

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

JANE DOE DANCER, I; JANE DOE  
DANCER, II; JANE DOE DANCER, III;  
and JANE DOE DANCER, V,  
individually, and on behalf of Class of  
similarly situated individuals,

Appellants,

vs.

LA FUENTE, INC., an active Nevada  
Corporation,

Respondent.

CASE NO.: 78078

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District Court Case No. 10-2020-08506  
Elizabeth A. Brown  
Clerk of Supreme Court  
Appeal from the Eighth Judicial District  
Court, Clark County, Nevada

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**APPELLANTS' APPENDIX  
VOLUME IV**

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KIMBALL JONES, ESQ.

Nevada Bar No.: 12982

**BIGHORN LAW**

716 S. Jones Blvd.

Las Vegas, Nevada 89107

Telephone: (702) 333-1111

Email: [kimball@bighornlaw.com](mailto:kimball@bighornlaw.com)

MICHAEL J. RUSING, ESQ.

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

**RUSING LOPEZ & LIZARDI, P.L.L.C.**

6363 North Swan Road, Suite 151

Tucson, Arizona 85718

Telephone: (520) 792-4800

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

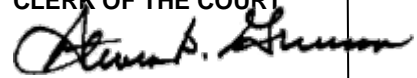
*Attorneys for Appellants*

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**OPPM**

KIMBALL JONES, ESQ.

Nevada Bar No.: 12982

LAUREN CALVERT, ESQ.

Nevada Bar No.: 10534

**BIGHORN LAW**

716 S. Jones Blvd.

Las Vegas, Nevada 89107

Phone: (702) 333-1111

Email: [Lauren@BighornLaw.com](mailto:Lauren@BighornLaw.com)

MICHAEL J. RUSING, ESQ.

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

P. ANDREW STERLING, ESQ.

Nevada Bar No.: 13769

**RUSING LOPEZ & LIZARDI, PLLC**

6363 North Swan Road, Suite 151

Tucson, Arizona 85718

Phone: (520) 792-4800

Fax: (520) 529-4262

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

*Attorneys for Plaintiffs*

**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, and ROE EMPLOYER, I-  
X,

Defendants.

CASE NO.: A-14-709851-C  
DEPT. NO.: IV

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

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1                   **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY**  
2                   **JUDGMENT**

3                   Plaintiff Jane Doe Dancer III, individually and on behalf of all persons similarly situated, by  
4 and through her attorneys of record, hereby submits this Errata to her Motion for Sanctions Against  
5 Defendant in Accordance with NRCP 37(C), for Spoliation Sanctions, and for Attorney's Fees and  
6 Costs.

7                   This Amended Motion is made and based on the following Points and Authorities, all pleadings  
8 and documents on file with the Court, and any oral argument entertained at the hearing of this matter.  
9

10                  DATED this 14th day of May, 2018.

11                                   **BIGHORN LAW**

12                                   By: /s/ Lauren Calvert

13                                   **KIMBALL JONES, ESQ.**

14                                   Nevada Bar No.: 12982

15                                   **LAUREN CALVERT, ESQ.**

16                                   Nevada Bar No.: 10534

17                                   716 S. Jones Blvd.

18                                   Las Vegas, Nevada 89107

19                                   **MICHAEL J. RUSING, ESQ.**

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

21                                   **P. ANDREW STERLING, ESQ.**

22                                   Nevada Bar No.: 13769

23                                   **RUSING LOPEZ & LIZARDI, PLLC**

24                                   6363 North Swan Road, Suite 151

25                                   Tucson, Arizona 85718

26                                   *Attorneys for Plaintiffs*  
27  
28

## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

Defendants (“the Club”) owns and operates Cheetahs, a Las Vegas strip club. Notwithstanding clear precedent on the matter, the Club willfully has failed to acknowledge its dancers’ employee status and, consequently, has not paid them any wages. The Club also unlawfully has required its dancers to pay substantial fees as a condition of employment. In this way, the Club has benefitted for years from labor that not only is free, but that pays to work. The Club in support of this arrangement argues its dancers are merely “tenants” – the notion being that dancers pay the Club a “house fee” each day to rent space in the club to conduct their own “independent businesses” with their “clients” (the club patrons), though the dancers are subject always to the oversight of Club managers, who can fire a dancer (“terminate her lease”) at any time for any reason.

The Club’s landlord-tenant model is incredibly lucrative, but it is also illegal and exploitative. As the Club knew or should have known, exotic dancers cannot be licensed in Las Vegas to operate as independent erotic dance businesses. The only businesses allowed to provide erotic dancing in Las Vegas are “erotic dance establishments” such as Cheetahs. *See* Las Vegas Municipal Code Ch. 6.35.030 (defining “erotic dance establishment” as “a fixed place of business which emphasizes and seeks, through one or more dancers entertainers [sic], to arouse or excite the patrons’ sexual desires.”). Efforts by other strip clubs to hide behind this landlord-tenant fiction rightly have been rejected by courts as nothing more than a flimsy pretext to avoid employer obligations and to require employees to pay for the privilege of working. *See, e.g., Reich v. Circle C. Investments, Inc.*, 998 F.2d 324, 329 (5th Cir. 1993)

1 (“We reject the defendants’ creative argument that the dancers are mere tenants who rent  
2 stages, lights, dressing rooms, and music from [the club]”) (cited with approval in *Terry v.*  
3 *Sapphire Gentlemen's Club*, 130 Nev. Adv. Op. 87, 336 P.3d 951, 959 (2014)).

4  
5 The undisputed facts here show that the Club’s dancers are not properly classified as  
6 tenants or independent businesses. Rather, as the Nevada Supreme Court and numerous  
7 federal courts around the country have held, exotic dancers are employees of the strip clubs  
8 in which they work as a matter of law. Accordingly, this Honorable Court should Grant  
9 Plaintiffs’ Summary Judgment Motion on Liability and Deny Defendants’ Countermotion,  
10 leaving for Trial only the issue of damages.

## 11 **II. RESPONSE TO DEFENDANTS’ STATEMENT OF FACTS (“DSOF”)**

12  
13 Plaintiffs dispute the following purportedly material facts relied on by the Club in its  
14 summary judgment motion:  
15

16 4. At all relevant times, Cheetahs dancers were required by law to have a business  
17 license issued by the Nevada Secretary of State to perform as an exotic dancer. -- *This is a*  
18 *disputed legal argument, not a statement of fact. Cheetahs has cited no law requiring dancers*  
19 *to obtain a state business license.*

20 17. Dancers at Cheetahs are not assigned to work any particular shift. -- *Disputed. The*  
21 *Club controlled which shifts dancers could work. See Plaintiffs’ Statement of Facts*  
22 *(“PSOF”) ¶¶13-14. The Club also would prohibit dancers from working particular shifts as*  
23 *a disciplinary measure. PSOF ¶¶23-24, 27-29.*

24 18. At Cheetahs, entertainers can work as long as they wish. Entertainers had the  
25 discretion to arrive and leave Cheetahs when they wished. If entertainers work at least six  
26 (6) consecutive hours at Cheetahs, they get a discount on their house fee. -- *Disputed. The*  
27 *Dancer Performance Lease the Club drafted and required all dancers to sign specifies a*  
28 *minimum shift requirement of six hours, PSOF ¶¶30, 31a-31b, and Cheetahs has disciplined*  
*and fired dancers for failing to work a full six-hour shift. PSOF ¶¶21-22, 24.*

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1 22. Cheetahs dancers are free to consume alcohol and smoke cigarettes while they work  
2 at Cheetahs. -- *Disputed. Cheetahs' rules prohibit dancers from smoking on the floor. PSOF*  
3 ¶33.

4 25. Cheetahs dancers are free to perform on stage, on the floor of the club, or in its VIP  
5 area. Dancers are not required to perform on stage or in the VIP area if they do not wish to  
6 do so. -- *Disputed. Dancers can only perform on stage when called up by the Club's DJ.*  
7 *PSOF ¶19. Dancers cannot use VIP areas unless granted access by Club staff and provided*  
8 *that the customer agrees to purchase a certain quantity of alcohol from the Club. PSOF ¶¶7-*  
9 *8.*

10 26. Cheetahs dancers can determine how much to charge Cheetahs' customers for private  
11 dances. -- *Disputed. The Club sets dance fees and advertised these prices on signs throughout*  
12 *the club. PSOF ¶¶9-11, 30, 31c.*

13 29. Cheetahs dancers can perform as they please. -- *Disputed. The Lease requires dancers*  
14 *to perform during all hours of her shift. PSOF ¶31b. The Club also published and enforced*  
15 *a list of rules dancers had to obey while performing PSOF ¶¶31d, 32-35, 38-39. Dancers*  
16 *were required by the Club to remove their tops while dancing on stage. PSOF ¶37. And the*  
17 *Club required dancers to talk to customers and sit with them for at least one song before*  
18 *asking them for a dance. PSOF ¶36.*

19 30. Cheetahs dancers are free to opt-out of the club's stage rotation. -- *Disputed. Dancers*  
20 *could only opt-out of stage rotation by paying a fee. PSOF ¶¶17, 19.*

21 31. Cheetahs dancers are free to sit and mingle with the club's customers. -- *Disputed.*  
22 *The Lease requires dancers to perform during all hours of her shift. PSOF ¶31b. The Club*  
23 *did not allow dancers who were not on stage to approach customers sitting at a stage, and*  
24 *required dancers to talk to customers and sit with them for at least one song before asking*  
25 *them for a dance. PSOF ¶¶35-36.*

### 26 **III. PLAINTIFF'S CONTROVERTING AND SEPARATE STATEMENT OF** 27 **FACTS ("PSOF")**

28 1. The Club controls the club's layout, décor, and ambiance. Dancers have no control over the  
club layout, décor, and ambiance. *See Ex. 1 (Deposition of Diana Pontrelli) at 20; Ex. 2 (La Fuente*  
Response to Second Set of Requests for Admissions at Response to Request No. 13).

2. The Club controls Cheetahs hours of operation and sets the amount of cover charges charged  
to Club Patrons. Dancers have no control over Cheetahs hours of operation and cover charge  
amounts. *See Ex. 2 at Response to Request Nos. 10 and 11; and Ex. 1 at 22- 23.*

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1 3. The Club does all the advertising for Cheetahs, including offering special promotions and  
2 creating content on Cheetahs' webpage. Dancers have no control advertising for Cheetahs and do  
3 not create content on Cheetahs' webpage. *See* Ex. 1 at 20; and Ex. 2 at Response to Request Nos. 8,  
9, and 12.

4 4. The Club obtains and pays for all of the licensing and fees necessary to operate the Club.  
5 Dancers do not pay any amount for the licensing and fees necessary to operate the Club. *See* Ex. 1  
6 at 21.

7 5. The Club hires and pays a DJ and all other employees necessary to run the club. Dancers  
8 have nothing to do with hiring or paying any club employees. *See* Ex. 1 at 21, 25; and Ex. 2 at  
9 Response to Request Nos. 15 and 16.

10 6. The Club pays for all repairs, maintenance, rent and utilities necessary to operate the Club.  
11 Dancers do not pay any amount for repairs, maintenance, rent and utilities necessary to operate the  
12 Club. *See* Ex. 1 at 21-22; and Ex. 2 at Response to Request No. 4.

13 7. The Club sets up, maintains, and controls access to VIP rooms. *See* Ex. 1 at 25 and 101; and  
14 Ex. 3 (*Pontrelli Deposition Ex. 6*) at page 12.

15 8. The Club set pricing for VIP rooms, requires a 2-drink minimum to use the VIP room, and  
16 requires all fees to be paid for in advance. *See* Ex. 1 at 101; and Ex. 3 (*Pontrelli Deposition Ex. 6*)  
17 at page 12.

18 9. The Club set pricing for floor dances. *See* Ex. 1 at 62-63; and Ex. 3 at pp. 12-13.

19 10. The Club sets dance pricing and advertises the pricing on signs throughout the club. *See* Ex.  
20 1 at 62.

21 11. The Club advertised 2 for \$20 lap dance promotions and expects dancers to honor the deal.  
22 *See* Ex. 1 at 69-70.

23 12. Exotic dancers are integral to Cheetah's business model. *See* Ex. 1 at 33; and Defendant La  
24 Fuente, Inc.'s Answer to Plaintiffs' First Amended Class Action Complaint at ¶35.

25 13. The Club established and maintained three shifts for its dancers: a "day shift" from 5:00 a.m.  
26 to 1:00 p.m., a "swing shift" from 1:00 p.m. to 9:00 p.m., and a "graveyard shift" from 9:00 p.m. to  
27 5:00 a.m. *See* Ex. 1 at 25-26.

28 14. The Club controlled which shifts dancers could work. *See* Ex. 1 at 88, 131; and Ex. 6 [*La*  
*Fuente House Mom Log Book (2015-2017) produced by Defendant La Fuente, Inc. in response to*  
*Plaintiffs' Third Set of Requests for Production, Request No. 18*] at LF019917; LF019944;  
LF020084.

15. The Club does not require prospective dancers to audition in order to work at the club;  
managers simply perform a visual inspection and brief interview "to get a vibe where they're coming  
from." *See* Ex. 1 at 29-30.

- 1 16. The Club does not require Dancers to have any prior experience or dance training in order to  
2 work at the club. *See* Ex. 1 at 31.
- 3 17. The Club requires dancers to pay a fee to work each shift and another fee if they do not want  
4 to dance on stage. *See* Ex. 1 at 97, 118; Ex. 3 at 5, 11; and Defendant La Fuente, Inc.’s Answer to  
5 Plaintiffs’ First Amended Class Action Complaint at ¶38.
- 6 18. The Club requires dancers who work two consecutive shifts to pay a \$25 “stay over” fee. *See*  
7 Ex. 1 at 93-94; and Ex. 3 at 5.
- 8 19. The Club requires dancers to check in with the DJ at the beginning of a shift to get on the  
9 stage rotation list unless they paid an additional “off stage” fee. *See* Ex. 3 at 5, 11; and Ex. 1 at 97,  
10 118.
- 11 20. The Club’s managers could terminate or suspend dancers for any reason. *See* Ex. 1 at 116;  
12 and Ex. 6 at LF019913, LF019915, LF019962, LF020026, LF020060.
- 13 21. On March 29, 2015 the Club suspended a dancer because she “refused to finish her 6 hrs”  
14 shift and allegedly exhibited a “bad attitude.” *See* Ex. 6 at LF019904.
- 15 22. On May 18, 2015, the Club terminated a dancer for “leaving early without any explanation”  
16 and for getting into a dispute with a customer over payment for dances. *See* Ex. 6 at LF019915.
- 17 23. On May 25, 2015, the Club informed a dancer that she could not work any afternoon shifts  
18 on Sunday, Monday, or Tuesday because of an alleged “negative attitude.” *See* Ex. 6 at LF019917.
- 19 24. On August 30, 2015, the Club informed a dancer that she could not work on Sunday,  
20 Monday, or Tuesday because she asked to leave early on several occasions. *See* Ex. 6 at LF019944.
- 21 25. On November 14, 2015, the Club terminated a dancer because of her alleged “poor, rude,  
22 nasty attitude towards Cheetahs staff.” *See* Ex. 6 at LF019962.
- 23 26. On August 16, 2016, the Club terminated a dancer for being “very disrepectable [sic] to  
24 mgr.” *See* Ex. 6 at LF020026.
- 25 27. On August 16, 2016, the Club suspended a dancer from all shifts “until she speaks to a mgr  
26 to clarify a very vicious rumor.” *See* Ex. 6 at LF020026.
- 27 28. On December 18, 2016, the Club terminated a dancer from “all shifts” allegedly for being  
28 “disrespectful to house mom.” *See* Ex. 6 at LF020060.
- 29 29. On February 21, 2017, the Club prohibited a dancer from working past 1:00 p.m. because of  
30 “her attitude + being disrepectable [sic] towards house mom.” *See* Ex. 6 at LF020084.
- 31 30. The Club requires all dancers to sign a “Dancer Performance Lease” (the “Lease”) in order  
to work at the Club. *See* Ex. 1 at 39-40; and Ex. 5 (*Dancer Performance Lease*).

1 31. The Lease contains the following provisions:

2 a. Each lease date “shall consist of a minimum of 6 consecutive hours (one  
3 “set”) during which PERFORMER shall provide entertainment consistent with this LEASE.”  
4 See Ex. 5 at ¶3.

5 b. “PERFORMER agrees to: Perform nude and/or semi-nude entertainment at  
6 the PREMISE for the general public during all hours of each set for which she has LEASED  
7 the PREMISES.” See Exhibit 5 at ¶6.

8 c. OWNER shall establish a fixed fee for the price of table, taxi and couch  
9 dances performed on the PREMISES ... and PERFORMER agrees not to charge a customer  
10 more than the fixed price for any such dance performance” *Id.*

11 d. OWNER shall have the right to impose such rules and regulations upon the  
12 use of the PREMISES by PERFORMER as OWNER, in its sole and absolute discretion,  
13 deems necessary and appropriate” *Id.*

14 32. The club requires dancers to sign in on a sheet, at the top of which is printed a list of rules.  
15 See Ex. 1 at 76-77.

16 33. The Club published and enforced the following rules: no street clothes, wear high heels (at  
17 least 3”), check out with the manager and DJ, do not refuse a drink or shooter from a customer,  
18 change costumes at least three times during each shift, no purse or cell phone on the floor, no  
19 smoking or chewing gum on the floor. See Ex. 1 at 75-82; Ex. 3 at pp. 11-12, 14; Ex. 4 (*Pontrelli*  
20 *Deposition* Ex. 5); and Defendant La Fuente, Inc.’s Answer to Plaintiffs’ First Amended Class  
21 Action Complaint at ¶39.

22 34. The Club does not allow dancers to run tabs on dances. See Ex. 3 at 13-14.

23 35. The Club does not allow dancers who were not on stage to approach customers sitting at a  
24 stage. See Ex. 1 at 101-102; and Ex. 3 at 14.

25 36. The Club requires dancers to talk to customers and sit with them for at least one song before  
26 asking them for a dance. See Ex. 3 at 14.

27 37. The Club requires Dancers dancing on stage to have removed their tops after the second  
28 song. See Defendant La Fuente, Inc.’s Answer to Plaintiffs’ First Amended Class Action Complaint  
at ¶39; and Ex. 1 at 109.

38. The Club did not allow Dancers’ spouses or significant others in the club while they were  
working. See Ex. 1 at 102; and Ex. 3 at 14.

39. The Club did not allow anyone who may have given a Dancer a ride to the club to enter the  
club during that dancer’s shift. See Ex. 1 at 102-103; and Ex. 3 at 14.

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1 **IV. ARGUMENT**

2 **A. The Club's dancers are its employees as a matter of law under the Minimum**  
3 **Wage Amendment to the Nevada Constitution.**

4 **1. The MWA's definition of employee incorporates the Fair Labor**  
5 **Standards Act's economic realities test.**

6 The Minimum Wage Amendment, which guarantees all employees the right to a  
7 minimum wage and creates an express private cause of action to enforce its provisions, was  
8 proposed by initiative petition and overwhelmingly approved and ratified by Nevada voters  
9 in 2004 and 2006. *See Nev. Const. art. 15, § 16.* The MWA defines an employee as:

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

15 *Id.* The Club oddly suggests this Court should interpret this constitutional provision by  
16 “look[ing] to the most analogous statute, in this case NRS Chap. 608.” MSJ at 10:5-8 (*citing*  
17 *Perry v. Terrible Herbst, Inc.*, 132 Nev. Adv. Op. 75, 383 P.3d 257 (2016)). The Club  
18 misreads *Perry* and proffers a patently spurious theory of constitutional interpretation. The  
19 Supreme Court in *Perry* merely was determining what statute of limitations should to apply  
20 to a constitutional cause of action when none is specified. *Perry*, 383 P.3d at 262 (“When a  
21 right of action does not have an express limitations period, we apply the most closely  
22 analogous limitations period.”).

24 The Nevada Supreme Court in fact has given clear guidance on how to go about  
25 interpreting voter intent in enacting specific constitutional terms and provisions:

27 To determine a constitutional provision's meaning, we turn first to the  
28 provision's language. In so doing, we give that language its plain effect,

1 unless the language is ambiguous. If a constitutional provision's language is  
2 ambiguous, meaning that it is susceptible to two or more reasonable but  
3 inconsistent interpretations, we may look to the provision's history, public  
4 policy, and reason to determine what the voters intended. . . . Whatever  
5 meaning ultimately is attributed to a constitutional provision may not violate  
6 the spirit of that provision.

7 *Miller v. Burk*, 124 Nev. 579, 590–91, 188 P.3d 1112, 1119–20 (2008) (quotations and  
8 citations omitted). The first step in determining the scope of the MWA's definition of  
9 employee is not to look at the most analogous statute, as the Club suggests, but rather to ask  
10 whether the term "employee" as it is used in the MWA is ambiguous.<sup>1</sup> Three well-established  
11 canons of construction and several observations by the Nevada Supreme Court (the ultimate  
12 authority on what the Nevada Constitution means) suggest it is not.

