Defendants' conduct described herein constitutes oppression, fraud
18 and/or malice and entitles Plaintiffs and the Class to exemplary and punitive
19 damages in an amount to be determined at trial.

20 82. Plaintiffs and the Class are entitled to an award of reasonable attorney
21 fees and costs upon successful prosecution of this case pursuant to the Minimum
22 Wage Amendment and NRS 608.140.

1 **WHEREFORE**, Plaintiffs and the Class pray for judgment on this cause of
2 action against Defendants as follows:

- 3 a. for payment of a penalty to Plaintiffs and the Class pursuant to 608.040
4 and 608.050, in an amount to be proven at trial;
- 5 b. for an establishment of a lien pursuant to NRS 608.050 securing the
6 payment of such penalty;
- 7 c. for pre- and post-judgment interest due on such sums at the highest
8 rate permitted by law;
- 9 d. for their attorney fees and costs;
- 10 e. for exemplary and punitive damages; and
- 11 f. for such other and further relief as may be fair and equitable under the
12 circumstances.

13 **FOURTH CAUSE OF ACTION**
14 **(Unjust Enrichment)**

15 83. Plaintiffs incorporate the foregoing allegations as though fully set forth
16 herein.

17 84. Defendants have been unjustly enriched, and Plaintiffs and the Class
18 have been unjustly impoverished as a result of, among other things: a) Defendants'
19 failure to pay any wages to Plaintiffs and the Class; b) Defendants' wrongful
20 conversion, confiscation and taking of money from Plaintiffs and the Class as a
21 condition of employment; and c) improper imposition and taking of fees, charges,
22 fines, penalties from Plaintiffs and the Class as condition of employment.

1 85. Defendants' enrichment occurred under circumstances in which it would
2 be unjust for them to retain the benefits received without compensating Plaintiffs and
3 the Class.

4 **WHEREFORE**, Plaintiffs and the Class pray for judgment on the Fifth Cause of
5 Action against Defendants as follows:

- 6 a. for restitution of all funds improperly and unlawfully taken from
7 Plaintiffs and the Class in an amount to be proven at trial;
- 8 b. for an award equal to, and representing a disgorgement of, all profits
9 earned by Defendants from the uncompensated for labor and benefits
10 provided by Plaintiffs and the Class;
- 11 c. for an award equal to all costs and expenses for uniforms, costumes and
12 accessories and maintenance of same as described herein incurred by
13 Plaintiffs and the Class; and
- 14 d. for such other relief as would be fair and equitable under the
15 circumstances.

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CLASS ACTION PRAYER

Plaintiffs further request that the Court certify this action as a Class Action pursuant to N.R.C.P. 23 and designate Plaintiffs as Class Representatives and their counsel as Class Counsel for all claims stated herein

Dated: May 1, 2015.

MORRIS ANDERSON LAW

By: /s/ Ryan M. Anderson
Ryan M. Anderson
Jacqueline Bretell
MORRIS // ANDERSON
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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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1 Judgment and Denying Plaintiffs' Countermotion for Summary Judgment was entered on January
2 4, 2019.

3
4 Hartwell Thalacker, Ltd.

5
6 /s/ Doreen Spears Hartwell
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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:**

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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.

Plaintiff,

vs.

La Fuente, Inc. et al.

Defendants.

Case No.: A-14-709851-C

Dept. No. IV

**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*
14 *v. Nevada Yellow Cab Corp.*, 327 P.3d 518, 521, 130 Nev. Adv. Op. 52, *4 (Nev. 2014).

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,
47-48, (MSJ142-43, MSJ171-72); Depo. Ex. 4 (MSJ258); see also Diana Pontrelli Deposition

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

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

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

Therefore , for good cause shown,

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

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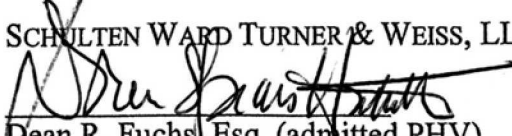
1 IT IS FURTHER ORDERED that Plaintiff's Countermotion for Summary Judgment is
2 denied.

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

4
5 
DISTRICT COURT JUDGE

6 Submitted by:

7 SCHULTEN WARD TURNER & WEISS, LLP

8 
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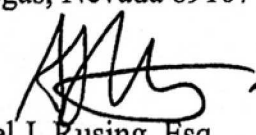
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16 Approved as to form/content.

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