13 First, the MWA's definition of employee is identical to the definition used in the  
14 parallel federal wage law, the Fair Labor Standards Act (FLSA), 29 USC §§ 201-219. *See*  
15 29 U.S.C. § 203(e)(I) ("the term 'employee' means any individual employed by an  
16 employer"). This definition may seem tautological, but it is a well-known term of art and for  
17 decades it consistently has been interpreted by courts with reference to the economic realities  
18 test. "Generally, when a legislature [or voters] uses a term of art in a statute [or initiative], it  
19 does so with full knowledge of how that term has been interpreted in the past, and it is  
20 presumed that the legislature [or voters] intended it to be interpreted in the same fashion."  
21 *Beazer Homes Nevada, Inc. v. Dist. Ct.*, 120 Nev. 575, 587, 97 P.3d 1132, 1139–40 (2004)  
22 (*emphasis added*).

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28 <sup>1</sup> A provision is ambiguous when it is susceptible to more than one reasonable interpretation. *Anvui, LLC v. G.L. Dragon, LLC*, 123 Nev. 212, 215, 163 P.3d 405, 407 (2007).

1 Second, where, as here, a state statute or constitutional provision parallels language  
2 in a federal counterpart (the FLSA), Nevada courts look to federal precedent interpreting the  
3 federal statute for guidance. *Hernandez v. Bennett-Haron*, 128 Nev. Adv. Op. 54, 287 P.3d  
4 305, 310 (2012).

6 Third, the MWA unquestionably is a remedial constitutional provision. *See Terry*,  
7 336 P.3d at 955 (noting MWA was enacted by Nevada voters to ensure that “more, not fewer,  
8 persons would receive minimum wage protections”). When construing remedial provision,  
9 “a broad and liberal construction is required, in order that the purposes designed by them  
10 shall be most completely served.” *Warren v. De Long*, 59 Nev. 481, 97 P.2d 792, 795 (1940)  
11 (emphasis added). *See also Terry* at 956 (noting “a broader or more comprehensive coverage  
12 of employees [than that provided in the FLSA’s definitions] would be difficult to frame.”)  
13 (*quoting United States v. Rosenwasser*, 323 U.S. 360, 362 (1945)).

16 These three canons of interpretation all indicate that the MWA’s definition of  
17 employee is not ambiguous, and that the only reasonable interpretation is that Nevada voters  
18 intended that the MWA would protect the same people protected by the parallel federal  
19 minimum wage law.

21 Reinforcing this conclusion is the fact that the Nevada Supreme Court clearly has  
22 indicated that the scope of the MWA should be broadly construed. First, the Court noted in  
23 *Terry* that the MWA was enacted by Nevada voters to ensure that “more, not fewer, persons  
24 would receive minimum wage protections.” *Terry*, 336 P.3d at 955. Then, in *Thomas v.*  
25 *Nevada Yellow Cab Corp.*, 130 Nev. Adv. Op. 52, 327 P.3d 518 (2014), the Court held the  
26 MWA preempted a pre-existing legislative carve-out for taxi drivers because “[t]he  
27  
28

1 Minimum Wage Amendment expressly and broadly defines employee, exempting only  
2 certain groups.” *Thomas* at 327 P.3d at 521. Taxi drivers are not one of those exempted  
3 groups. *Id.*

4  
5 The only reasonable interpretation of the MWA’s definition of employee is that it is  
6 co-extensive with its identical federal counterpart and, notably, *Cheetahs* suggests no  
7 plausible alternative definition; however, even if the definition were ambiguous (*i.e.*,  
8 susceptible of more than one plausible interpretation), the next step would be to examine  
9 “the provision’s history, public policy, and reason to determine what the voters intended.”  
10 *Miller*, 124 Nev. at 590–91, 188 P.3d at 1119–20. As noted above, the historical and public  
11 policy connections are immediately apparent because the MWA’s definition of employee is  
12 identical to the well-known FLSA definition and both laws serve the same remedial purpose.  
13 Interpreting the MWA definition to be consistent with the FLSA definition furthers public  
14 policy concerns and is faithful to the spirit of the provision because the MWA, like the FLSA,  
15 must be broadly construed to further its remedial purpose. *Terry* at 956. *See also Warren*, 59  
16 Nev. 481, 97 P.2d at 795 (“For statutes so highly remedial, a broad and liberal construction  
17 is required, in order that the purposes designed by them shall be most completely served.”).  
18 Additionally, in determining, for similar reasons, that the definition of employee in NRS  
19 608.010 also should incorporate the FLSA economic realities test, the Nevada Supreme  
20 Court noted it would make no sense and sow considerable confusion to have different rules  
21 for who qualifies as an employee under state and federal wage laws. *Terry* at 957 (“having  
22 no substantive reason to break with the federal courts on this issue, judicial efficiency  
23 implores us to use the same test as the federal courts”).  
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1       The MWA’s history and considerations of public policy and reason thus all strongly  
2 indicate that, even if the MWA’s definition of employee were ambiguous (it is not), it should  
3 be construed in the same manner as the identical definition in the parallel federal minimum  
4 wage law (*i.e.*, by reference to the economic realities test). To needlessly restrict or alter the  
5 definition would sow confusion and not comport with “the spirit of the provision.” *Miller*,  
6 124 Nev. at 590–91, 188 P.3d at 1119–20.  
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9       **2.     The Club’s dancers are its employees under MWA’s economic realities**  
10       **test.**

11       “[T]he economic realities test examines the totality of the circumstances and  
12 determines whether, as a matter of economic reality, workers depend upon the business to  
13 which they render service for the opportunity to work.” *Terry*, 336 P.3d at 956. *See also*  
14 *Saleem v. Corp. Transportation Grp., Ltd.*, 854 F.3d 131, 139 (2d Cir. 2017) (noting purpose  
15 of economic realities test is to determine “whether, as a matter of economic reality, the  
16 workers depend upon someone else’s business for the opportunity to render service or are in  
17 business for themselves.”).

18  
19       Courts in applying the “economic reality” test consider the following factors: (1) the  
20 degree of the alleged employer's right to control the manner in which the work is to be  
21 performed; (2) the alleged employee's opportunity for profit or loss depending upon his  
22 managerial skill; (3) the alleged employee's investment in equipment or materials required  
23 for his task, or his employment of helpers; (4) whether the service rendered requires a special  
24 skill; (5) the degree of permanence of the working relationship; and (6) whether the service  
25 rendered is an integral part of the alleged employer's business. *Terry* at 958. “Neither the  
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1 presence nor the absence of any individual factor is determinative.” *Donovan v. Sureway*  
2 *Cleaners*, 656 F.2d 1368, 1370 (9th Cir. 1981). Neither contractual labels nor the subjective  
3 intent of the parties are relevant factors in this analysis. *Real v. Driscoll Strawberry*  
4 *Associates, Inc.*, 603 F.2d 748, 754 (9th Cir. 1979). “When a disposition in either direction  
5 can be justified, the Court must err in favor of a broader reading of ‘employee.’” *Hanson v.*  
6 *Trop, Inc.*, 167 F.Supp.3d 1324, 1328 (N.D. Ga. 2016).

7  
8  
9 The Club in its summary judgment motion attached certain interrogatory responses  
10 produced in a private arbitration between the Club and one of its dancers who alleged she  
11 was an employee under the FLSA. *See* Cheetahs MSJ Ex. 4. The Club neglected to mention  
12 that the arbitrator granted the dancers’ summary judgment motion on employee status  
13 because the economic reality of the relationship between the Club and its dancers is identical  
14 to the economic reality of dependence conclusively identified in so many other dancer  
15 misclassification cases. *See* Arb. MSJ Order (attached as Ex. 7). Cheetahs is collaterally  
16 estopped from re-litigating this issue here because it previously litigated the issue  
17 unsuccessfully in an action with another party. *See Montana v. United States*, 440 U.S. 147,  
18 153 (1979) (noting prior determination of an issue “is conclusive in subsequent suits based  
19 on a different cause of action involving a party to the prior litigation.”). However, a review  
20 of the facts and the law confirms the arbitral result, without question.

21  
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23  
24 **a. Substantial persuasive authority indicates strip club dancers are**  
25 **employees under the economic realities test.**

26 Before embarking on an examination of the economic realities factors as applicable  
27 to the facts of this case, it is important to note that many courts, including the Nevada  
28

Supreme Court, have addressed the question of whether an exotic dancer is an employee under the economic realities test, and almost

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

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

**b. Individual dancers are economically dependent on strip clubs for the opportunity to work because they cannot legally operate as independent businesses in Las Vegas.**

The individual factors utilized in the economic realities test all seek to determine “whether, as a matter of economic reality, workers depend upon the business to which they render service for the opportunity to work.” *Terry*, 336 P.3d at 956. But, even without a formal weighing of the economic realities factors, it is clear dancers depend entirely upon

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<sup>2</sup> The cases cited in *Clinicy* (and *Terry*) are only the tip of the iceberg. See also, e.g., *Lester v. Agment LLC*, 2016 WL 1588654 (N.D. Ohio Apr. 20, 2016); *Foster v. Gold & Silver Private Club, Inc.*, 2015 WL 8489998 (W.D. Va. Dec. 9, 2015); *McFeeley v. Jackson St. Entm’t LLC*, 47 F.Supp.3d 260 (D.Md. 2014); *Whitworth v. French Quarter Partners, LLC*, No. 6:13-CV-6003, 2014 WL 12594213 (W.D. Ark. June 30, 2014); *Stevenson v. Great Am. Dream, Inc.*, No. 1:12-CV-3359-TWT, 2013 WL 6880921 (N.D. Ga. Dec. 31, 2013); *Butler v. PP & G, Inc.*, 2013 WL 5964476 (D. Md. Nov. 7, 2013); *Thornton v. Crazy Horse, Inc.*, 2012 WL 2175753 (D.Alaska June 14, 2012); *Thompson v. Linda and A. Inc.*, 779 F.Supp.2d 139 (D.D.C.2011); *Mason v. Fantasy, LLC*, 2015 WL 4512327 (D. Colo. July 27, 2015); *Verma v. 3001 Castor, Inc.*, 2014 WL 2957453 (E.D.Pa. June 30, 2014); *Hart v. Rick’s Cabaret Int’l, Inc.*, 967 F. Supp. 2d 901 (S.D.N.Y. 2013).

1 the clubs for the opportunity to work because they cannot legally operate as independent  
2 businesses in Las Vegas. Las Vegas requires all businesses to obtain a city business license  
3 in addition to a state business license. Las Vegas Municipal Code 6.02.060. However, Las  
4 Vegas does not issue business licenses to individual dancers, only to the clubs in which they  
5 work. *See Id.* at 6.35.030 (license available for “erotic dance establishments”). The Club’s  
6 practice of treating its dancers as tenants who allegedly operate their own independent  
7 businesses on Club property is flatly foreclosed by City regulations. The City’s regulatory  
8 framework for erotic dance establishments belies the notion that dancers are independent  
9 businesswomen and confirms that dancers “are dependent upon the business to which they  
10 render service.” *Donovan*, 656 F.2d at 1370.

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13  
14 **c. The notion that exotic dancers are independent businesswomen**  
15 **does not pass the straight-face test.**

16 Even without a formal weighing of the economic realities factors, the notion that  
17 dancers could be “independent businesswomen” renting space in clubs simply does not pass  
18 the straight-face test. All dancers need to do to “launch their business” is to show up to the  
19 Club with a dance costume and pay an entrance fee. PSOF ¶¶ 15-17. Once inside, every  
20 critical component of their “business” is paid for and provided by the Club: the multi-  
21 million-dollar venue, the licensing, the advertising, the alcohol, the stages, the DJ and music,  
22 the lighting, the décor, the security. PSOF ¶¶ 1-6. Further, the notion that dancers are running  
23 an “independent business” of course can be rudely dispelled if a dancer creates a scene or  
24 otherwise displeases a manager – she can and will be terminated and her “independent  
25 business” will be over. PSOF ¶¶ 20-29.

1           The economic reality of the club-dancer relationship is similar to the relationship  
2 between high-end restaurants and waiters. Restaurants need waiters; clubs need dancers.  
3 Neither job requires any special skill or capital investment and high turnover is common.  
4 Further, though both jobs offer the potential to earn significant amounts of money from  
5 customers in tips (*assuming the restaurant or club can attract enough of the right sort of*  
6 *customers*), the waiters and dancers depend entirely upon the restaurant or club for this  
7 opportunity. The fact that a club or restaurant may choose not to require its dancers or waiters  
8 to wear a uniform or to work a particular shift or may choose not to micromanage customer  
9 interactions would not alter the fundamental nature of this relationship which, as the Nevada  
10 Supreme Court has held, fundamentally is one of economic dependence. *Terry* at 959.

11           **d.     As the Nevada Supreme Court has held, the economic reality**  
12 **factors lopsidedly favor a finding that the Club's dancers are**  
13 **employees as a matter of law.**

14           **(i)     *Dancers do not exert control over a meaningful part of the***  
15 ***business.***

16           The Club predictably attempts to disclaim any control over its dancers in order to  
17 avoid its obligations as an employer. However, the Nevada Supreme Court in *Terry*  
18 emphatically rejected another club's similar self-serving disclaimer of control. The Court  
19 noted dancers at Sapphire, like those at Cheetahs, could "choose" whether or not to perform  
20 lap dances and could "choose" not to perform a stage rotation by paying a fee but concluded  
21 that

22           by forcing them to make such 'choices,' Sapphire is actually able to 'heavily  
23 monitor the performers, including dictating their appearance, interactions  
24 with customers, work schedules, and minute to minute movements when  
25 working' while ostensibly ceding control to them." This reality undermines

1 Sapphire's characterization of the 'choices' it offers performers and the  
2 freedom it suggests that these choices allow them; the performers are, for all  
3 practical purposes, 'not on a pedestal but in a cage.'

4 *Terry* at 959 (quoting Sheerine Alemzadeh, Baring Inequality: Revisiting the Legalization  
5 Debate Through the Lens of Strippers' Rights, 19 Mich. J. Gender & L. 339, 347 (2013)).  
6 *See also Harrell*, 992 F. Supp.. at 1349 ("The mere fact that [the club] has delegated a  
7 measure of discretion to its dancers does not necessarily mean that its dancers are elevated  
8 to the status of independent contractors."); *Reich v. Circle C. Investments, Inc.*, 998 F.2d  
9 324, 327 (5th Cir. 1993) (rejecting strip club's "effort on appeal to downplay [the club's]  
10 control"); *Mednick v. Albert Enters., Inc.*, 508 F.2d 297, 303 (5th Cir. 1975) ("An employer  
11 cannot saddle a worker with the status of independent contractor, thereby relieving itself of  
12 its duties [as an employer] by granting him some legal powers where the economic reality is  
13 that the worker is not and never has been independently in the business in which the employer  
14 would have him operate.").

15  
16  
17 As in these other cases, numerous undisputed facts and admissions show that the Club  
18 wields significant control over the most meaningful aspects of the erotic dance business:  
19

- 20 • The Club controls the club layout, décor, and ambiance. Dancers have no  
21 control over the club layout, décor, and ambiance. PSOF ¶1.
- 22 • The Club controls Cheetahs hours of operation and sets the amount of cover  
23 charges charged to customers. PSOF ¶2.
- 24 • The Club obtains and pays for all of the licensing and fees necessary to  
25 operate as an erotic dance establishment. PSOF ¶4.
- 26 • The Club hires and pays all employees necessary to run the club. PSOF ¶5.
- 27 • The Club pays for all repairs, maintenance, rent and utilities necessary to  
28 operate the Club. PSOF ¶6.

- 1 • The Club sets the pricing for dances. PSOF ¶¶8-11.
- 2 • The Club managers could fire or suspend dancers or restrict their shifts for
- 3 any reason, including “being disrespectful” to Club employees. PSOF ¶¶20-
- 4 29.
- 5 • The Club published and enforced many rules dancers had to follow while on
- 6 the job, such as not wearing street clothes, wearing high heels, checking in
- 7 and out with the DJ, not refusing drinks from customers, changing costumes
- 8 at least three times during each shift, not carrying a purse or cellphone on the
- 9 floor, no smoking or chewing gum on the floor, no running tabs on dancers,
- 10 a requirement to talk to customers for at least one song before asking them
- 11 for a dance and to remove tops on stage after the second song, and not
- 12 allowing in the club any boyfriends or anyone giving the dancer a ride to the
- 13 club. PSOF ¶¶30-39.

14 These undisputed indicia of control, which are similar to the circumstances in other  
15 strip club cases, unquestionably “overshadow[] the smaller freedoms [the club] allowed its  
16 dancers.” *Harrell*, 992 F. Supp. at 1350. Here, as in these other dancer cases,

17 [t]he club controls all the advertising, without which the entertainers could  
18 not survive. Moreover, the defendants created and controlled the atmosphere  
19 and surroundings at [the club], the existence of which dictates the flow of  
20 customers into the club. An entertainer can be considered an independent  
contractor only if she ‘exerts such control over a meaningful part of the  
business that she stands as a separate economic entity.’ In this case, the  
entertainer’s economic status is inextricably linked to those conditions over  
which defendants have complete control.

21 *Priba Corp.*, 890 F. Supp. at 592 (emphasis added). The control factor thus weighs in favor  
22 of economic dependence.

23 **(ii) *The dancers’ opportunities for profit or loss does not depend***  
24 ***on managerial skill.***

25 The second factor evaluates the extent to which the workers’ opportunities for profit  
26 or loss is dependent on their managerial skill. As one court explained in examining this facet  
27 of the dancer-club relationship, “entertainers do not control the key determinants of profit  
28

1 and loss of a successful enterprise . . . Any profit to the entertainers is more analogous to  
2 earned wages than a return for risk on capital investment.” *Priba Corp.*, 890 F. Supp. at 593.  
3 *See also Reich v. Circle C. Investments, Inc.*, 998 F.2d 324, 328 (5th Cir. 1993) (“Given its  
4 control over determinants of customer volume, [the Club] exercises a high degree of control  
5 over a dancer's opportunity for ‘profit.’”). As yet another court convincingly reasoned:

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

16 *Harrell*, 992 F.Supp. at 135. Here, as in these other cases, the Club controls and pays for all  
17 expenses relating to marketing and operating the venue, including paying rent, utilities,  
18 special promotions, obtaining licensing, bar and kitchen inventory, and repair and  
19 maintenance (*see* PSOF ¶¶1-6). Accordingly, the undisputed fact that dancers exercise no  
20 “managerial skill” and that the Club controlled its dancers’ opportunity for profit and loss  
21 also weighs heavily in favor of finding employee status.

22 ***(iii) Exotic dancing does not require a special skill.***

23 As the Nevada Supreme Court and many other courts have found, little specialized  
24 skill is required to be a nude dancer. *See* cases cited in A.1, above. The Club on this point  
25 admits no audition or formal dance training is required and that “[i]t takes a lot not to get  
26 hired.” PSOF 15-16. Even viewing the evidence in the light most favorable to the Club, the  
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1 lack of specialized skills required for the job (or any skills, for that matter, other than looking  
2 good in a bikini) weighs strongly in favor of finding employee status.

3  
4 **(iv) *The fact that the dancer-club relationship lacks a high degree***  
5 ***of permanence carries little persuasive value.***

6 Consistent with industry custom, Cheetahs hires dancers on an at-will basis and  
7 dancers are able to work at other clubs. Defendants' SOF ¶19. However, "this factor carries  
8 little persuasive value in the context of topless dancers and the clubs at which they perform,  
9 and cannot alone tilt the scales in [the club's] favor." *Terry* at 960. *See also Thompson v.*  
10 *Linda And A., Inc.*, 779 F.Supp.2d 139, 150 (20110) ("Many of the courts that have found  
11 exotic dancers to be employees . . . did so despite finding the employment relationship lacked  
12 a high degree of permanence.") (citing cases). This is because "[e]ven if the freedom to work  
13 for multiple employers may provide something of a safety net, unless a worker possesses  
14 specialized and widely-demanded skills, that freedom is hardly the same as true economic  
15 independence." *McLaughlin v. Seafood, Inc.*, 861 F.2d 450, 452–53 (5th Cir.1988), modified  
16 on other grounds, 867 F.2d 875 (5th Cir.1989).

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19 **(v) *The services rendered by exotic dancers are an integral part of***  
20 ***the Club's business.***

21 The Club admits exotic dancers are necessary for it to operate as an exotic dance  
22 establishment. PSOF ¶12. Nor could it do otherwise, as it is "a self-evident conclusion that  
23 nude dancers form an integral part of [a strip club's] business." *Linda & A.*, 779 F.Supp.2d  
24 at 150. *See also Terry* at 960 ("Given that Sapphire bills itself as the 'World's Largest Strip  
25 Club,' and not, say, a sports bar or night club, we are confident that women strip-dancing  
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1 there are useful and indeed necessary to its operation.”). This factor, too, points strongly  
2 towards employee status.

3  
4 **(vi) *Consideration of all factors indicate the Club’s dancers are its***  
5 ***employees as a matter of law.***

6 The economic reality factors unquestionably confirm that the Club’s dancers are its  
7 employees as a matter of law. The only factor that does not clearly weigh in favor of  
8 employee status is the impermanence of the working relationship, and numerous other courts  
9 have found exotic dancers to be employees despite the typically impermanent nature of the  
10 work force in this industry. *See Thompson*, 779 F.Supp.2d at 150 (collecting cases). “[T]he  
11 economic reality is that the dancers are not in business for themselves but are dependent  
12 upon finding employment in the business of others.” *Circle C. Invs.*, 998 F.2d at 329. As  
13 such, the Club’s dancers are employees within the meaning of the MWA and are entitled to  
14 all rights and privileges flowing therefrom, including a minimum wage and the right to not  
15 have to pay to work.  
16

17  
18 **B. NRS 608.0155 does not apply.**

19  
20 **1. NRS 608.0155 does not purport to apply to MWA claims.**

21 The Club’s attempt to rely on NRS 608.0155, a recently-enacted amendment to  
22 Chapter 608 that creates a threshold test for independent contractor status in evaluating  
23 Chapter 608 claims, is entirely unavailing. As the first six words of that statute clearly  
24 indicates, its test for independent contractor status applies only “[f]or the purposes of this  
25 chapter [*i.e.*, Chapter 608].” NRS 608.0155(1). NRS 608.0155 thus unambiguously indicates  
26 its independent contractor test does not apply for the purposes of Minimum Wage  
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28

1 Amendment claims. If the Nevada legislature wanted to ignore the principle of constitutional  
2 supremacy and attempt to limit the scope of the Minimum Wage Amendment by statute it  
3 easily could have said so, but did not.  
4

5 **2. NRS 608.0155 cannot apply to MWA claims.**

6 The legislature of course has no power to enact legislation to restrict a constitutional  
7 cause of action. *See Strickland v. Waymire*, 126 Nev. 230, 241, 235 P.3d 605, 613 (2010)  
8 (“The constitution may not be construed according to a statute enacted pursuant thereto;  
9 rather, statutes must be construed consistent with the constitution — and rejected if  
10 inconsistent therewith.”). *See also Thomas*, 327 P.3d at 522 (“If the Legislature could change  
11 the Constitution by ordinary enactment, ‘no longer would the Constitution be ‘superior  
12 paramount law, unchangeable by ordinary means.’ It would be ‘on a level with ordinary  
13 legislative acts, and, like other acts, ... alterable when the legislature shall please to alter it.’”)  
14 (*quoting City of Boerne v. Flores*, 521 U.S. 507, 529 (1997) (alteration in original) (*quoting*  
15 *Marbury v. Madison*, 5 U.S. 137 (1803))). The Nevada Supreme Court in *Thomas* expressly  
16 foreclosed any legislative attempt to constrict the MWA’s broad scope when it struck down  
17 a statute purporting to exclude taxicab drivers from employee status because the MWA’s  
18 “broad definition of employee and very specific exemptions necessarily and directly conflict  
19 with the legislative exception for taxicab drivers.” *Thomas*, 327 P.3d at 521. A fortiori, a  
20 statutory test that, if applied, would accomplish a similar result (excluding individuals from  
21 the MWA’s broad definition of employee) also would be preempted. The MWA was enacted  
22 by Nevada voters to ensure that “more, not fewer, persons would receive minimum wage  
23 protections.” *Terry*, 336 P.3d at 955. If the legislature for some reason wanted to ensure that  
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fewer, not more, persons would receive minimum wage protections, it would need to amend or repeal the MWA.

**C. NRS 608.0155 is preempted by its conflict with the FLSA.**

“Pursuant to the Supremacy Clause of the United States Constitution, ‘state laws that conflict with federal law are without effect.’” *Munoz v. Branch Banking*, 131 Nev. Adv. Op. 23, 348 P.3d 689, 690 (2015) (quoting *Altria Grp., Inc. v. Good*, 555 U.S. 70, 76 (2008) (internal quotations omitted)). See also *Gade v. Nat’l Solid Waste Mgmt. Ass’n*, 505 U.S. 88, 108 (1992) (“[U]nder the Supremacy Clause, from which our pre-emption doctrine is derived, any state law, however clearly within a State’s acknowledged power, which interferes with or is contrary to federal law, must yield.”). State laws are preempted if “a party’s compliance with both state and federal law requirements is impossible, or ... the [federal] act’s purpose would be frustrated if state law were to apply.” *Nanopierce Techs., Inc. v. Depository Tr. & Clearing Corp.*, 123 Nev. 362, 375, 168 P.3d 73, 82 (2007) (holding state law preempted because it posed obstacle to congressional objectives and because compliance with both state and federal requirements impossible).

NRS 608.0155 is preempted by its conflict with the FLSA. The Nevada Supreme Court, citing to a wealth of precedent across the country, has held that exotic dancers are employees under the FLSA’s economic realities test. *Terry* at 958. Further, at least one arbitrator has confirmed that Cheetahs dancers are its employees under the FLSA as a matter of law. See Ex. 7. It would be impossible for Cheetahs to comply with the FLSA by classifying and paying its dancers as employees and to also comply with a state law requiring a different classification.

1                   **D.     NRS 608.0155 cannot apply retroactively to impair employees’**  
2                   **vested rights to wages.**

3           Even if NRS 608.0155 could apply to MWA claims and was not preempted by federal  
4 law, it could not be applied retroactively because that would run afoul of constitutional limits  
5 on a legislature’s ability retroactively to impair vested rights. *See Town of Eureka v. Office*  
6 *of State Eng’r of State of Nev.*, 826 P.2d 948, 950 (Nev. 1992) (due process prevents  
7 retrospective laws from divesting vested rights). There are two vested rights at issue: (1) an  
8 employee’s property right to wages for each hour worked and (2) a property right in an  
9 accrued cause of action.  
10

11           The law in Nevada on this point is clear. The right to a minimum hourly wage (*a*  
12 *fundamental property right*) vests as soon as the worker performs each hour of labor. *See*  
13 *Sandpointe Apts. v. Eighth Jud. Dist. Ct.*, 313 P.3d 849, 856 (Nev. 2013) (lienholder’s right  
14 to deficiency payment vests at time of trustee sale because that’s when amount owed  
15 becomes “crystalized”). In *Sandpointe*, the Nevada Supreme Court held that a statute  
16 limiting deficiency judgments would impermissibly impair lienholders’ vested rights if  
17 retroactively applied to deficiencies arising after trustee sales that took place before the  
18 statute became effective. *Id.* The court explained that a lienholder’s right to a deficiency  
19 payment “crystalizes” (vests) as soon as the trustee sale results in a deficiency amount. *Id.*  
20 For the same reason, a statute erasing a minimum wage obligation would impair workers’  
21 vested rights if retroactively applied to hours already worked before the statute became  
22 effective. The rule that an employee’s right to an hourly wage vests as soon as each hour of  
23 labor is performed makes intuitive sense and is widely recognized. *See, e.g., Sanders v.*  
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1 *Loomis Armored, Inc.*, 614 A.2d 320 (Penn. 1992) (*employees had vested right in wages*  
2 *earned which could not be extinguished by legislation without violating due process*);  
3 *Fletcher v. Grinnell Bros.*, 64 F. Supp. 778, 780 (E.D. Mich. 1946) (Upon failure to pay  
4 minimum wages employee obtains “a vested right thereto regardless of whether or not the  
5 employee is forced to institute suit to recover the amount due.”). The dancers’ right to a  
6 minimum wage for each hour worked became absolute and unconditional upon performance  
7 of each hour of work.  
8

9  
10 Plaintiffs also have a vested property right in this existing right of action. *See Gibbes*  
11 *v. Zimmerman*, 290 U.S. 326, 332 (1933) (“a vested cause of action is property and is  
12 protected from arbitrary interference”); *Gibson v. Com.*, 490 Pa. 156, 161, 415 A.2d 80, 83  
13 (1980) (“It is well-settled that the Legislature may not extinguish a right of action which has  
14 already accrued to a claimant.”). *See also* 16A C.J.S. Constitutional Law § 486 (“an existing  
15 right of action which has accrued to a person . . . is a vested property right in the same sense  
16 in which tangible things are property and may not be destroyed or impaired by legislation.”).  
17  
18

19 **E. There is a private right of action under Chapter 608.**

20 The Club’s suggestion that there is no private right of action under NRS 608.040-050  
21 (Club MSJ Sec. IV.B) is foreclosed by the Nevada Supreme Court’s decision in *Neville v.*  
22 *Eighth Judicial Dist. Court in & for Cty. of Clark*, 406 P.3d 499, 500–01 (Nev. 2017)  
23 (holding private right of action exists under NRS 608.016, NRS 608.018, and NRS 608.020  
24 through NRS 608.050).  
25

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1                   **F.     This Court already has identified the applicable statutes of**  
2                   **limitations.**

3                   The Club argues Plaintiffs’ wage claims are subject to a two year statute of limitations  
4 (Club MSJ Sec. IV.C) and that Plaintiffs’ unjust enrichment claim also should be subject to  
5 a two year statute of limitations, because “it is, effectively, just another claim for unpaid  
6 wages.” *See* MSJ Sec. IV.D at 19:15-20:14. The Club apparently forgets this Court already  
7 has determined the applicable statutes of limitations for each claim in certifying two classes.  
8 *See* 10/10/17 Order on Plaintiff Jane Doe Dancer III’s Motion for Class Certification (filed  
9 10/12/17). Implicit in the creation of two separate classes is the common sense understanding  
10 that Plaintiffs’ claim for unjust enrichment is not “effectively” another claim for unpaid  
11 wages – it is a claim for unjust enrichment. The minimum wage claims relate to the Club’s  
12 legal obligation to pay at least a minimum wage for each hour worked. *See* Plaintiffs’ First  
13 Amended Class Action Complaint at ¶¶50, 62, 73-74. The unjust enrichment claim relates  
14 to the Club’s illegal practice of requiring each dancer to pay fees and fines as a condition of  
15 hire. *See id.* at ¶¶84-85.  
16  
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19                   **G.     The unjust enrichment claim is valid**

20                   The Club argues Plaintiffs’ unjust enrichment claim fails to state a claim or,  
21 alternatively, is unavailable because the MWA and Chapter 608 provide an adequate remedy  
22 at law. *See* Club MSJ Sec. IV.D at 20:15-21:13. The argument is based on the unexceptional  
23 proposition that “[a]n action based on a theory of unjust enrichment is not available when  
24 there is an express, written contract” because “[t]o permit recovery by quasi-contract where  
25 a written agreement exists would constitute a subversion of contractual principles.”  
26  
27  
28

1 *Leasepartners Corp. v. Robert L. Brooks Trust Dated Nov. 12, 1975*, 113 Nev. 747, 755–56,  
2 942 P.2d 182, 187 (1997). The problem with the Club’s argument, of course, is that the  
3 “express agreement” must be valid and enforceable to preclude an action for unjust  
4 enrichment. As the Nevada Supreme Court has held, contractual principles cannot be  
5 subverted if the contract at issue is unenforceable and/or illegal. *See Tom v. Innovative Home*  
6 *Sys., LLC*, 132 Nev. Adv. Op. 15, 368 P.3d 1219, 1222 (Nev. App. 2016) (“Since the court  
7 found a valid contract existed, it denied [plaintiff’s] unjust enrichment claim; however, it  
8 stated that, if the contract had been deemed unenforceable, it would have granted summary  
9 judgment to [plaintiff] for unjust enrichment.”). Defendants oddly and incorrectly assert that  
10 “Plaintiff have not alleged . . . that the Rules Agreement and Entertainer’s Agreement were  
11 not valid contracts.” Club MSJ at 29. Of course, this entire lawsuit is premised on the  
12 illegality, not only of these contracts, but of Defendants’ entire business model. Plaintiffs  
13 unjust enrichment claim is appropriate because the “Dancer Performance Lease” – the only  
14 potentially relevant contract at issue here – is illegal and unenforceable.

15  
16  
17  
18  
19 **H. Punitive damages are available as this is “an action for the breach**  
20 **of an obligation not arising from contract”.**

21 Punitive damages are available in “an action for the breach of an obligation not arising  
22 from contract.” NRS § 42.005. Thus, punitive damages potentially are available here,  
23 because the action is premised upon breach of an obligation arising, not from a contract, but  
24 from the Nevada Constitution and NRS Chapter 608. *See* Plaintiffs’ First Amended Class  
25 Action Complaint at ¶¶ 46-85. Employers without question may be subject to punitive  
26 damages for exploitative or reprehensible treatment of their employees. *See, e.g., Hester v.*  
27  
28

1 *Vision Airlines, Inc.*, 687 F.3d 1162, 1173 (9th Cir. 2012) (punitive damages available where  
2 employer refused to pay wages) (applying Nevada law).

3  
4 **CONCLUSION**

5 As the Nevada Supreme Court and numerous federal courts around the country have  
6 held, exotic dancers are employees of the strip clubs in which they work as a matter of both  
7 state and federal law. Thus, this Honorable Court should Grant Plaintiffs' Summary  
8 Judgment Motion on Liability and Deny Defendants' Countermotion, leaving for Trial only  
9 the issue of damages.  
10

11 DATED this 14th day of May, 2018.

12 **BIGHORN LAW**

13 By: /s/ Lauren Calvert

14 **KIMBALL JONES, ESQ.**

Nevada Bar No.: 12982

15 **LAUREN CALVERT, ESQ.**

Nevada Bar No.: 10534

16 716 S. Jones Blvd.

17 Las Vegas, Nevada 89107

18 **MICHAEL J. RUSING, ESQ.**

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

19 **P. ANDREW STERLING, ESQ.**

Nevada Bar No.: 13769

20 **RUSING LOPEZ & LIZARDI, PLLC**

21 6363 North Swan Road, Suite 151

22 Tucson, Arizona 85718

23 *Attorneys for Plaintiffs*  
24  
25  
26  
27  
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of  
3 **BIGHORN LAW**, and on the 14th day of March, 2018, I served the foregoing ***PLAINTIFFS'***  
4 ***OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT*** as follows:  
5

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

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

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

15 Doreen Spears Hartwell, Esq.  
16 HARTWELL THALACKER, LTD.  
17 11920 Southern Highlands Parkway, Suite 201  
18 Las Vegas, Nevada 89141  
19 [Doreen@HartwellThalacker.com](mailto:Doreen@HartwellThalacker.com)

20 Dean R. Fuchs, Esq.  
21 SCHULTEN WARD & TURNER, LLP  
22 260 Peachtree Street NW, Suite 2700  
23 Atlanta, Georgia 30303  
24 [d.fuchs@swtwlaw.com](mailto:d.fuchs@swtwlaw.com)

25 *Attorneys for Defendants*

26 /s/ Erickson Finch  
27 An employee/agent of **BIGHORN LAW**  
28

# EXHIBIT “1”

DIANA PONTRELLI  
JANE DOE DANCER v. LA FUENTE, INC., ET AL.

Page 1

DISTRICT COURT  
CLARK COUNTY, NEVADA

JANE DOE DANCER, I through V, )  
Individually, and on behalf )  
of Class of similarly )  
situated individuals, )  
 )  
 )  
 )  
Plaintiffs, )  
 )  
vs. ) CASE NO.  
 ) A-14-709851-C  
 )  
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 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. )

VIDEO DEPOSITION OF DIANA PONTRELLI

Taken at Dalos Legal Services  
2831 St. Rose Parkway  
Suite 200  
Henderson, Nevada 89052

Thursday, March 16, 2017  
12:57 P.M.

Reported by: Angela Campagna, CCR #495

DALOS Legal Services, LLC  
702.260.0976

1 Q. Not the dancers?

2 A. Maybe I'm misunderstanding the  
3 question.

4 Q. All right. Who's in charge of the  
5 setup of the club in terms of layout, decor, the  
6 ambiance you're attempting to achieve?

7 A. That would be the owner, DJ with the  
8 lighting, the club is -- there's no moveable objects  
9 inside there.

10 Q. The dancers wouldn't have anything to  
11 do with those items; correct?

12 A. Correct.

13 Q. Who's in charge of special promotions  
14 at the club?

15 A. Got to be Charles and myself.

16 Q. And the dancers wouldn't have anything  
17 to do with those; correct?

18 A. Not unless they were hired to work with  
19 the promotion.

20 Q. Right. They might participate in the  
21 promotion --

22 A. Correct.

23 Q. -- but you or Chuck would come up with  
24 it?

25 A. Correct.

1           Q.    And in terms of the club's licensing  
2   and fees and things like that, that is something  
3   that you or Chuck would do, not the dancers;  
4   correct?

5           A.    Correct.

6           Q.    And in terms of hiring and paying  
7   employees and workers other than the dancers, that's  
8   something you and Chuck do; right?

9           A.    Correct.

10          Q.    Not the dancers?

11          A.    I don't do the checks, but yes, I  
12   gather the information for the employees; correct.

13          Q.    And the dancers wouldn't have anything  
14   to do with that; correct?

15          A.    Correct.

16          Q.    Same thing with bar and kitchen  
17   inventory --

18          A.    I don't have a kitchen.

19          Q.    Okay. Bar inventory, you and Chuck?

20          A.    That would be Charles.

21          Q.    Not the dancers; correct?

22          A.    Correct.

23          Q.    Repairs, maintenance, rents and  
24   utilities, things like that having to do with the  
25   physical structure, you or Chuck or the owner would

1 take care of that, not the dancers; right?

2 A. Correct.

3 Q. Do you know if Club Onyx in Atlanta is  
4 still owned by the Galardis?

5 A. I have no knowledge.

6 Q. King of Diamonds in Miami?

7 A. No knowledge.

8 Q. Have you ever heard of an entity called  
9 Galardi South Enterprises?

10 A. Yes. The name itself, yes. My office,  
11 the -- the company office. That's it.

12 Q. Does it have any ownership in Cheetahs,  
13 to your knowledge?

14 A. I don't know who's got financial  
15 anything, but I would assume -- assume Teri being  
16 the boss, I would assume that she has her clubs and  
17 all that, but I work for her. So what she owns, I  
18 don't know or how much.

19 Q. Now, what are the hours of operations  
20 at Cheetahs?

21 A. 24/7.

22 Q. And who set those hours?

23 A. They were set back in 1992, November  
24 17th of 1992.

25 Q. By whom?

1 A. By the previous owner.

2 Q. Mr. Galardi?

3 A. Mr. Galardi and his son -- his son.

4 Q. The -- I want to talk a little bit  
5 about some of the other workers at the club.

6 A. Okay.

7 Q. The floor or shift managers, are  
8 they -- are they treated as employees?

9 A. I want to say yes.

10 Q. They receive a paycheck?

11 A. Correct.

12 MR. FUCHS: I'm sorry, Mick, I don't mean  
13 to -- was it floor managers, is that who you asked  
14 about?

15 MR. RUSING: Shift managers.

16 MR. FUCHS: Shift manager, I'm sorry. I just  
17 didn't hear that.

18 BY MR. RUSING:

19 Q. Is there -- is there something called a  
20 floor manager that's --

21 A. No. People use the phrase, they'll use  
22 it as both, but I don't use it so I wouldn't refer  
23 to it.

24 Q. Okay. If -- so if there's a -- is  
25 there one shift manager at any given time?

1 managers?

2 A. The floor men or the manager on shift  
3 duty. When greeting the customer, but there is no  
4 VIP. We're small.

5 Q. Is there -- do you have VIP rooms?

6 A. Yes.

7 Q. What are they called?

8 A. We have one called the Cheetah room.  
9 One called the G Spot and one's the back VIP.

10 Q. Do you have a DJ?

11 A. Yes.

12 Q. How is he paid or she paid?

13 A. Check.

14 Q. Employee?

15 A. Correct.

16 Q. Do you have a house mom?

17 A. Yes.

18 Q. Is there one house mom or a series of  
19 them?

20 A. One house mom per shift.

21 Q. Are there three shifts?

22 A. Three shifts.

23 Q. And what are they called?

24 A. Employees.

25 Q. No. I mean -- good answer. That saves

1 me a question, but what are the shifts called?

2 A. Day, swing, grave.

3 Q. Okay. What is the day shift?

4 A. Day shift is from 5:00 in the morning  
5 to 1:00 in the afternoon. Swing is from 1:00 in the  
6 afternoon till 9:00p.m. Graveyard is 9:00 p.m.  
7 until 5:00 a.m.

8 Q. Now, you have cashiers there too;  
9 right?

10 A. Front door cashier type thing?

11 Q. Yeah.

12 A. Yes.

13 Q. And are they employees?

14 A. Yes.

15 Q. And you have servers, like cocktail  
16 waitresses?

17 A. Yes.

18 Q. Are they employees?

19 A. Yes.

20 Q. Bartenders?

21 A. Yes.

22 Q. Do you have cleaners or is that subbed  
23 out?

24 A. It's subbed out.

25 Q. How -- how many dancers work there at

1 will disappear and then come back is only during  
2 convention time. Work the four days and I don't see  
3 them again for another year.

4 BY MR. RUSING:

5 Q. Right. And I guess I'm talking about  
6 how many -- we've talked about what would be an  
7 active dancer and that would be someone who had  
8 auditioned and within three months of some period of  
9 time they're entitled to just -- they're considered  
10 sort of active.

11 How many dancers, at any given  
12 time, are in that sort of active approved list, a  
13 couple hundred?

14 A. I'm guessing -- I'm just doing a guess  
15 on it. I would probably say less but...

16 Q. Who does the hiring of dancers?

17 A. The shift manager.

18 Q. So if a woman shows up and wants to  
19 become a dancer, whoever happens to be the shift  
20 manager is responsible for processing that person?

21 A. Correct.

22 Q. And what does that process consist of?

23 A. A sheriff's card and ID, state license,  
24 and that's to fill out for the paperwork and then  
25 have their outfit with them.

1 Q. I'm sorry?

2 A. Their outfit.

3 Q. Oh --

4 A. Whatever they were going to put on and  
5 we see what they look like and talk to them just to  
6 get a vibe where they're coming from.

7 Q. All right. It sounds like you've been  
8 involved in that process too?

9 A. I've done it.

10 Q. So when you say they put on a cos --  
11 they would put on what they would wear to dance so  
12 you would see what they look like in a dance outfit?

13 A. Correct.

14 Q. Do they actually audition by dancing  
15 around or --

16 A. No.

17 Q. -- do they just turn in circles?

18 A. No.

19 Q. You don't make them do anything like  
20 that; correct?

21 A. No. Never have.

22 Q. Okay. Do you ever turn down people who  
23 apply?

24 A. Yes.

25 Q. Why?

1           A.    Drugs, intoxicated, belligerent, nasty,  
2    talking when they first walk in and -- it takes a  
3    lot not to get hired.

4           Q.    They got to rub you the wrong way?

5           A.    Well, you get them where they kind of  
6    float around on the streets and all of a sudden they  
7    ran out of money and it's shoot through the door and  
8    hi, can I dance and they're trashed. They're not  
9    even standing up, yes.

10          Q.    Okay. What -- what percentage get  
11   hired do you reckon?

12          A.    90 percent of them.

13          Q.    Is any experience required?

14          A.    No.

15          Q.    No formal dance training required?

16          A.    No.

17          Q.    Do men ever apply?

18          A.    I do not have a separate area. At one  
19   time I did have them back in '91. But the law  
20   required I have a separate entity of dressing room,  
21   a separate part of the building. So we're not  
22   allowed by law.

23          Q.    Do you ever have transgender  
24   applicants?

25          A.    Well, I know of one, but when I call on

1 is not to stereotype in my building.

2 Q. Do you ask for and/or check references?

3 A. No.

4 Q. Now, would you agree with me that the  
5 exotic dancers are critical for Cheetahs operation  
6 as a men's club?

7 A. Well, it is a men's club and I do need  
8 entertainers, so I think that would be a part of  
9 operation.

10 Q. Right. You can't be a men's club  
11 without exotic dancers; right?

12 A. Entertainers, yes.

13 Q. Did you ever become aware of lawsuits  
14 that were challenging the classification of dancers  
15 as anything other than employees?

16 A. Have I heard? Yes.

17 Q. When did you first hear?

18 MR. FUCHS: I'm going to object to the form of  
19 the question. It's a little vague, but if you  
20 understood it, you can answer.

21 A. Well, they were trying to stop us back  
22 in '96. Then it stopped for many, many years and  
23 then it came about again when Spearmint Rhino was  
24 approached on this situation, so probably in the  
25 last year.

1 use the one that was actually executed. Do you  
2 recognize Exhibit 1?

3 A. Yes.

4 Q. Tell me what it is.

5 A. It is a dancer contract stating that  
6 I'm -- I'm going to try to do this from memory, that  
7 we are not responsible for their makeup, their  
8 music, their taxes, things like that. Just  
9 basically telling them what's going on on the floor,  
10 that -- just to follow the rules of the City and the  
11 laws that we have there and I would have to go over  
12 each individual.

13 Q. No, I'm not going to ask you. I'll ask  
14 you about a few specific things.

15 A. Okay.

16 Q. I guess my -- this is something called  
17 a dancer performance lease; correct?

18 A. Correct.

19 Q. And this is something that Cheetahs  
20 Las Vegas utilized; correct?

21 A. It's been changed over the time but  
22 yes.

23 Q. Okay. When did they start utilizing  
24 the dancer performance lease?

25 A. To be honest, I don't know. I don't

1 remember the year.

2 Q. Was it prior to 2010?

3 A. I'm -- I'm guessing, yes.

4 Q. Okay. And do you still use some  
5 version of this?

6 A. Yes.

7 Q. You said it might be -- been slightly  
8 modified?

9 A. It's been modified, yes.

10 Q. Do you recall any specific  
11 modifications that were made to it?

12 A. In the right hand corner, second  
13 paragraph where there is an amount, we have no  
14 amounts there because we do not charge for missing  
15 an item or finding and things like that and this is  
16 a bad copy, but I assume it says each day missed,  
17 that was eventually crossed out after a certain  
18 amount of time. I know it's an old copy. Once they  
19 sign, we do not charge for days off, missing days,  
20 late time, we don't charge.

21 Q. Okay. And what you're referring to is  
22 the second paragraph of section four?

23 A. Correct.

24 Q. And where it requires the performer to  
25 pay to the owner liquidated damages for certain

1           A.    I'd have to re-read it, but okay,  
2   I'm -- I'm known as a tenant.

3           Q.    And there's nothing in here that says  
4   that they are a worker; correct?

5           A.    Could you define what you mean by  
6   "worker"?

7           Q.    Well, there's nothing in here that says  
8   that the dancer is going to work for the club;  
9   correct?

10          A.    Performer.

11          Q.    Okay. Performer is different than a  
12   worker.

13          A.    Could you define that?

14          Q.    I'll move on.

15                   Was there a period of time that  
16   Cheetahs was in existence before the performance  
17   lease was executed by the dancers on a routine  
18   basis?

19          A.    I'm sure.

20          Q.    And what were they before the contract  
21   was signed?

22          A.    Entertainers. Non-employees.

23          Q.    Did Cheetahs ever treat the dancers as  
24   employees?

25          A.    No.

1 THE WITNESS: Oh, I apologize.

2 BY MR. RUSING:

3 Q. The lease agreement which is Exhibits 1  
4 and 2, provides at section 3 that the performer  
5 shall schedule days to perform at least one week in  
6 advance; correct?

7 A. It says that here.

8 Q. Okay. And it also provides that each  
9 day so as scheduled shall consist of a minimum of  
10 six consecutive hours as set; correct?

11 A. Correct. It says that there.

12 Q. Okay. And I've seen that stated on  
13 other materials from Cheetahs; is that correct?

14 A. No. Not correct.

15 Q. There's not other materials that say  
16 six hour shifts?

17 A. Six hours. If they wish to receive a  
18 discount on house fees.

19 Q. All right. So unless they work a full  
20 six hours, they pay more?

21 A. No, they pay their regular house fee.  
22 We give them a discount if they work at least six  
23 hours.

24 Q. When did you start that practice?

25 A. Four years ago.

1           Q.    And prior to that you fined them;  
2   correct?

3           A.    Never fined.  We've never fined a girl  
4   in any of the places I've worked for the company  
5   since the beginning when I started working for them.

6           Q.    What happens if they didn't work six  
7   hours?

8           A.    As far as you mean a financial fine, if  
9   they want to leave early?  It was no money.  It was  
10   not anything to do with money.  If they left early,  
11   then they would work -- take the next day off or  
12   whatever.  There would have to be a reason for them  
13   to leave early.

14          Q.    What if they just wanted to leave and  
15   they left?

16          A.    Well, back at that time we were written  
17   by -- to the laws of Metro that we had to watch for  
18   them engaging with customers, to leave with  
19   customers.  If we saw them to the point that they  
20   left early to leave with customers, we are subject  
21   to a very large fine for the club.  So we kept it at  
22   that so they wouldn't be meeting up with the  
23   customers.

24          Q.    Okay.  But what if they left?

25          A.    They would be asked why they left, if

1 they said they just felt like leaving. They didn't  
2 have to work the next day or whatever, they would be  
3 subject to not working the next day.

4 Q. Okay. Just to distill this so we can  
5 move on, so before they got a discount for working a  
6 full six hours, if they worked less than six hours  
7 and didn't have a good excuse, some sort of  
8 discipline would be imposed; correct?

9 A. No. If they worked less than six  
10 hours, then they turned on -- they pay the regular  
11 house fee. If you worked six hours or more, you pay  
12 less of a house fee. We -- Cheetahs gives them a  
13 discount.

14 Q. Yeah. I'm talking before that.

15 A. Before that it was just a regular house  
16 fee.

17 Q. Right. But if they left early before  
18 you had this discount thing, if they left early and  
19 they didn't have a good reason, you would discipline  
20 them by not letting them work the next day or  
21 something like that; correct?

22 A. Sometimes.

23 Q. Yeah. And if they did that  
24 continuously, you would occasionally fire them;  
25 correct?

1 A. Well, yes.

2 Q. All right.

3 A. Well, there's always more to that.

4 Q. Now, in section four at the beginning  
5 at the top it says, "Owner hereby leases the  
6 premises for a minimum of one set per week."

7 Do you see that? It's the very  
8 first sentence, section four?

9 A. Okay.

10 Q. Does that mean the performer has to  
11 work a minimum of one set per week?

12 A. Well, this was made up for multiple  
13 places. As far as one dance, yes.

14 Q. And then the next paragraph provides --  
15 okay. Let's go back to three for a second, I'm  
16 sorry. 3-I says that "The performer will produce  
17 the maximum gross sales possible for dance  
18 performances during the term of this lease for the  
19 benefit of both owner and performer."

20 Do you see that?

21 A. Okay.

22 Q. What does that mean?

23 A. We would ask them to sell waters, sell  
24 a drink. Didn't necessarily mean alcohol. No other  
25 way of putting. It just --

1           Q.    And number two says "assure regular  
2   maximum operation of entertainment at premises for  
3   the benefit of both owner and performer."

4                   What does that mean?

5           A.    I would assume that means their dance  
6   performance, as far as putting their best foot  
7   forward. It benefits them. It benefits the club  
8   if everybody looks good.

9           Q.    You -- you made a reference to them  
10   getting a commission on something. What was that a  
11   reference --

12          A.    They used to get commission on when  
13   they sold their drinks. To this day if they get a  
14   commission, if they sell a bottle of champagne or  
15   they can ask -- they can get it -- it's one or the  
16   other. They can get a free house fee or they can  
17   get cash and that's their choice. And that's always  
18   been -- been that way over ten years.

19          Q.    Is it a percentage commission?

20          A.    No, it's just a flat fee.

21          Q.    Okay. Going back to the liquidated  
22   damages provision, we talked about that a little bit  
23   earlier and you -- it was your testimony that that  
24   was -- although it was in the contract, it was never  
25   applied; correct?

1 A. As far as the dancers being fined or?

2 Q. Right.

3 A. Yeah. We've never -- never. I've  
4 never -- on the west coast have ever fined.

5 Q. So it's your testimony that Cheetahs  
6 has never fined a dancer?

7 A. Never.

8 Q. Now, going down to section six provides  
9 that "The owners shall establish a fixed fee for the  
10 price of table, taxi and couch dances performed on  
11 the premises and performer agrees not to charge a  
12 customer more than the fixed price for any such  
13 dance performance."

14 Do you see that?

15 A. Yes.

16 Q. Is that true?

17 A. The dancers do overcharge.

18 Q. No. But does the owner establish  
19 fixed --

20 A. We have pricing that is put on the  
21 walls. We do have signs that states what -- how  
22 much our dancers are in what area. There are signs  
23 that are placed throughout the club in front of each  
24 room or on the floor. We advertise it with the DJ  
25 and saying this is what it is and the girls get a

1     hundred percent of it.

2             Q.     Okay. And then going on to the next  
3     page it says compliance with rules and regulations.  
4     It's kind of the first section there on the left.  
5     It says "Owner shall have the right to impose such  
6     rules and regulations upon the use of premises by  
7     performer as owner in its sole and absolute  
8     discretion." Do you see that?

9             A.     Correct.

10            Q.     Is that true?

11            A.     Yes.

12            Q.     All right. And then in 7 when it talks  
13     about the business relationship of the party like we  
14     talked about before, it says the parties acknowledge  
15     that the business relationship created between owner  
16     and performer is that of landlord and tenant."

17                    Do you see that?

18            A.     Yes.

19            Q.     And that this relationship is material  
20     consideration of this lease; correct?

21            A.     Okay.

22            Q.     All right. And that is the sole  
23     business relationship that is created in this  
24     agreement; correct?

25            A.     Owner/performer, correct.

1           Q.    Were the entertainers paid anything  
2   else to go to these parties?

3           A.    No, not to my knowledge.

4           Q.    Cheetahs didn't pay them?

5           A.    Not to my knowledge, no.

6           Q.    If the customer wanted to pay them  
7   something, that would be up to them I guess?

8           A.    They're off duty, yes.

9           Q.    Well, would the entertainers be  
10   entertaining before the -- at the pregame party?

11          A.    No.

12          Q.    Or the after party?

13          A.    No. They all off shift.

14          Q.    Now, the next one is -- next page is  
15   lap dance happy hour, two for 20 lap dances;  
16   correct?

17          A.    Correct.

18          Q.    So if a girl was working at that time  
19   she would be obligated to do two lap dances for \$20;  
20   correct?

21          A.    She's asked to do that, yes.

22          Q.    And the next page, same thing, Super  
23   Bowl Sunday at Cheetahs, two for 20 lap dances  
24   during the game; correct?

25          A.    Correct.

1 Q. And this was something that was  
2 advertised and the customers would expect from the  
3 girls; correct?

4 MR. FUCHS: Objection to form. If you know,  
5 you can answer.

6 THE WITNESS: Correct.

7 BY MR. RUSING:

8 Q. And you would expect the girls to do  
9 the two for 20; correct?

10 A. I would expect them, not saying they  
11 did.

12 (Exhibit 4 marked.)

13 BY MR. RUSING:

14 Q. Now -- Exhibit 4 I guess. Let me hand  
15 you what has been marked as Exhibit 4 and that's  
16 entitled arbitration policy Cheetahs; correct?

17 A. Yes.

18 Q. And at some point Cheetahs started  
19 asking the girls to sign these agreements, those  
20 policies; correct?

21 A. Correct.

22 Q. And I think that we were told that that  
23 started happening some time in like June of 2014; is  
24 that correct?

25 A. April of '14. Somewhere close to that

1 department to who works at the club every month.

2 Q. Okay. So if you went back and looked  
3 at those records for however many times prior to  
4 April and compared them against who you had  
5 arbitration agreements with, you could find out who  
6 had worked there during that time and were not  
7 subject to an arbitration; correct?

8 A. I probably have it somewhere. It's not  
9 required that I keep that.

10 Q. Let me hand you what's been marked as  
11 Exhibit 6. Do you recognize that document in front  
12 of you?

13 A. Yes.

14 Q. What is it?

15 A. It's a sign-in sheet.

16 Q. All right. And above it are Cheetahs'  
17 lounge rules?

18 A. Yes. Or reminder.

19 Q. So what we're seeing at the bottom of  
20 Exhibit 5 is an actual sheet showing the girls  
21 signing in to dance at the club?

22 A. Correct.

23 MR. FUCHS: I'm sorry, is this 5 or 6? I  
24 thought you said 6, I'm not sure.

25 MR. RUSING: Five.

1 THE WITNESS: Six, that's number six.

2 MR. RUSING: It should be five. It should be  
3 five, but we'll change it to five. Okay.

4 (Exhibit 5 marked.)

5 MR. FUCHS: I'm sorry, you want me just to  
6 change it on the exhibit, would that be --

7 MR. RUSING: Sure. That's fine.

8 MS. CALVERT: Yeah, I'll just put this on top.  
9 So it doesn't look...

10 MR. FUCHS: Okay. So we don't get confused.

11 MS. CALVERT: That's why they don't let me  
12 teach math.

13 MR. FUCHS: No worries. Okay. Five. Sorry.

14 MS. CALVERT: Thank you.

15 BY MR. RUSING:

16 Q. So we started talking about this, this  
17 is a sign-up sheet?

18 A. Sign-in.

19 Q. Sign-in sheet. And what are the three  
20 columns?

21 A. Where the girls put their names,  
22 sign-in when they walk in.

23 Q. Yeah, why there's three columns?

24 A. Why they make a bigger paper for them  
25 to -- it could be how many dancers are coming in.

1           Q.    Right.  But why -- why are they not all  
2   in a row, why is there three -- there's three  
3   divided columns here.

4           A.    Right.

5           Q.    Why?

6           A.    To add more names on the front sheet.

7           Q.    Okay.  Do they -- I don't see any times  
8   or anything or dates.

9           A.    Correct.  It's a sign-in.

10          Q.    Okay.  So --

11          A.    This is just the acknowledgement,  
12   that -- just a reminder of basic rules when they go  
13   on the floor.

14          Q.    Okay.  So this is just a sign-in to  
15   acknowledge the rules --

16          A.    Correct.

17          Q.    -- this is not their formal sign-in?

18          A.    No.

19          Q.    Okay.  That's where you threw me off.

20                    Okay.  So everyday they have to  
21   acknowledge the rules?

22          A.    It's a reminder, yeah.

23          Q.    And these rules have been in effect for  
24   some period of time?

25          A.    I usually go every couple of years,

1 they'll change, add or subtract.  
2 Q. Okay. I've seen some more recent.  
3 They're are pretty close to the same though; right?  
4 A. Correct.  
5 Q. And you've been using these for a long  
6 time; right?  
7 A. Correct.  
8 Q. Since the 1990s or -- 19 --  
9 A. '91.  
10 Q. '91, okay. And you expect the girls to  
11 abide by these; correct?  
12 A. When it becomes to Metro City or state  
13 law, yes.  
14 Q. Okay. Well, some of these don't apply,  
15 don't have anything to do with the law; correct?  
16 A. Correct.  
17 Q. All right. Let's talk about those.  
18 Costumes only, no street clothes --  
19 A. Correct.  
20 Q. -- that's not a law --  
21 A. Correct.  
22 Q. -- that's a Cheetahs' rule?  
23 A. Yes.  
24 Q. And you expect the girls to abide by  
25 that; correct?

1           A.    There are reasons that go with that --  
2   to go with the police department with that.

3           Q.    That wasn't my question.

4           A.    Okay.

5           MR. RUSING:   Read the question back.

6           THE WITNESS:   Okay.   No street clothes;  
7   correct.

8                   (Record read by reporter.)

9   BY MR. RUSING:

10          Q.    And you expect the girls to abide by  
11   that rule; correct?

12          A.    Correct.

13          Q.    Number two, high heels required.   No  
14   clog-type shoes?

15          A.    Clogs.   Clogs.

16          Q.    Clog-type shoes.   That's not a law;  
17   correct?

18          A.    Correct.

19          Q.    It's a Cheetahs' rule; correct?

20          A.    Correct.

21          Q.    And Cheetahs expects the dancers to  
22   abide by these rules?

23          A.    Correct.   Safety issue.

24          Q.    Did I ask you if it was a safety issue?

25          A.    No.

1           Q.    Okay.  Number eight, do not leave your  
2    shift without checking out with the manager and  
3    the --

4           A.    DJ.

5           Q.    -- DJ, Cheetahs' rule?

6           A.    Yes.

7           Q.    Do you expect the women dancers to  
8    abide by it?

9           A.    Yes.

10          Q.    Number 11, you must not refuse a drink  
11   or a shooter from the customer; correct?

12          A.    Correct.

13          Q.    That's not a law?

14          A.    Correct.

15          Q.    It's a Cheetahs' rule?

16          A.    Correct.

17          Q.    And you expect the girls to abide by  
18   it?

19          A.    Correct.

20          Q.    You must change costumes at least three  
21   times during your shift.  That's not a law; correct?

22          A.    Correct.

23          Q.    It's a Cheetahs' rule; correct?

24          A.    Suggestion; correct.

25          Q.    And you expect the girls to abide by

1 it; correct?

2 A. Correct.

3 Q. All right. Cabs and rides must pick  
4 you up at the back door. That's not a law; correct?

5 A. Correct.

6 Q. You may never leave with a customer?

7 A. Correct.

8 Q. That's not a law?

9 A. That's a law.

10 Q. That's a law saying you can't leave  
11 with a customer?

12 A. Correct.

13 Q. Where does it -- where does it say  
14 that?

15 A. Metro law states that any -- any dancer  
16 that was an entertainer, performer on the floor  
17 receiving cash from a customer as tipping wise does  
18 not know the denominations being handed to them  
19 leaving with the customers would constitute  
20 prostitution.

21 Q. That's an actual law?

22 A. That is law and that's what SIS and SIB  
23 and vice arrest the girls for.

24 Q. You are not allowed to carry a purse or  
25 cell phone on the floor is a Cheetahs' rule;

1 correct?

2 A. Going back to that time?

3 Q. Yes.

4 A. All right. Correct.

5 Q. No smoking or gum chewing on the floor,

6 another Cheetahs' rule; correct?

7 A. Correct.

8 Q. And those things you expected the girls

9 to abide by?

10 A. Correct.

11 Q. What would happen if the girls violated

12 it?

13 MR. FUCHS: I'm sorry. You're talking about

14 the gum chewing rule?

15 BY MR. RUSING:

16 Q. Any of these rules, how -- how would

17 you enforce the rules?

18 A. Take it off the bar where you stuck it

19 under it and throw it away. Take your cigarettes to

20 the dressing room. And what was the other one?

21 Q. Well, any of these rules.

22 A. Oh, and the purse if it becomes stolen,

23 we are not liable for it and we will not chase down

24 the customer. All actual incidents that have

25 happened.

1 during the day?

2 A. They are hired per manager. Whoever  
3 hires them, that's who they work for.

4 Q. Okay.

5 A. If they was to work another shift, they  
6 ask another manager. If they can work into their  
7 shift. They weren't hired. Girls do not get hired  
8 for a shift, they get hired for that particular  
9 manager. Whatever day he works.

10 Q. Okay. So a dancer doesn't have  
11 discretion just to show up and work on other shifts  
12 other than what the manager who hired them?

13 A. Correct.

14 Q. And if they want to change shifts for  
15 whatever reason, they have to go talk to the manager  
16 of that shift?

17 A. Correct.

18 Q. And is permission normally granted or  
19 not?

20 A. It depends on the individual.

21 Q. We've had some dancers tell us that  
22 they are only allowed to dance during the day  
23 because they're overweight and if they lose weight,  
24 they will be allowed to dance at night.

25 A. That's their perception.

1                   Q.    And this is what was given us, these 19  
2   pages.

3                   A.    Yes.

4                   Q.    Okay.  Did you have anything to do with  
5   gathering these documents?

6                   A.    Yes.

7                   Q.    And do these reflect all documents  
8   posted in any workplace at Cheetahs during the  
9   relevant time period?

10                  A.    Yes.

11                  Q.    Let's -- going to the first page, what  
12   are these and where are they posted?

13                  A.    These are not posted.  These are what  
14   the dancers receive when they pay the house amount  
15   of their dance fee to work in the club that night or  
16   that shift.

17                  Q.    The -- you mean they're given one of  
18   these little squares?

19                  A.    Right, and they have a stamp on it to  
20   the date they worked.

21                  Q.    Okay.

22                  A.    It's for record.

23                  Q.    And what is the stay over fee?

24                  A.    If they decide to work a double shift,  
25   they don't pay a full house fee, they just pay the

1 additional 25.

2 Q. And what's the house fee special?

3 A. If it runs into a holiday, Valentine's  
4 Day, Easter, Christmas, a slow period.

5 Q. Is Valentine's day slow?

6 A. Father's day slow, yes.

7 Q. So a dancer gets one of these everyday?

8 A. Every single day.

9 Q. And then what does she do with it then?

10 A. She is asked to save them for her tax  
11 reports for receipts for the end of the year.

12 Q. And -- but are they charged the fees at  
13 the beginning of the shift?

14 A. When they walk in the door, if they  
15 have it, then they have to.

16 Q. And if they don't?

17 A. Then they just pay as they go along.

18 Q. Okay. This -- the next page is a  
19 change of employment status; right?

20 A. Yes.

21 Q. That wasn't posted anywhere, was it?

22 A. That's part of their packets when they  
23 walk in.

24 Q. Right.

25 A. Put out by the police department.

1 BY MR. RUSING:

2 Q. Okay. And this still says no purses or  
3 cellular phones on the floor; right?

4 A. Yes.

5 Q. Off stage fee is optional \$25, what  
6 does that mean?

7 A. If they do not wish to dance on the  
8 stage, they -- they're not in rotation, then they  
9 just pay an additional \$25.

10 Q. Now, it says when going in the VIP  
11 rooms you must get paid up front. How does that  
12 work?

13 A. The girls will make sure that the  
14 customers have gone to the ATM or gotten funny money  
15 to make sure that there's no discrepancy on a  
16 misunderstanding of how much the cost of the room is  
17 since there is a sign. But sometimes people go --  
18 their credit card doesn't work. We ask the girls to  
19 not run a tab and make sure that the customer knows  
20 up front what they're paid for. Three songs for a  
21 hundred or --

22 Q. Okay. And the three songs for a  
23 hundred or whatever it is, does the girl get a  
24 hundred? Does the dancer get a hundred percent of  
25 that?

1 BY MR. RUSING:

2 Q. Now this -- on -- on that one this is  
3 the one that's 7 of 14 at the top?

4 A. Yes.

5 Q. It says when going to these rooms must  
6 be paid in advance and it talks about the hundred  
7 dollars or 2/20, but it also says two drinks  
8 required.

9 A. Regular price.

10 Q. Okay. I thought you said there was no  
11 requirement other than paying the dancer?

12 A. Yes. You have a bottle charge. We  
13 don't sell bottles in our rooms.

14 Q. Well, one says two regular priced  
15 drinks and the other -- Cheetahs says two drinks  
16 required at \$20 each?

17 A. Correct.

18 Q. That's more than the regular price?

19 A. \$5.

20 Q. And the next page, the middle of it is  
21 8 of 14 says if you would like to tip your floor  
22 man, it is very much appreciated?

23 A. Yes.

24 Q. Next page, 9 of 14 is another set of  
25 rules, "Do not approach a customer sitting at a

1 stage."

2 A. Correct.

3 Q. Do not run tabs on your dances. Again,  
4 no cell phones, no boyfriends, husbands or lovers  
5 allowed in the club while you're working?

6 A. Yes.

7 Q. That's a Cheetahs' rule?

8 A. Yes.

9 Q. Anyone giving you a ride to work or  
10 ride home is not allowed in the club during your  
11 shift?

12 A. Yes.

13 Q. Cheetahs' rule?

14 A. Yes. No -- yes. Well --

15 MR. FUCHS: Well, you can explain if you -- I  
16 mean --

17 THE WITNESS: You have to understand, I don't  
18 know if they're a customer, a boyfriend, a whatever.  
19 I don't know who is giving a ride. I don't know if  
20 it's a customer. If it's a customer, they go to  
21 leave with them, it could subject to me getting  
22 fined or cited by Metro.

23 BY MR. RUSING:

24 Q. I get that, but that's the -- the  
25 question was that's -- that's a rule you've done

1 to --

2 A. After a citation, yes.

3 Q. But there's nothing in law saying the  
4 person who drops them off can't come in and have a  
5 drink; right?

6 A. Then who is to decide at the end --

7 Q. Well, I -- no. No. No.

8 A. I'm not getting it.

9 Q. Is there a law that says thou shall not  
10 go into the club if you take a dancer there?

11 A. No.

12 Q. Okay. Go to the interrogatories and I  
13 have some questions about those. Go to -- go to  
14 number 21.

15 MR. FUCHS: Page 5, bottom of page 5.

16 BY MR. RUSING:

17 Q. Who has the power to enforce or alter  
18 work rules?

19 A. The GM, myself after discussion. It's  
20 a joint but it's the GM.

21 Q. All right. Interrogatory No. 22 asks  
22 you to describe in detail any fee or fine such as  
23 house fees, stage fee, miss stage fee, off stage  
24 fee, locker fee or other fee and finding fee could  
25 be charged or assessed to a dancer during their

1           A.    Nothing.  A log.  I mean the incident  
2   logs are required by the City of Las Vegas and the  
3   sign in sheets.  I think I gave you a copy of  
4   everything.  An employee sheet that goes to Metro, I  
5   mean everything to my knowledge.

6           Q.    Is there a policy about no jackets on  
7   the floor or something like that?

8           A.    Jackets?

9           Q.    Yeah.

10          A.    Blankets.  No jackets, I've never heard  
11   that one.

12          Q.    Okay.  Do you have a requirement with  
13   regard to the entertainers dancing on stage that  
14   some number of clothes are off and some number of  
15   songs?

16          A.    Our policy, first two songs clothes on.  
17   Last song, top off.

18          Q.    Do you have -- I think you called it  
19   funny money, some people call it dance dollars.

20          A.    Yes.

21          Q.    What is that?

22          A.    It's acquired by the customer to get  
23   dances from their entertainers, from their credit  
24   card as a purchase.

25          Q.    All right.  And so if they want to pay

1 you use other than pricing?

2 A. You can talk to them. You can suggest  
3 to them that they may want to come in earlier or  
4 help them out, you know, help the shift out. There  
5 is nothing else you can do except for hire more.  
6 They just -- that's why our shifts overlap.

7 Q. Who -- did just you and the general  
8 manager have the ability to fire dancers?

9 A. Just the general manager.

10 Q. How frequently does he fire dancers?

11 A. Not too often it happens. I'm going to  
12 say maybe three people a month, one to three.

13 Q. What are the grounds for firing  
14 typically?

15 A. Drugs, sexual activity, being a thief.

16 Q. Do they ever get fired for violating  
17 these rules we've been going over?

18 A. If it's a consistent problem of going  
19 over the months, yes, and we know that they're not  
20 paying attention to management or floor men  
21 correction of climbing up on a customer's face.  
22 It's breaking rules. You just -- you can -- you  
23 have to weigh things out. Have they been drinking.  
24 It's a weigh out.

25 THE VIDEOGRAPHER: Excuse me, counsel. Can I

1 VIP?

2 A. No. You don't have to pay a charge if  
3 you are in the VIP. If you pay for off stage, then  
4 you pay your off stage fee. If it becomes a  
5 consistent thing where you've missed every hour the  
6 whole time you were there, then you will be charged  
7 your off stage fee, but there's no individual fees,  
8 fines or anything like that. We ask them, Do you  
9 want to be on stage or off stage. If you're in a  
10 room, there is no charge if you are called.

11 Q. And if you are not in a room, it's \$20?

12 A. You just pay the fee. You just pay the  
13 off stage fee and you're off the rest of the night,  
14 off the stage.

15 Q. So it's \$20 a shift?

16 A. Yes. If you stay a second shift, no  
17 charge.

18 Q. What -- what is the annual gross income  
19 of Cheetahs?

20 A. I do not know.

21 Q. Do you have any knowledge of annual  
22 expenditures?

23 A. Monthly involving payroll, repairs,  
24 things like that to what we have to come up to cost  
25 for the month.

1 papers about -- that the dancers are required or  
2 encouraged to buy a locker -- a lock and use a  
3 locker?

4 A. For their protection of their private  
5 property.

6 Q. And do they have to buy a locker  
7 from --

8 A. It -- it becomes their property. A  
9 permanent property. They take it with them when  
10 they leave. They can, you know, they leave it on  
11 their locker there, they take it to other clubs.

12 Q. Do -- does Cheetahs have access to open  
13 that lock while they're there?

14 A. If there's suspicion of drugs, yes.

15 Q. Okay. And do you have a master key  
16 or --

17 A. Yes.

18 Q. Okay. And do you ever search their  
19 lockers?

20 A. With their presence, they're requested  
21 their presence to be standing there if there's an  
22 activity going on and it's been on camera of them  
23 having drugs in their locker, yes. They are present  
24 there. They are standing there when they are  
25 searched.

1 managers. She worked for at least four managers,  
2 four different managers during the course of the  
3 time working there.

4 Q. So you would have to do -- go through  
5 daily logs for that --

6 A. Yes.

7 Q. -- entire time frame looking for her --

8 A. Yes.

9 Q. Have you done that?

10 A. On her I -- I started looking to find  
11 out when she started and stopped because she would  
12 be gone for six months at a time. So I have to go  
13 through every piece of paper.

14 Q. Was she a good employee?

15 A. For the most part.

16 Q. She didn't get fired you say?

17 A. No.

18 Q. But for this lawsuit, you would have  
19 let her come back?

20 A. She -- before the lawsuit she had tried  
21 to come back and she refused to take the shift that  
22 she -- she wanted a different shift and the manager  
23 didn't want her on that shift and she refused to  
24 take anybody else's shift and she came up to me and  
25 complained to me.

# EXHIBIT “2”

Doreen Spears Hartwell,  
Nevada State Bar No. 7525  
Laura J. Thalacker, Esq.  
Nevada State Bar No. 5522  
HARTWELL THALACKER, LTD.  
11920 Southern Highlands Parkway, Suite 201  
Las Vegas, Nevada 89141  
Phone: (702) 850-1074; Fax: (702) 508-9551  
[Doreen@HartwellThalacker.com](mailto:Doreen@HartwellThalacker.com)  
[Laura@HartwellThalacker.com](mailto:Laura@HartwellThalacker.com)

and

Dean R. Fuchs, Esq. (Admitted PHV)  
Stephen Whitfield Brown, Esq. (Admitted PHV)  
Schulten Ward & Turner, LLP  
260 Peachtree Street NW, Suite 2700  
Atlanta GA 30303  
Phone: (404) 688-6800; Fax: (404) 688-6840  
[d.fuchs@swtwlaw.com](mailto:d.fuchs@swtwlaw.com)  
[s.brown@swtwlaw.com](mailto:s.brown@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.

Plaintiff,

vs.

La Fuente, Inc. et al.

Defendants.

Case No.: A-14-709851-C

Dept No. IV

**DEFENDANT LA FUENTE, INC.'S  
RESPONSE TO PLAINTIFFS' SECOND  
SET OF REQUESTS FOR ADMISSIONS**

**GENERAL OBJECTIONS**

Defendant La Fuente, Inc. objects to these Requests, including without limitation the Sections entitled "Definitions" and "Instructions," to the extent they seek to impose an obligation upon Defendant which exceeds what is required under Nevada law.

Defendant La Fuente, Inc. objects to Plaintiff's definition of the phrase "relevant time period" on the ground that the definition is overly broad and includes a time period which far exceeds the statute of limitations on the claims asserted by the Plaintiff.

Defendant La Fuente, Inc. objects to Plaintiff's use of the term "Plaintiffs" in these Requests on the ground that there is only a single plaintiff in this civil action, and Defendant objects to Plaintiff's efforts to request documents on behalf of multiple individuals who are not parties to this civil action.

### **REQUESTS**

**REQUEST NO. 3:** Admit no dancer during the relevant time period was responsible for selecting the physical location for the Club.

**RESPONSE:** Defendant objects to this Request on the ground that the term "Club" is not defined in the Requests. Subject to and without waiving that objection, the Request is admitted.

**REQUEST NO. 4:** Admit no dancer during the relevant time period was responsible for paying rent, utilities, insurance, and other facility expenses relating to the operation of the Club.

**RESPONSE:** Defendant objects to this Request on the ground that the term "Club" is not defined in the Requests. Subject to and without waiving that objection, Defendant admits only that no dancer was responsible for paying utilities, insurance and related expenses for the operation of the Club, but denies that Plaintiff was not expected to pay rent.

**REQUEST NO. 5:** Admit no dancer during the relevant time period was responsible for paying any licensing fees (sic) necessary to operate the Club.

**RESPONSE:** Defendant objects to this Request on the ground that the term “Club” is not defined in the Requests. Subject to and without waiving that objection, the Request is denied.

**REQUEST NO. 6:** Admit no dancer during the relevant time period was responsible for purchasing food, beverages, or other inventory sold at the Club.

**RESPONSE:** Defendant objects to this Request on the ground that the term “Club” is not defined in the Requests. Subject to and without waiving that objection, the Request is admitted.

**REQUEST NO. 7:** Admit no dancer during the relevant time period was responsible for setting the prices for any food, beverage, or any other inventory sold at the Club.

**RESPONSE:** Defendant objects to this Request on the ground that the term “Club” is not defined in the Requests. Subject to and without waiving that objection, the Request is admitted.

**REQUEST NO. 8:** Admit no dancer during the relevant time period was responsible for purchasing advertising for the Club.

**RESPONSE:** Defendant objects to this Request on the ground that the term “Club” is not defined in the Requests. Subject to and without waiving that objection, the Request is admitted.

**REQUEST NO. 9:** Admit no dancer during the relevant time period was responsible for initiating special promotions (discounts, package deals, etc.) at the Club.

**RESPONSE:** Defendant objects to this Request on the ground that the term “Club” is not defined in the Requests. Subject to and without waiving that objection, the Request is admitted.

**REQUEST NO. 10:** Admit no dancer during the relevant time period was responsible for setting the Club’s hours of operation.

**RESPONSE:** Defendant objects to this Request on the ground that the term “Club” is not defined in the Requests. Subject to and without waiving that objection, the Request is admitted.

**REQUEST NO. 11:** Admit no dancer during the relevant time period was responsible for setting the amount of cover charges charged to Club patrons.

**RESPONSE:** Defendant objects to this Request on the ground that the term “Club” is not defined in the Requests. Subject to and without waiving that objection, the Request is admitted.

**REQUEST NO. 12:** Admit no dancer during the relevant time period was responsible for creating content on the Club’s webpage.

**RESPONSE:** Defendant objects to this Request on the ground that the term “Club” is not defined in the Requests. Subject to and without waiving that objection, the Request is admitted.

**REQUEST NO. 13:** Admit no dancer during the relevant time period was responsible for selecting and purchasing furniture for the Club.

**RESPONSE:** Defendant objects to this Request on the ground that the term “Club” is not defined in the Requests. Subject to and without waiving that objection, the Request is admitted.

**REQUEST NO. 14:** Admit no dancer during the relevant time period was responsible for cleaning the Club.

**RESPONSE:** Defendant objects to this Request on the ground that the term “Club” is not defined in the Requests. Subject to and without waiving that objection, the Request is admitted.

**REQUEST NO. 15:** Admit no dancer during the relevant time period was responsible for hiring DJs to play at the Club.

**RESPONSE:** Defendant objects to this Request on the ground that the term “Club” is not defined in the Requests. Subject to and without waiving that objection, the Request is admitted.

**REQUEST NO. 16:** Admit no dancer during the relevant time period was responsible for paying Club employees.

**RESPONSE:** Defendant objects to this Request on the ground that the term “Club” is not defined in the Requests. Subject to and without waiving that objection, the Request is admitted.

**REQUEST NO. 17:** Admit that the Club cannot function as a “gentlemen’s club” without dancers.

**RESPONSE:** Defendant objects to this Request on the ground it is vague and it seeks a response to what is an improper hypothetical question.

**REQUEST NO. 18:** Admit that the Club cannot be profitable as a “gentlemen’s club” without dancers.

**RESPONSE:** Defendant objects to this Request on the ground that the term “Club” is not defined in the Requests. Defendant further objects to this Request on the ground it is vague and it seeks a response to what is an improper hypothetical question.

**REQUEST NO. 19:** Admit the Club has been properly named as a defendant in this lawsuit.

**RESPONSE:** Defendant objects to this Request on the ground that the term “Club” is not defined in the Requests. Subject to and without waiving that objection, Defendant admits only that La Fuente, Inc. is correctly named. Defendant denies it has any liability to Plaintiff. Defendant further denies that the remaining defendants are properly named in this lawsuit.

**REQUEST NO. 20:** Admit Defendant is a liable party if Plaintiffs prevail on their causes of action.

**RESPONSE:** Defendant objects to this Request on the ground it is speculative, overly broad and seeks a response to what is an improper hypothetical question. Defendant further objects to this Request on the ground it does not contemplate the assertion of any set-off defense.

**REQUEST NO. 21:** Admit the Club required dancers to comply with certain check-in and check-out procedures during the relevant time period.

**RESPONSE:** Defendant objects to this Request on the ground it is vague, overly broad, and not reasonably limited in time or scope. Subject to and without waiving those objections, Defendant admits only it has a check-in protocol for dancers.

**REQUEST NO. 22:** Admit all prospective dancers are auditioned by managers of the Club.

**RESPONSE:** Admitted.

**REQUEST NO. 23:** Admit at least 200 hundred dancers performed at the Club during the relevant time period.

**RESPONSE:** Admitted.

Dated: This 16th day of December, 2016.

/s/ Dean R. Fuchs  
DEAN R. FUCHS (admitted PHV)  
Georgia Bar No. 279170

Schulten Ward Turner & Weiss, LLP  
260 Peachtree Street, NW  
Suite 2700  
Atlanta, GA 30303  
(404) 688-6800 telephone  
*Attorney for Defendant*

**CERTIFICATE OF SERVICE**

I certify that on the 16<sup>th</sup> day of December, 2016, a true and correct copy of the foregoing  
**DEFENDANT LA FUENTE, INC.'S RESPONSE TO PLAINTIFFS' SECOND SET OF  
REQUESTS FOR ADMISSIONS** was served via Odyssey electronic-service to the following:

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

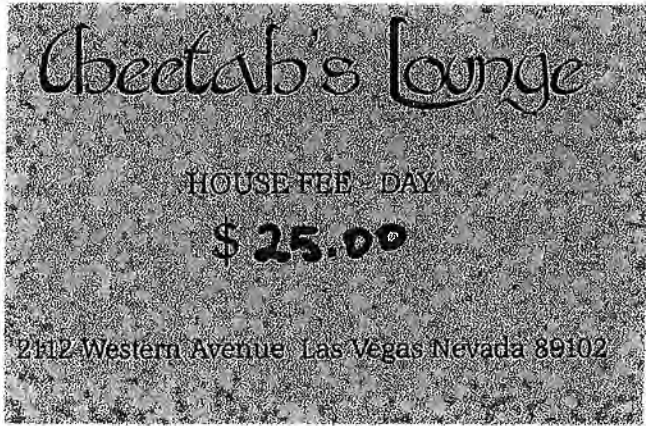
Ryan M. Anderson  
Jacqueline Bretell  
Daniel Price  
Morris Anderson Law  
716 Jones Blvd.  
Las Vegas, Nevada 89107  
*Attorneys for Plaintiffs*

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

Michael J. Rusing  
P. Andrew Sterling  
Rusing, Lopez & Lizardi, PLLC  
6363 North Swan Road, Suite 151  
Tucson, AZ 85718  
*Attorneys for Plaintiffs*

/s/ Dean R. Fuchs  
DEAN R. FUCHS

# EXHIBIT “3”



Cheetah's Lounge

HOUSE FEE - SWING

\$ 45.00

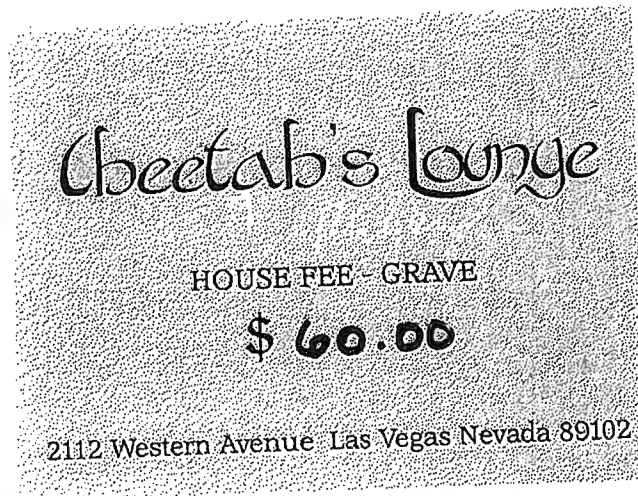
2112 Western Avenue Las Vegas Nevada 89102

Cheetahs Lounge

House Fee - SPECIAL

- \$15.00
- \$30.00
- \$40.00

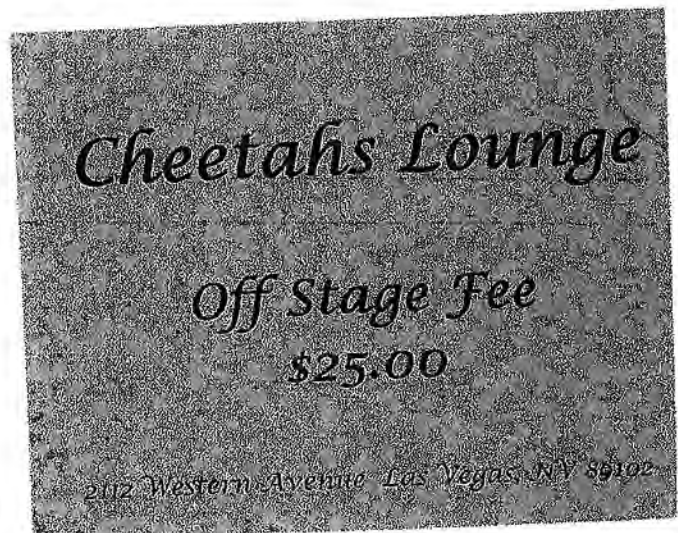
2112 Western Avenue Las Vegas, NV 89102



Cheetahs Lounge

Stay Over Fee  
\$25.00

2112 Western Avenue Las Vegas, NV 89102



LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
CHANGE OF EMPLOYMENT STATUS (LAS VEGAS)

This form must be mailed within 5 days from date of employment.  
Illegible writing will require the applicant to appear in person at the  
LVMPD Fingerprint Bureau

Employer Name: Cheetahs Lounge (702) 384-0074Location: 2112 Western Ave. F.V. 170. 89102

The above listed Employer desires to report the employment of:

Name: \_\_\_\_\_

SHERIFFS

ID#: \_\_\_\_\_ SS#: \_\_\_\_\_

Current Address: \_\_\_\_\_

Type of Work Card: non-gaming Position: entertainerSHERIFFS

Work Permit Expiration Date: \_\_\_\_\_ Date Hired: \_\_\_\_\_

\_\_\_\_\_  
Signature of Payroll Clerk\_\_\_\_\_  
Signature of ApplicantPlease return by mail in a stamped,  
sealed envelope to:Attn: Fingerprint Bureau  
Bill Young, Sheriff  
Las Vegas Metropolitan Police Dept.  
5880 Cameron Street  
Las Vegas, NV 89118-3083

# CHEETAHS LAS VEGAS

Please Print Information

SHERIFF CARD #		SHERIFF CARD EXP	
BUS LICENSE #		BUS LICENSE EXP	
LAST NAME		STAGE NAME	
FIRST NAME			
		SOCIAL SECURITY #	
ADDRESS		DATE OF BIRTH	
CITY			
STATE		EMERGENCY CONTACT	
ZIP CODE		PHONE #	
PHONE #			

OFFICE USE ONLY. DO NOT WRITE BELOW THIS LINE.

MANAGER		COMMENTS:
HOUSE MOM		
HIRE DATE		
FILED		

HOUSEMOM  
DATE STAMP  
AND SIGN

CARD

SHIFT \_\_\_\_\_ DATE \_\_\_\_/\_\_\_\_/\_\_\_\_

## CHEETAH'S LOUNGE RULES-MAY INCLUDE METRO AND CITY LAWS

1. COSTUMES ONLY.....NO STREET CLOTHES (NO COTTON MATERIAL)
2. ALL DANCERS WILL GET A DISCOUNTED HOUSE-FEE AUTOMATICALLY FOR WORKING AT LEAST 6HRS  
IF YOU SHOULD WORK LESS THAN 6HRS YOU WILL PAY ORIGINAL AMOUNT  
DAYSHIFT \$\_\_\_\_ 40.00\_\_\_\_ SWING\$ 50.00\_\_\_\_ GRAVEYARD \$65.00\_\_\_\_
3. HIGH HEELS ARE REQUIRED AT LEAST 2" HIGH, MUST HAVE GRIPS ON BOTTOMS OF SHOES
4. TWO (2) G STRINGS ARE REQUIRED (NOT SEE-THRU OR UNDERWEAR COTTON OR LACE ARE ALLOWED.) MUST BE SOLID MATERIAL.
5. TAKE YOUR TIPS ON YOUR HIPS- NOT IN FRONT PANEL OR IN BUTT STRING AREA
6. KEEP YOUR FACE OFF THE CROTCH-GROIN AREA, AND YOUR CHEST OFF THEIR FACES.
7. DO NOT GRIND ON CUSTOMERS LAP
8. CUSTOMERS CAN NOT FONDLE YOU, YOU CAN NOT FONDLE THEM.
9. PROSTITUTION IS ILLEGAL IN CLARK COUNTY. (NO LEAVING WITH CUSTOMERS)
10. PLEASE CHECK-OUT WITH THE DJ. AND HOUSEMOM WHEN LEAVING.
11. NO GLASSWARE IN DRESSING ROOM- OR NO PLASTIC CUPS ON FLOOR...
12. NO REFUSING DRINK IF CUSTOMERS WANTS TO BUY YOU ONE (WATER IS ACCEPTABLE) ie....KEEPS HOUSE FEES LOW
13. OUTFITS- MUST BE CLEAN. PERSONAL HYGIENE IS A MUST (DANCE "SWEAT")..ALL CUTS WILL BE COVERED WITH A BAND-AIDS
14. CABS AND YOUR RIDE WILL PICK YOU UP AT THE DRESSING DOOR ONLY (CUSTOMERS CAN NOT GIVE YOU A RIDE
15. NO PURSES OR CELLULAR PHONES ON THE FLOOR. (EX.. USE MONEY CUFFS OR RUBBER BANDS FOR YOUR MONEY)
16. PLEASE WEAR A BUTT COVER, NIPPLES MUST BE COVERED WHEN YOU ARE NOT DANCING (CITY OF LAS VEGAS LAWS)
- 6.35.050: CERTAIN ACTIVITES PROHIBITED MUNICODE: NO PERSON SHALL PUBLICLY DISPLAY OR EXPOSE WITH LESS THAN A FULL OPAQUE COVERING OF ANY PORTION OF A PERSON'S GENITALS, PUBIC AREA OR BUTTOCKS IN A LEWD AND OBSCENE FASHION.
17. WHEN DANCING ON THE FLOOR, (1) ONE FOOT MUST BE ON THE FLOOR , SHOES MUST BE WORN AT ALL TIMES
18. CUSTOMERS MUST BE SITTING UP WHEN YOU ARE GIVING THEM A LAP DANCE.
19. DANCERS CAN NOT RUN A TAB ON DANCES. WHEN GOING INTO THE V.I.P ROOMS YOU MUST GET PAID UP FRONT
20. OFF STAGE FEE- IS (OPTIONAL) .....\$25.00

[illegible]

**ATTENTION ENTERTAINERS JAN 2017 NEW HOUSE FEES**

MON TUE DAY \$15.00      SWING \$30.00      GRAVE \$ 40.00

**DISCOUNTED 6 HRS MIN****FULL TIP OUT**

DAYS 3AM -3PM      \$25.00

\$40.00

SWING 11AM -11PM      \$45.00

\$55.00

**SUN & WED      GRAVE YARD 7AM -7PM**

SUN & WED      \$55.00

\$65.00

THURS FRI SAT      \$60.00

\$75.00

OFF STAGE AND STAY OVER ---\$25.00

Employee
Code: A06I Tax Profile: 1 - NV/NV/NV
<b>MURPHY, PAUL T</b> Code: A05Q Tax Profile: 1 - NV/NV/NV
<b>ROBERTS, JOSEPH L</b> Code: A077 Tax Profile: 1 - NV/NV/NV
<b>SCHMIDT, KURT J</b> Code: A04B Tax Profile: 1 - NV/NV/NV
SubTotal For Dept: 400
<b>4000 - Marketing/Promot</b>
<b>HIGHAM, CORTNEY M</b> Code: A01K Tax Profile: 1 - NV/NV/NV
SubTotal For Dept: 4000
<b>500 - Floor Security</b>
<b>ADAMS, MICHAEL L</b> Code: A06X Tax Profile: 1 - NV/NV/NV
<b>AKERIPA, SIUAANA U</b> Code: A06V Tax Profile: 1 - NV/NV/NV
<b>AULAVA, OGE</b> Code: A05B Tax Profile: 1 - NV/NV/NV
<b>LA FUENTE INC</b> Client: 0R037

Employee
<b>BEDFORD, DONALD L</b> Code: A01B Tax Profile: 1 - NV/NV/NV
<b>BROOKS, JUSTIN B</b> Code: A03Y Tax Profile: 1 - NV/NV/NV
<b>CONNER, ACCIE J</b> Code: A04G Tax Profile: 1 - NV/NV/NV
<b>GONZALES, ANDRE M</b> Code: A00M Tax Profile: 1 - NV/NV/NV
<b>HARPER, MICHAEL J</b> Code: A00O Tax Profile: 1 - NV/NV/NV
<b>KESI, PATRICK V</b> Code: A03O Tax Profile: 1 - NV/NV/NV
<b>MONE III, MICHAEL J</b> Code: A00X Tax Profile: 1 - NV/NV/NV
<b>PARKER, JUSTIN</b> Code: A02O Tax Profile: 1 - NV/NV/NV
<b>SCULL, TIMOTHY P</b> Code: A06N Tax Profile: 1 - NV/NV/NV
<b>THOMAS, JOSEPH S</b> Code: A07K Tax Profile: 1 - NV/NV/NV
<b>TRIMBLE, CLAYTON M</b> Code: A03R Tax Profile: 1 - NV/NV/NV
<b>VELASCO JR, MANUEL</b> Code: A00E
<b>LA FUENTE INC</b> Client: 0R037

Employee
Tax Profile: 1 - NV/NV/NV
<b>WAGERS, SHANE</b> Code: A06K Tax Profile: 1 - NV/NV/NV
SubTotal For Dept: 500
<b>5000 - Administrative</b>
<b>MAGTOTO, FLORIDA M</b> Code: A06Z Tax Profile: 1 - NV/NV/NV
<b>MARTINEZ, MARICAR ANGUS</b> Code: A00I Tax Profile: 1 - NV/NV/NV
<b>SY, EMELITA P</b> Code: A005 Tax Profile: 1 - NV/NV/NV
SubTotal For Dept: 5000
<b>600 - Outside Security</b>
<b>DUCHENE, JAMES J</b> Code: A00D Tax Profile: 1 - NV/NV/NV
SubTotal For Dept: 600
<b>700 - Drivers</b>
<b>DAVIS, PAUL M</b> Code: A05U
<b>LA FUENTE INC</b> Client: 0R037

Employee	Earnings	Rate	Hc
Tax Profile: 1 - NV/NV/NV	GROSS		
<b>DUCHENE, DREW A</b> Code: A05J Tax Profile: 1 - NV/NV/NV	Regular Tips In/Out GROSS	10.00	
SubTotal For Dept: 700	Regular Tips In/Out GROSS		
<b>800 - House moms</b>			
<b>DEBERNARDO, JOANNE C</b> Code: A06Y Tax Profile: 1 - NV/NV/NV	Regular Tips In/Out GROSS	10.00	
<b>FISCHER, DONNA M</b> Code: A002 Tax Profile: 1 - NV/NV/NV	Regular Tips In/Out GROSS	10.00	
<b>REESE, DEBORA L</b> Code: A05X Tax Profile: 1 - NV/NV/NV	Regular Tips In/Out GROSS	10.00	
<b>SKILES, TRACY L</b> Code: A00P Tax Profile: 1 - NV/NV/NV	Regular Tips In/Out GROSS	10.00	
<b>TRAMA, JENNIFER N</b> Code: A06S Tax Profile: 1 - NV/NV/NV	Regular Tips In/Out GROSS	10.00	
<b>WILLIAMS, JONNA L</b> Code: A009 Tax Profile: 1 - NV/NV/NV	Regular Tips In/Out GROSS	10.00	
SubTotal For Dept: 800	Regular Tips In/Out GROSS		
<b>900 - Doorgirls</b>			
<b>FREDIANELLI, TIFFANY R</b> Code: A00J Tax Profile: 1 - NV/NV/NV	Regular Tips In/Out GROSS	10.00	
<b>WRIGHT, DENISE L</b> Code: A043	Regular Tips In/Out	10.00	
<b>LA FUENTE INC</b> Client: 0R037			

WELCOME TO CHEETAHS

AS YOU WELL KNOW WE HAVE BEEN  
HERE OVER 23 YEARS

THE RULES HAVE BEEN PLACED HERE  
FOR A REASON.

TO CONTINUE TO MAKE THE CLUB RUN  
SMOOTHLY.

THE MAIN OBJECT AROUND HERE IS FOR  
EVERYONE TO MAKE MONEY

\$  
\$

ALL ENTERTAINERS MUST HAVE THEIR  
STATE LICENSE IN THIS BUILDING

BY JAN 4, 2014.

THIS IS YOUR ONLY WARNING.

IF YOU HAVE DANCED HERE BEFORE, THERE IS  
NO GRACE PERIOD.

ALL NEW DANCERS HAVE <sup>one DAY</sup> ~~1~~ DAY TO GET YOUR  
LICENSE.

IT IS AGAINST LAW TO WORK WITHOUT IT.

YOU CAN GET IT ONLINE- OR FROM DIANA THE  
MGR. FOR AN EXTRA \$40.00 CHARGE.

OR PICK IT UP AT SAWYER STATE BUILDING 555  
WASHINGTON AVE SUITE 5500. NEW  
LICENSE IS \$200.00 late FEE is extra 100.00.

THESE LICENSE DO NOT EXPIRE, THEY KEEP  
ADDING FINES <sup>Every</sup> ~~EVERY~~ YEAR YOU DO NOT PAY. IF  
YOU QUIT DANCING YOU MUST CANCEL THEM.

ALL ENTERTAINERS  
MUST HAVE A SHERIFF CARD AND A  
STATE LICENSE.  
STATE LICENSE IS REQUIRED TO WORK  
IN THIS INDUSTRY  
CAN BE PURCHASED AT  
SAWYER STATE BUILDING  
555 EAST WASHINGTON AVE FOR  
\$200.00 OR FROM DIANA –MGR. IT WILL  
BE DONE HERE FOR 240.00. STATE LATE  
FEE IS \$100.00.

PLEASE REMEMBER IF YOU QUIT DANCING, CANCEL YOUR LICENSE.  
THEY WILL KEEP CHARGING YOU EVERY YEAR UNTIL CANCELLED

WE WILL GIVE YOU 14 DAYS TO PURCHASE LICENSE TO WORK HERE.

AFTER 14 DAYS YOU CAN NOT WORK WITHOUT IT.

# CHEETAHS SPECIALS

WHEN YOU TEXT 90407 THEN  
IN MESSAGE SPACE TYPE  
TOPLESS.21

PLEASE DON'T FOR THE DOT,  
SHOW THE MESSAGE TO  
HOUSEMOM AND GET HOUSE  
SPECIALS

ALL NIGHT TIME ENTERTAINERS – AFTER 7PM WILL VALET PARK  
OR HAND YOUR KEYS OVER TO HOUSEMOM,  
YOU WILL BE CHECK ON ALL SHIFTS FOR BEING TO  
INTOXICATED BY HOUSEMOM.

CHECK IN PROCEDURE:

1. ALWAYS HAVE HOUSE-FEE READY
2. HAVE SHERIFF CARD OUT
3. ONCE YOU HAVE CHECKED IN, GET READY AND PUT  
CLOTHING IN LOCKERS . DON'T LEAVE ANYTHING ON THE  
COUNTERS. WE ARE NOT RESPONSIBLE FOR LOST OR  
STOLEN ITEMS.
4. WHEN GOING ON FLOOR- CHECK IN WITH D.J. FOR MUSIC  
UNLESS (OPTIONAL ) YOU PAID TO STAY OFF STAGE.

ATTIRE AND COSTUMES:

1. COSTUMES ONLY NO STREET CLOTHES NO TEARS IN YOUR  
STOCKING OR OUTFITS, CLEAN CLOTHES
2. LOOK CLASSY(NOT NASTY).. LOOK LIKE A DOLLAR MAKE A  
DOLLAR. LOOK LIKE A MILLION MAKE A MILLION.\$\$\$
3. 2 G STRINGS ARE REQUIRED AT ALL TIMES ALSO A BUTT  
COVER (SCARF-SKIRT-OF SUCH)

No purses are allowed on the floor, attach money with rubber band on your hip or get a cuff wallet. Every dancer will have a locker with a **cheetah lock** on it. Put all your belonging in the locker, not under counter Lockers are meant for your costumes and work clothes

They are not meant for storage .

(No food or drink is to be kept in your locker) BUGS!!!

if you leave your clothes or items in your locker over 60 days without working. Your things will be removed.

**REMINDER.....**

**REMEMBER: YOU ONLY GET WHAT YOU PUT IN, NOTHING OUT  
NOTHING BACK**

**CHECKING IN ON THE FLOOR WITH THE D.J.**

**Rules of Dances**

**When going to any of these rooms- must be paid for in advance**

**Prices: G spot room from 7am to 7pm 4 songs for \$100.00- day  
G spot room from 7pm to 7am 3 songs for \$100.00 –grave  
( 2 regular price drinks required to be in there)**

**Cheetah Room: \$220.00 ½ hr \$400.00 1 hr  
( 2 drink are required at \$20.00 each)**

**Dances on the floor:**

**Check on daytime hours- vary from weekdays to weekends  
2 FOR \$20.00**

**Night time dances on the floor are \$20.00 each**

**NO RUNNING ANY TABS ON DANCES!!!!!!!!!!**

**When on the main stage. Make sure all body parts stay on the stage area. Do not lean over to them.**

**No legs on the customer's shoulders and your face does not belong in their lap.**

**Keep feet off the furniture – on the floor at all times.**

**Keep knees off groin area, and your chest off their face.**

**Shoe must be a least a 3" heel or higher.**

**IF YOU WOULD LIKE TO TIP YOUR FLOORMAN, it is very much appreciated.**

**You are not tipping them to turn their heads, It's to make sure everything goes**

**Smoothly.**

**Knowing and understanding the laws, they may save you from getting cited or jailed.**

**There are many variables that can earn you a citation or prostitution charge.**

**You must understand that if you agree to perform any activity with a patron outside of the club, including dinner**

**And dancing, gambling you can be charged with prostitution.**

**If you promise a customer that they can get anything other than a dance. You can be arrested.**

5. NIPPLE MUST BE COVERED AT ALL TIMES WHILE ON THE FLOOR. EXCEPT WHILE DANCING. GET DRESSED AFTER DANCE. DON'T WALK AND GET DRESSED. (CITATION)
6. NO!!!! body oil -butter Makes stage slippery or Glitter is <sup>w/o</sup> allowed on you in the club (customers don't want glitter on them.)

**DANCER ETTIQUETTE:**

1. WE ARE ALL HERE TO MAKE MONEY, SO WORKING TOGETHER IS VERY IMPORTANT.  
IF THERE ARE ANY PROBLEMS PLEASE LET THE HOUSEMOM OR MANAGER KNOW BEFORE BECOMES AND ISSUE
- 2 ALL ENTERTAINERS ON YOUR SHIFT PAY THE SAME HOUSE FEE AS YOU, SO PLEASE GIVE THEM THE SAME RESPECT THAT YOU WOULD LIKE THEM TO GIVE YOU.
- 3 Do not approach customer sitting at a stage. If he request your present. Make sure he tips dancer on the stage at that time.
2. **DO NOT RUN TABS ON YOUR DANCES.** This rule seems so simple, however it seems to happen quite often. We will not chase your money down
3. Do not do a Hit & Run!!!! This means do not walk up to a customer and just ask him for a dance, talk to them, get to know him a little, you will be amazed how this will help you make money and leave a great and lasting impression. Sit at least one song with them first.
4. There is ~~NO~~ SMOKING on the floor
5. No CELL phones on the floor
6. No boyfriends , husbands or lovers allowed in club while you are Working.
7. Anyone giving you a ride to work or a ride home is not allowed in club during your shift.
8. NO -solicitations of any kind, Do not exchange phone numbers on the floor what so ever....
9. Do not joke around about leaving with them. ( metro is watching)

**You are A SOLE PROPRIETOR , and you work under the guidelines of the exotic dance code, if you violate these codes and are cited or jailed, you alone will suffer the consequences of your actions.**

**HOUSEMOMS:**

House moms – are required to report to management of any illegal activity in the building.

With the new laws changing on “POT”. You are **NOT ALLOWED** to bring or smoke this in the building

You will be **FIRED ON THE SPOT.**

**THE House-moms**

Supplies are not from the club. The house-moms buy and bring this in for the entertainers

If you should use any of these products, please **TIP** accordingly. They have the right to tell you No if you should Abuse the use of these products.

**PURCHASE LOCKS**-from your house mom \$10.00. It now belongs to you. If you should lose it. You are responsible for all your own things. Other locks will be cut off your locker.( you have been warned) your loss.

**Phones:** being left out on the counters or house moms desk is not her responsibility.

**REFRIGERATOR:** is the house moms not the entertainers. Ask if you can put something in there. Please remove

All items out by the end of her shift. Otherwise it will be thrown out.

## 6.35.100 Erotic dance establishment regulations.

Page 1 of 1

## 6.35.100 Erotic dance establishment regulations.

- (A) No person, firm, partnership, corporation or other entity shall advertise, or cause to be advertised, as an erotic dance establishment without a valid erotic dance establishment license issued pursuant to this Chapter.
- (B) No later than the fifteenth day of the month succeeding the semiannual license period, an erotic dance establishment licensee shall file a verified report with the Department showing the licensee's gross receipts and amounts paid to dancers for the preceding semiannual period.
- (C) An erotic dance establishment licensee shall maintain and retain for a period of three years the names, addresses, a copy of each dancer's work card, new and renewal, and ages of all persons employed as dancers by the licensee.
- (D) No erotic dance establishment licensee shall employ as a dancer a person under the age of eighteen years or a person is not licensed pursuant to this Chapter and LVMC 6.86.
- (E) No person under the age of eighteen years shall be admitted to a nonalcoholic erotic dance establishment. No patron under the age of twenty-one shall be admitted to an alcoholic erotic dance establishment.
- (F) No erotic dance establishment licensee shall serve, sell, distribute or suffer the consumption or possession of any intoxicating liquor, or any beverage represented as containing any alcohol upon the premises of the licensee without a valid liquor license.
- (G) An erotic dance establishment licensee shall conspicuously display all licenses required by this Chapter.
- (H) *Dancing* shall take place within an area which is visible immediately upon entrance to the establishment premises, is visible immediately from the entry room, is visible immediately from one fixed staffed security station, or is visible immediately from a service bar area of the establishment's premises; however, no erotic *dancing* shall be visible to the outside sidewalk or street areas. Dance areas must not be obscured by any curtain or door that restricts view from one of the above-described areas. Patrons will not be allowed to enter private rooms with dancers.
- (I) No dancer shall fondle or caress any patron, and no patron shall fondle or caress any dancer.
- (J) Any erotic dance establishment which does not have a liquor license issued by the Department and which uses the words that imply the availability of alcoholic liquor on the premises, such as "bar," "lounge" or "saloon," in any advertisement or place name must state in all such advertisements that alcoholic beverages are not sold or allowed on the premises.
- (K) All erotic dance establishments licensed pursuant to this Chapter shall post on each entrance door and not more than five inches above each entrance door, and in at least three places behind the bar a sign with letters not less than three inches high stating:  
 "ALCOHOLIC LIQUOR IS NOT SOLD HERE"  
 "PROSTITUTION IS UNLAWFUL"
- The letters must be black on a yellow background and the sign on each entrance door and behind the bar must be between four and six feet above floor level. Each sign must be located and illuminated sufficient to be visible by a person with normal eyesight corrected to 20/20, thirty feet from the sign.
- (L) No erotic dance establishment shall employ a security guard, or allow a security guard to work on the premises, unless such security guard has obtained a work identification card pursuant to LVMC 6.86.
- (Ord. 3916 § 2 (part), 1995)

PROSTITUTION  
IS  
ILLEGAL  
IT WILL NOT BE  
TOLERATED IN  
THE BUILDING

CHEETAHS  
HAS A (ZERO)  
0  
DRUG TOLERANCE

CHEETAHS

HAS A (ZERO)

0

DRUG TOLERANCE

LEAVE PRESCRIPTION IN YOUR CAR OR AT HOME.  
NO NEED TO BRING THE WHOLE BOTTLE TO WORK,  
BUT YOUR SCRIPTS MUST BE IN LABELED BOTTLE.  
(LET MANAGER KNOW OF MEDICATIONS)

# EXHIBIT “4”

Deaf/Steve

2/5/2014



### WHEELBARROW'S LUNGE RULES

1. Costumes only... **NO STREET CLOTHES.**
2. High Heels **REQUIRED.** NO CLOU TYPE shoes.
3. Two (2) G-strings must be worn **AT ALL TIMES**...Underwear doesn't count as a G-String.
4. Accept your money at your hips, not with your **FRONT OR BACK.**
5. Keep your chest off the customer's head or face area.
6. **DO NOT GRIN** on the customer's lap at **ANYTIME, IT IS AGAINST THE LAW!**
7. Customers cannot fondle you and you cannot fondle them.
8. **DO NOT LEAVE YOUR SHIFT WITHOUT CHECKING OUT WITH THE MANAGER AND THE DJ.**
9. You must have the manager's permission to work without your house fee **BEFORE** you come to work.
10. **NO GLASS** in the dressing room. **NO PLASTIC CUPS** on the floor.
11. You **MUST NOT** refuse a drink or shooter from the customer. Non-alcoholic beverages are provided.
12. You **MUST** change costumes at least 3 times during your shift. You dance...you sweat!
13. **CABS and RIDES** must pick you up at the back door. **YOU MAY NEVER LEAVE WITH A CUSTOMER!**
14. **YOU ARE NOT ALLOWED TO CARRY A PURSE OR CELL PHONE ON THE FLOOR.**
15. **NO SMOKING OR GUM CHEWING ON THE FLOOR.**
16. You are not allowed to wear just G-Strings as part of your costume. You **MUST** have you behind covered
17. You may not wear fishnet costumes without a bra or panties underneath.
18. **YOU MUST HAVE ONE FOOT ON THE FLOOR AT ALL TIMES WHILE DOING A LAP DANCE**

PLEASE SIGN YOUR REAL NAME AND PRINT YOUR STAGE NAME TO INDICATE THAT YOU READ AND UNDERSTAND THE RULES  
THANK YOU.

TAM

Cece

Cinnamon

Christina

Cherrie

Bartholomew

Spice

# EXHIBIT “5”

**DANCER PERFORMANCE LEASE**  
**CHEETAH'S LAS VEGAS**

**OWNER:**

Name: LA FUENTE, INC. d/b/a CHEETAH'S

**PREMISES:**

Address: 2112 Western Avenue, Las Vegas, Nevada

**PERFORMER:**

Name: ANITA COY

Address: [REDACTED]

City, State, Zip Code:  Henderson, NV 89012

Telephone: [REDACTED]

Stage Name: HEILA

Social Security Number: [REDACTED]

This Dancer Performance LEASE (referred to as "LEASE") is made and entered into this 22nd day of Aug, 2013 by and between OWNER and PERFORMER.

WHEREAS, OWNER operates a retail business establishment at the PREMISES where live nude and/or semi-nude dance entertainment is presented to adult members of the general public; and

WHEREAS, OWNER desires to LEASE to PERFORMER, on a non-exclusive basis, the right to use certain private and/or public areas of the PREMISES for purposes of presenting live nude and semi-nude entertainment to the adult general public pursuant to and in accordance with the terms of this LEASE; and

WHEREAS, PERFORMER desires to LEASE the PREMISES for purposes of performing live nude and/or semi-nude entertainment pursuant to and in accordance with this LEASE.

NOW, THEREFORE, OWNER AND PERFORMER, in consideration of the terms and conditions stated here, agree as follows:

1. **Leasing of PREMISES:** OWNER LEASES to PERFORMER and PERFORMER LEASES from OWNER the non-exclusive right during normal business hours to use the stage area and certain other portions of the PREMISES designated by OWNER for the performing of live nude and/or semi-nude entertainment and the preparation for entertaining, for the periods, at the rent, and upon the terms and conditions contained in this LEASE.
2. **Term of Agreement:** This LEASE is on a day to day basis, renewable upon mutual consent of both parties. Either party may terminate this agreement by providing oral notice to the other party at any time.
3. **Scheduling of LEASE Dates:** PERFORMER shall exclusively choose and schedule the particular days on which she desires to LEASE the PREMISES; all such days for each week are to be selected at least one week in advance. Each day so scheduled shall consist of a minimum of 8 consecutive hours (one "set") during which PERFORMER shall provide entertainment consistent with this LEASE. PERFORMER acknowledges that there are other PERFORMERS leasing the PREMISES, and agrees to establish her sets consistent with and in cooperation thereof to:
  - i. produce the maximum gross sales possible from dance performances during the term of this LEASE for the benefit of both OWNER and PERFORMER, and
  - ii. assure regular maximum operation of entertainment at PREMISES for the benefit of both OWNER and PERFORMER.

4. OWNER shall make the PREMISES available to PERFORMER and PERFORMER hereby LEASES the PREMISES for a minimum of one set per week, unless otherwise specifically agreed to by the parties. Once scheduled, neither PERFORMER nor OWNER shall have the right to cancel or change any scheduled sets except upon material breach as defined in Paragraph 11 or as mutually agreed by PERFORMER and OWNER. PERFORMER may be permitted to LEASE space during unscheduled sets, subject to space availability and subject to the rental credit provided in this LEASE.

If PERFORMER misses an entire scheduled set, PERFORMER shall pay to OWNER as liquidated damages \$25.00 for each day set missed and \$25.00 for each night set missed. Owner may waive such liquidated damages in its discretion. Such liquidated damages are to be paid by PERFORMER to OWNER no later than by the end of the set. All liquidated damages as established in this LEASE are in view of the fact that it would be impracticable or extremely difficult to fix or determine the actual damages incurred as a result of breaches of the terms of this LEASE. If PERFORMER fails to timely commence a scheduled set, PERFORMER shall pay to OWNER as liquidated damages \$20.00 for each mystery dance performed during her absence. Such liquidated damages are to be paid by PERFORMER to OWNER no later than by the end of that set.

5. **Rent (cross off one):**  
~~For the term of this LEASE, PERFORMER agrees to pay rent to OWNER an amount equal to \$40.00 for each morning day set, \$30.00 for each afternoon set and \$65.00 for each night set (referred to as "set rent"). All set-rent shall be paid to OWNER immediately upon completion of any set.~~
6. **Use of PREMISES:** PERFORMER agrees to perform nude and/or semi-nude entertainment at the PREMISES for the general public during all hours of each set for which she has LEASED the PREMISES; PERFORMER hereby specifically acknowledging that PERFORMER'S agreement to perform such entertainment during all said periods of time is a material obligation under this LEASE. In consultation with PERFORMERS who LEASE space on the PREMISES, OWNER shall establish a fixed fee for the price of table, taxi and couch dances performed on the PREMISES (referred to as "DANCE PERFORMANCE FEES"), and PERFORMER agrees not to charge a customer more than the fixed price for any such dance performance, although nothing contained in this LEASE shall limit PERFORMER from seeking and/or obtaining "tips" and/or gratuities over or above the established price for such dances. THE PARTIES ACKNOWLEDGE AND AGREE, HOWEVER, THAT DANCE PERFORMANCE FEES ARE NEITHER TIPS NOR GRATUITIES, BUT ARE, RATHER, CHARGES TO THE CUSTOMER AS COMPENSATION FOR THE SERVICE OF OBTAINING A DANCE PERFORMANCE. PERFORMER recognizes that her obligations as set forth in this Paragraph are material considerations to OWNER in order to:

- A. Use her best efforts in connection with the performance of her entertainment at the PREMISES.
- B. Use the PREMISES in a professional, courteous or responsible manner in consideration of and for the convenience of the customers and other PERFORMERS on the PREMISES.
- C. Apply for, keep and maintain, in full force and effect, any and all licenses and/or permits necessary or required by any governmental agencies.

Defendants 00004



- D. Comply with and otherwise not violate and all rules, regulations, statutes, ordinances or other laws imposed by any federal, state or local governmental agency. PERFORMER acknowledges and agrees, and it is the understanding of both parties to this LEASE, that any activity, conduct or performance of PERFORMER which is in violation of any federal, state or local law or ordinance is beyond the scope of her authority pursuant to this LEASE and that such activity, conduct and/or performance is in violation of the terms of this LEASE.
- E. Maintain accurate daily records of all income earned from and at the PREMISES during this LEASE, in accordance with all federal, state and local taxation laws; and
- F. Become knowledgeable with all federal, state and local laws and regulations that impact upon or apply to PERFORMER'S conduct while on the PREMISES.

**Compliance with Rules and Regulations.** OWNER shall have the right to impose such rules and regulations upon the use of the PREMISES by PERFORMER as OWNER, in its sole and absolute discretion, deems necessary and appropriate in order to ensure that: a) no waste or damage to the PREMISES is sustained; b) the property is used in a safe fashion for the benefit of all entertainers, patrons and others; and c) no violations of the applicable governmental regulations, statutes, ordinances or other laws occur. PERFORMER agrees to be bound by and to otherwise adhere to each and every such rule and regulation imposed by OWNER in connection with her use of the PREMISES. PERFORMER agrees to be responsible for any damages she causes to the PREMISES, and/or to any of OWNER'S personal property, furniture, fixtures, inventory or equipment, and shall reimburse OWNER as additional rent the actual expenses incurred to repair such damages or to replace such damaged property (real or personal), furniture, fixtures, inventory, and/or equipment.

#### 7. Business Relationship of Parties

- A. The parties acknowledge that the business relationship created between OWNER and PERFORMER is that of landlord and tenant for the joint and non-exclusive leasing of the PREMISES, and that this relationship is a material consideration of this LEASE. **THE PARTIES SPECIFICALLY DISAVOW ANY EMPLOYMENT RELATIONSHIP,** and agree that this LEASE shall not be interpreted as creating an employer/employee relationship.
- B. PERFORMER specifically acknowledges that were the relationship between OWNER and PERFORMER to be that of employer/employee, OWNER would be entitled to collect and retain all DANCE PERFORMANCE FEES collected by PERFORMER from customers -- PERFORMER specifically acknowledging here that in the circumstance of an employer/employee relationship, these fees would be the sole and exclusive property of the OWNER -- and that PERFORMER would be paid on an hourly basis for work performed on the PREMISES at a rate equal to the applicable minimum wage law, equal to the amount of taxes, interest and penalties OWNER is required to pay.
- C. **Taxes.** PERFORMER shall exclusively be responsible for, and pay all federal, state and local taxes and contributions imposed or required at any time by unemployment, workman's compensation, social security and income tax laws, and any other applicable laws, rules or regulations imposed upon or asserted in connection with any income earned by PERFORMER at the PREMISES. Should PERFORMER fail to pay any applicable income taxes and OWNER (later be held accountable by any court, tribunal or governmental agency for the payment of such taxes on income generated by PERFORMER at the PREMISES, PERFORMER shall pay to OWNER as damages for the breach of this obligation portion of NET DANCE PERFORMANCE FEES earned by PERFORMER businesses or locations other than at OWNER'S PREMISES.

PERFORMER understands that if the relationship of the parties was of employer/employee (which it is not), that any wages PERFORMER would receive would be reduced by the maximum "tip credit" as allowed by law. Regarding this "tip credit", under federal law pursuant to 29 United States Code Section 203(m), an employer subject to that law is allowed to reduce minimum wage payments by up to 50% based upon the tips received by the employee. Any applicable state wage laws may contain similar "tip credit" provisions. Under such an employment arrangement, PERFORMER would further be entitled to retain any and all "tips" and/or gratuities, but not DANCE PERFORMANCE FEES, that she may collect while performing on the PREMISES. The parties specifically acknowledge that PERFORMER'S right to obtain and retain DANCE PERFORMANCE FEES pursuant to this LEASE is specifically contingent and conditioned upon the acknowledged business relationship of the parties as being that of landlord and tenant as is set forth in subparagraph 7A. The parties additionally acknowledge that were the relationship between them to be that of employer and employee, PERFORMER'S employment would be "at will" (you could be fired without cause and without prior notice or warning), and that OWNER would be entitled to control PERFORMER'S work schedule and the hours of work; physical presentation (make-up, hairstyle, etc.); costumes and other wearing apparel; music; work habits; the selection of her customers; the nature, content, character, manner and means of her performances; and her ability to perform at or for other locations or businesses. PERFORMER desires to control all these matters herself and without the control by OWNER, and OWNER and PERFORMER agree by the terms of this LEASE that all such matters are exclusively reserved to the decisions of the PERFORMER. **PERFORMER SPECIFICALLY REPRESENTS THAT SHE DOES NOT DESIRE TO PERFORM AS AN EMPLOYEE OF OWNER SUBJECT TO TERMS AND CONDITIONS OUTLINED IN THIS SUBPARAGRAPH, BUT RATHER DESIRES TO PERFORM CONSISTENT WITH THE OTHER PROVISIONS OF THIS LEASE AS A TENANT.**

PERFORMER and OWNER specifically agree that if any governing Federal or State agency, or any court or tribunal which acquires jurisdiction over OWNER, determines that the relationship between the parties is other than that of landlord/tenant and that PERFORMER is entitled to payment of monies from OWNER, all of the following shall apply: 1) in order to ensure that OWNER is not unjustly harmed and that PERFORMER is not unjustly enriched by the parties operating pursuant to the terms of this LEASE, OWNER and PERFORMER agreed that PERFORMER shall disgorge herself of, and pay to and reimburse OWNER, all NET DANCE PERFORMANCE FEES (which are defined as DANCE PERFORMANCE FEES remaining after the payment of net rent and any additional rent) earned by the PERFORMER at any time while performing on the PREMISES, all of which would otherwise have been received and kept by OWNER had they not been retained by PERFORMER under the terms of this LEASE; 2) any payment deemed owing by OWNER to PERFORMER shall be determined based upon the pay arrangement set forth in subparagraph 7B; and 3) the relationship of the parties shall then immediately convert to an arrangement of employer and employee upon the terms set forth in subparagraph 7B.

9. **Costumes.** PERFORMER shall supply all her own costumes and wearing apparel of any kind or nature, subject to compliance with any applicable laws and/or governmental regulations, and OWNER shall neither be responsible for such decisions, nor control in any way whatsoever the choice of costumes and/or wearing apparel made by PERFORMER.

10. **Nature of Performance.** OWNER shall have no right to direct and/or control the nature, content, character, manner or means of PERFORMER'S performances. PERFORMER acknowledges and agrees, however, to perform live nude and/or semi-nude entertainment consistent with the type of entertainment regularly performed at the PREMISES.

11. **Material Breach.** Any of the following conduct by PERFORMER shall constitute a material breach of this LEASE:

- A. Failing to maintain and keep in full force and effect any and all licenses and/or permits necessary and/or required by any federal, state or local law, regulation or governmental agency.
- B. Violating any federal, state or local laws or regulations while on PREMISES.
- C. Failing to timely comply with LEASE set obligations on more than two (2) occasions in any one calendar month.
- D. Failing to pay any set rent and/or additional rent when due.
- E. Engaging in disruptive behavior while on the PREMISES.
- F. Failing to timely pay any assessed liquidated damages.
- G. Claiming the business relationship with OWNER as being other than that of a landlord and a tenant, in contravention to Paragraph 7 of this LEASE.
- H. Violating any public health or safety laws, rules, regulations, or concerns.

12. **Termination of Lease.** Either party hereto may terminate this LEASE, without cause, upon thirty (30) days notice to the other party. Upon material breach, the non-breaching party may terminate this LEASE upon twenty-four (24) hours notice to the other party, or as provided by law. Such termination shall be effective immediately. Nothing in this paragraph, however, shall allow PERFORMER to perform on the PREMISES without a valid license to continue to engage in conduct in violation of any laws or regulations, or public health or safety rules or concerns. In lieu of terminating this LEASE upon the material breach as set forth in subparagraph 11E by the PERFORMER, OWNER may, at its option, assess as liquidated damages for that material breach, an amount not to exceed the liquidated damage amount as set forth in paragraph 9 for a missed set. In lieu or in addition to terminating this LEASE, upon the material breach as set forth in subparagraph 11G by the PERFORMER, OWNER may, at its option and in addition to any other remedies that may be available to OWNER at law, in equity, or as are contained in this LEASE, do either or both of the following: A) assess liquidated damages against PERFORMER equal to all NET DANCE PERFORMANCE FEES earned by PERFORMER pursuant to this LEASE and/or B) alter the relationship between the parties to that of an employment arrangement consistent with the provisions of paragraph 7B.

13. **Assignment/Non-Exclusivity.** This LEASE is acknowledged to be personal in nature. PERFORMER shall have no right to subLEASE her rights to the use of the PREMISES or to assign this LEASE or any rights or obligations contained in this LEASE without the express consent of OWNER; provided, however, if PERFORMER is unable to fulfill her contractual obligations during any scheduled set, PERFORMER shall have the right to substitute the services of any licensed (if applicable) PERFORMER who is then a party to a Dance Performance LEASE with the OWNER. Any such substitution shall not, however, relieve PERFORMER of the rent and liquidated damage obligations as contained in this LEASE, should any substitute fail to pay any rent, additional rent, and/or liquidated damages that are due to OWNER as a result of the substitute's LEASE obligations. PERFORMER'S obligations under this LEASE are non-exclusive.

14. **Severability.** In the event that any term, paragraph, subparagraph, or portion thereof of this LEASE is declared to be illegal or unenforceable, this LEASE shall, to the extent possible, be interpreted as if said provision, or portion thereof, was not a part of this LEASE; it being the intent of the parties that any such portion of the LEASE, to the extent possible, be severable from this LEASE as a whole. This paragraph shall not apply, however, to the circumstance of a judicial or administrative determination of the business relationship between PERFORMER and OWNER as being other than that of landlord and tenant, which shall be controlled by the provisions of subparagraph 7C above.

15. **OWNER'S Additional Obligations.** OWNER shall, in addition to leasing of the PREMISES as set forth in paragraph 7:

- I. Provide to PERFORMER, at OWNER'S expense, music used on the PREMISES, lighting and dressing room facilities.
- J. Pay any and all copyright fees due relative to the music used on the PREMISES; and
- K. Advertise the business in a commercially reasonable manner for the benefit of both PERFORMER and OWNER. Nothing contained in this subparagraph or in this LEASE shall prohibit PERFORMER from advertising her services in any manner or fashion as she so desires (including but not limited to buying TV advertising, placing advertisements in trade publications, etc.)

16. **Nature of Business.** PERFORMER acknowledges that she understands that the nature of the business being operated at the PREMISES is that of an adult entertainment establishment, and that she will be subjected to nudity (primarily female), and explicit language from time to time, and that she may be subjected to depictions or portrayals of explicit sexual conduct and the like. PERFORMER acknowledges and affirmatively represents that she is not and will not be offended by, and that she assumes any and all risks involved or associated with being subject to, such conduct, depictions, portrayals, or language.

17. **Miscellaneous.** This LEASE shall be interpreted pursuant to the laws where the PREMISES are located.

In the event that OWNER commences legal action to enforce any of the provisions herein, or defends against any claims in any court or administrative proceeding which have been initiated or made by PERFORMER either pursuant to this LEASE or regarding the business relationship between the parties as set forth in paragraph 7 above, if OWNER is the prevailing party, OWNER shall be entitled to reimbursement from PERFORMER for any and all costs and expenses incurred in connection with such proceeding, including actual reasonable attorney fees.

PERFORMER SPECIFICALLY ACKNOWLEDGES THAT SHE HAS BEEN ADVISED THAT IT IS THE POLICY OF OWNER NOT TO ENTER INTO A LEASE WITH A PERFORMER WHO IS UNDER THE AGE OF EIGHTEEN (18), AND THAT THIS LEASE IS NULL AND VOID IF PERFORMER IS NOT OF SUCH AGE. PERFORMER HEREBY REPRESENTS AND WARRANTS THAT SHE IS EIGHTEEN (18) YEARS OF AGE OR OLDER, THAT SHE HAS PROVIDED OR WILL, UPON REQUEST, PROVIDE IDENTIFICATION ATTESTING TO HER AGE, AND THAT SUCH IDENTIFICATION IS AUTHENTIC.

"OWNER" La Fuente, Inc. d/b/a Cheatah's

By: Cristina Lopez

Title: Flawless

Date: 8/22/2013

"PERFORMER"

[Signature]

SWITH COY  
(printed name)

## DANCER PERFORMANCE LEASE

### CHEETAH'S LAS VEGAS

**"OWNER"**

Name: LA FUENTE, INC. d/b/a CHEETAH'S

**"PREMISES"**

Address: 2112 Western Avenue, Las Vegas, Nevada 89102

**"PERFORMER"**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, \_\_\_\_\_

Zip Code: \_\_\_\_\_

Telephone: \_\_\_\_\_

Stage Name: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

This Dancer Performance LEASE (referred to as "LEASE" is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between OWNER and PERFORMER.

WHEREAS, OWNER operates a retail business establishment at the PREMISES where live nude and/or semi-nude dance entertainment is presented to adult members of the general public; and

WHEREAS, OWNER desires to LEASE to PERFORMER, on a non-exclusive basis, the right to use certain private and/or public areas of the PREMISES for purposes of presenting live nude and semi-nude entertainment to the adult general public pursuant to and in accordance with the terms of this LEASE; and

WHEREAS, PERFORMER desires to LEASE the PREMISES for purposes of performing live nude and/or semi-nude entertainment pursuant to and in accordance with this LEASE.

NOW, THEREFORE, OWNER AND PERFORMER, in consideration of the terms and conditions stated here, agree as follows:

1. **Leasing of PREMISES:** OWNER LEASES to PERFORMER and PERFORMER LEASES from OWNER the non-exclusive right during normal business hours to use the stage area and certain other portions of the PREMISES designated by OWNER for the performing of live nude and/or semi-nude entertainment and the preparation for entertaining, for the periods, at the rent, and upon the terms and conditions contained in this LEASE.
2. **Term of Agreement:** This LEASE is on a day to day basis, renewable upon mutual consent of both parties. Either party may terminate this agreement by providing oral notice to the other party at any time.
3. **Scheduling of LEASE Dates:** PERFORMER shall exclusively choose and schedule the particular days on which she desires to LEASE the PREMISES; all such days for each week are to be selected at least one week in advance. Each day so scheduled shall consist of a minimum of 6 consecutive hours (one "set") during which PERFORMER shall provide entertainment consistent with this LEASE. PERFORMER acknowledges that there are other PERFORMERS leasing the PREMISES, and agrees to establish her sets consistent with and in cooperation thereof to:
  - i. produce the maximum gross sales possible from dance performances during the term of this LEASE for the benefit of both OWNER and PERFORMER; and
  - ii. assure regular maximum operation of entertainment at PREMISES for the benefit of both OWNER and PERFORMER.

4. OWNER shall make the PREMISES available to PERFORMER and PERFORMER hereby LEASES the PREMISES for a minimum of one set per week, unless otherwise specifically agreed to by the parties. Once scheduled, neither PERFORMER nor OWNER shall have the right to cancel or change any scheduled sets except upon material breach as defined in Paragraph 11 or as mutually agreed by PERFORMER and OWNER. PERFORMER may be permitted to LEASE space during unscheduled sets, subject to space availability and subject to the rental conditions provided in this LEASE.

If PERFORMER misses an entire scheduled set, PERFORMER shall pay to OWNER as liquidated damages \$0.00 for each day set missed and \$0.00 for each night set missed. Owner may waive such liquidated damages in its sole discretion. Such liquidated damages are to be paid by PERFORMER to OWNER no later than by the end of the next set. All liquidated damages as established in this LEASE are in view of the fact that it would be impracticable or extremely difficult to fix or determine the actual damages incurred as a result of breaches of the terms of this LEASE. If PERFORMER fails to timely commence a scheduled set, PERFORMER shall pay to OWNER as liquidated damages \$0.00 for each mystery dance performed during her absence. Such liquidated damages are to be paid by PERFORMER to OWNER no later than by the end of that set.

5. **Rent (cross off one)**  
**Flat Set Rent.** PERFORMER agrees to pay rent to OWNER in an amount equal to \$\_\_\_\_\_ for each morning day set, \$\_\_\_\_\_ for each afternoon set and \$\_\_\_\_\_ for each night set (referred to as "set rent"). All set rent shall be paid to OWNER immediately upon completion of any set. Discounted rent fees would apply if PERFORMER can perform for 6 hours or more.
6. **Use of PREMISES:** PERFORMER agrees to:
  - Perfom nude and/or semi-nude entertainment at the PREMISES for the general public during all hours of each set for which she has LEASED the PREMISES; PERFORMER hereby specifically acknowledging that PERFORMER'S agreement to perform such entertainment during all said periods of time is a material obligation under this LEASE. In consultation with PERFORMERS who LEASE space on the PREMISES, OWNER shall establish a fixed fee for the price of table, taxi and couch dances performed on the PREMISES (referred to as "DANCE PERFORMANCE FEES"), and PERFORMER agrees not to charge a customer more than the fixed price for any such dance performance, although nothing contained in this LEASE shall limit PERFORMER from seeking and/or obtaining "tips" and/or gratuities over and above the established price for such dances. THE PARTIES ACKNOWLEDGE AND AGREE, HOWEVER, THAT DANCE PERFORMANCE FEES ARE NEITHER TIPS NOR GRATUITIES, BUT ARE, RATHER, CHARGES TO THE CUSTOMER AS COMPENSATION FOR THE SERVICE OF OBTAINING A DANCE PERFORMANCE. PERFORMER recognizes that her obligations as set forth in this Paragraph are material considerations to OWNER in order to:
    - A. Use her best efforts in connection with the performance of her entertainment at the PREMISES;
    - B. Use the PREMISES in a professional, courteous and responsible manner in consideration of and for the convenience of the customers and other PERFORMERS on the PREMISES;
    - C. Apply for, keep and maintain, in full force and effect, any and all licenses and/or permits necessary or required by any governmental agencies;



# EXHIBIT “6”

Dean R. Fuchs, Esq. (Admitted PHV)  
Schulten Ward Turner & Weiss, LLP  
260 Peachtree Street NW, Suite 2700  
Atlanta GA 30303  
Phone: (404) 688-6800; Fax: (404) 688-6840  
[d.fuchs@swtwlaw.com](mailto:d.fuchs@swtwlaw.com)

*Attorney 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

**DEFENDANT LA FUENTE, INC.'S  
SUPPLEMENTAL RESPONSE TO  
PLAINTIFFS' THIRD SET OF  
REQUESTS FOR PRODUCTION**

**REQUEST NO. 17:** All questionnaires Dancers were asked to fill out from 2010 to present, including those questionnaires inquiring about Dancers' treatment as independent contractors or employees.

**RESPONSE:** Defendant has no document responsive to this Request which is related to the only remaining Plaintiff in this civil action.

**REQUEST NO. 18:** Complete Copy of the hand-written book, referenced in the Rule 30(b)(6) Deposition of Defendant taken on March 16, 2017, which contains information regarding each Dancer, the days and times worked by each Dancer, infractions of individual Dancers and terminations or deactivations of Dancers.

**RESPONSE:** See documents marked LF019880-02172.

**REQUEST NO. 19:** Complete Copy of the “Rule Book” referenced in the Rule 30(b)(6) Deposition of Defendant taken on March 16, 2017, including any prior versions of the “Rule Book.”

**RESPONSE:** Documents responsive to this Request have already been produced. See PMK Deposition, Ex. 6.

**REQUEST NO. 20:** Complete Copy of any documents removed from the “Rule Book” described above.

**RESPONSE:** Respondent has no document responsive to this Request in its possession, custody or control.

**REQUEST NO. 21:** Complete Copy of any information/advertisement published on Cheetah’s website from 2010 to 2016.

**RESPONSE:** See documents marked LF016204-016210.

This 20<sup>th</sup> day of February, 2018.

SCHULTEN WARD TURNER & WEISS, LLP  
260 Peachtree Street, NW  
Suite 2700  
Atlanta, GA 30303  
(404) 688-6800 telephone

/s/ Dean R. Fuchs  
DEAN R. FUCHS (admitted PHV)  
Georgia Bar No. 279170

*Attorney for Defendant*

**CERTIFICATE OF SERVICE**

I certify that on the 20<sup>th</sup> day of February, 2018, a true and correct copy of the foregoing  
**DEFENDANT LA FUENTE INC.'S SUPPLEMENTAL RESPONSE TO PLAINTIFFS'**  
**THIRD SET OF REQUESTS FOR PRODUCTION** was served via e-mail and E-SERVE to  
the following:

Lauren Calvert  
Morris Anderson Law  
716 Jones Blvd.  
Las Vegas, Nevada 89107  
*Attorneys for Plaintiffs*

P. Andrew Sterling  
Rusing, Lopez & Lizardi, PLLC  
6363 North Swan Road, Suite 151  
Tucson, AZ 85718  
*Attorneys for Plaintiffs*

/s/ Dean R. Fuchs  
DEAN R. FUCHS

3/27/15 Steve 1-9 10 PM

3/28/15 Steve 1-9 10 PM

3-29-15 MANNY V 1-9 Saw

8:30 PM Suspended Dancer Rose #2824493  
"NITA Castro", Walked off the floor,  
Refused to finish her 6hrs, Refused  
to pay \$20 per hr, BAD ATTITUDE -  
HER RESPONSE WAS "FIRE ME - I  
DON'T CARE, WILL SPEAK WITH BEAR  
PENDING OUT Come, Checked in at  
6 PM, Walked off the floor at 8:44 PM

3-30-15 MANNY V 1-9 MON

5-3-15 MANNY V 1-9 SUN

4:10 PM PAT, NITE DOOR MAN Called  
IN SAYING HE WOULD NOT BE IN  
TONITE, NO EXPLANATION.

5-4-15 MANNY V 1-9 MON  
Good Ring on the BAR Prop

5-5-15 MANNY V 1-9 TUES

1:20 PM MEETING with the DOOR MAN  
CHAD, MIKE, DON, CONCERNING "TIPPING"  
FROM OUR ENTERTAINERS, SEEMS  
CERTAIN ONE'S ARE EXPRESSING THEIR  
VIEWS AS TO LACK OF TIPS FROM C  
GIRLS, I EXPRESSED TO THEM MYSELF  
& STEVE DO NOT WANT TO HEAR  
ANY MORE ABOUT THIS MATTER.

5/15/15 Stan no Prob

5/16/15 Stan NO Problem

5-17-15 MANNY ✓ 1-9 SUN

5.17.15 SCOTT 9.5- SUN

TATIANA (BARTENDER) SHOWED UP AT  
0:15 I JUST SENT HER HOME. REPEATEDLY  
LATE

5-18-15 MANNY ✓ 1-9 MON

DANCER COCOA IS TERMINATED, LEAVING  
EARLY WITHOUT ANY EXPLANATION AND NOT  
PAYING TO COMPLETE HER SHIFT, ALSO SHE  
TOOK \$100<sup>00</sup> FROM A CUSTOMER AT THE BAR.  
NO DANCES WERE RENDERED, I RETURNED  
THE \$100 TO THE CUSTOMER, COCOA #2682894

-25-15 MANNY V 1-9 MON  
" MEMORIAL DAY "

I've informed Dancer Lollipop  
# 3056132 THAT SHE IS NOT TO WORK  
on SUN, MON, TUES, AFTERNOON SHIFTS,  
on Sunday she offended 2 of our  
MALE CUSTOMERS, NOT THE 1ST TIME, ALSO  
ENOUGH OF HER NEGATIVE ATTITUDE  
Every day she works.

Called METRO, OUR CAR CLUB IS AT  
IT AGAIN, THE USUAL.

5-26-15 MANNY V 1-9 TUES  
" TERRIBLE "

5/27/15 Steve 5-1  
15 SCOTT - Suspended (DANIELLE NORMAN)  
5/20/15 Steve 1-9 Steve  
Standing approx 7' tall

15 guy hit pole w/ LIP #150528-3685

8-30-15 MANNY V 1-9 SUN

(CANT do that!)

3 PM

I have informed Dancer Amanda  
# 6030840, I do NOT WANT HER WORKING  
SUN, MON, OR TUES. Records show that  
"4" times SHE WILL ASK TO LEAVE EARLY,  
AND "4" times IT'S WITHIN 1 1/2 TO 2 HRS  
UPON ARRIVING TO WORK. I DON'T NEED HER.

6:15 PM

CAR CLUB STARTING TO GATHER NEXT DOOR  
CALLED METRO.

7:30

METRO NEVER SHOWED.

8-30-15 <sup>Search</sup> NO PROBLEM  
8/31/15 Oleg V S-1 MON

NO PROBLEMS

8-31-15 MANNY V 1-9 MON

No Problems

8-31-15 <sup>Search</sup> 9:5

NO PROBLEM

9-29-15 - Sent -

NO AMEX AT 6-BYKS

Sent home Rain till she go  
to afternoon mgs. Dirty

Sent home mischief Morn  
girl. Needs to speak to Do  
Guy - Dirty

9-30-15 - MY Cell Phone  
HAS Completely Gone OUT OF  
Service; I HAVE ORDERED A NEW  
ONE, IT WILL TAKE 3 days TO DELIV  
IN THE MEAN TIME IF YOU NEED  
TO CONTACT ME PLEASE FEEL FREE  
TO CALL MY WIFE'S CELL HER NO  
IS 702-281-8879, THANKS

MANNY V

9-30-15 - DON RES 5-1 NO PROBLEM

10-26-2015

SCOTT

9-5

4:30 AM

CALLED ATM MERCHANT 303 PER

10/27/2015 DAYS GUY V 5-1

Fried Red SC#(6030072) A  
WAKING. ALL SHIFTS. Her Services are  
no longer needed.

10-27-15 MANNY V 1-9 TU.

11-1-15 MANNY V 1-9 SUN

11/2/15 GUY V 5-1 MON

I HAVE SUSPENDED SA  
SC#(6025624) FOR REFUSING TO pay  
THE STAY OVER FEE. I IGNORED THE  
MOM AND WALKED OUT THE DOOR  
WITHOUT ESCORT. SHE WAS VERY DRUNK  
CANNOT WORK UNTIL SHE TALKS TO

11-13-15 Justin Spring

At around 6:40 pm, asked a customer to leave the club after he was asking people if we've seen any terrorists or ISIS in the club.

11/14/15 S-1 SAT DAYS

I HAVE INFORMED ROXY SC# 6035352 THAT HER SERVICES ARE NO LONGER NEEDED HERE AT CHEETARS DUE TO HER POOR, RUDE, NASTY ATTITUDE TOWARDS CHEETARS STAFF.

- Kim Buxx IS ALL PAID UP. JUSTIN'S FEE IS IN THE SAFE

11-15-15 MANNY V 1-8 SUN

GO RAIDERS

-NOT TODAY-

12-1-15 Manny V. 1-9 TUES

I have Suspended Dancer Jill #2546979  
NAUGHTY, NAUGHTY dancing, FOR 3 DAYS.

TERMINATED Dancer TINA #6051380, TRYING  
TO GET (buy) DRUGS, COCAINE, ~~MARIJUANA~~  
MARIJUANA, FROM CUSTOMERS & OUR DANCERS.

12-1-15 Sam 9-5  
No Problems

12-2-15 DON (5-1)

12-3-15 DON (5-1)

12-3-15 VERO (NAVE)  
NO PROBLEMS

12-4-15 VERO (NAVE)  
NO PROBLEMS

maybe Hustle - is hooking.  
Threw drug dealer out then she  
left. Keep an eye ON her. 440 AM  
Parking corner 453 they came Back  
Red / silver cars out of store plates  
ON VIDEO

3-22-16 MANNY (1-9)  
POWER OUTAGE AT 5:14 PM  
LASTED A couple MINUTES,

3-22-16 JESSIE LEWIS - TANKS 1-9  
NOW BEEN 2 YRS. Think she  
is pregnant - got Drunk called  
D Driver because she try to leave  
in dance clothes. Drunk and her ass  
then called Boyfriend after D Driver got  
here.

3-23-2016 DON 5-1 WED

CONTINUED-

TERMINATED FROM ALL SHIFTS  
DEAR WAS INFORMED OF THE SITUATION  
METRO DID COME BY 2 HOURS  
AFTER THE INCIDENT BUT THE  
CUSTOMERS HAD ALREADY LEFT.  
NOTHING WAS REPORTED THEY LEFT

5-11-2016 THUR 1-9 "Don"  
NO PROBLEMS

5-16-16 MANNY V 1-9 TUES  
DANCER LOXX # 2657234 (LAREN KNETENMEYER)  
HAS BEEN TERMINATED ALL SHIFTS, COMPLETE  
DISREGARD AND VERY DISRESPECTABLE TO MGR  
DON D, AFTER BEING WARNED TWICE FOR  
THE SAME OFFENCES, NO MORE.

S-16-16 - ALSO DANCER BLAZE # 3037251  
(JEANETTE GASDAR) IS NOT ALLOWED TO  
WORK ANY SHIFT UNTIL SHE SPEAKS TO  
MGR MANNY TO CLARIFY A VERY VICIOUS,  
RUMOR MADE PUBLIC TO HOUSE MOM DEBBIE  
IN THE DRESSING RM, DRUNK OF COURSE.

750<sup>PM</sup> (MARIA ARRAS.)  
TERMINATED DANCER VERSACE #606133  
DIRTY DANCING IN G-SPOT Caught ON  
Camera, denied, it over & over again  
then SHE TOOK A BAD ATTITUDE,  
"Really".

9-14-2016 (1-9) DON WED

9-15-2016 MIKE - THURS

9-15-2016 (1-9) DON THURSDAY  
SLOW FOOTBALL NIGHT

9-16-2016 (1-9) DON FRIDAY

9-16-16 LEON CRAW

9/17/16 Greg DAYS SAT.

AT OR AROUND 7 AM A  
CUSTOMER CAME IN THE CLUB TO  
INFORM US HE WAS ROBBED IN  
OUR PARKING LOT.

CONTINUED -7

12-15-16 - MIKE S-1 THURS ✓

12-15-2016 (1-9) DON THURSDAY

NO PROBLEMS

12-16-2016 (1-9) DON FRIDAY

RAINY & WINDY

12-17-2016 (1-9) DON SATURDAY

COOL - LOTS OF RAKE I.D.  
TRYING TO GET IN 3<sup>RD</sup> IN TWO DAYS

CONSOLE TONAS

12-18-16 MANNY V 1-9 SUN

DANCER KERRA #1951628 IS TERMINATED  
ALL SHIFTS, DISRESPECTFUL TO HOUSE MAM  
TRACY, SHE WAS TRASHED, TOTAL GHETTO,  
GOOD BY. (CRYSTAL FLETCHER).

- JASMINE'S SERVICES ARE NO LONGER NEEDED. INCIDENT IS ON CAMERA BY THE COFFEE POT AT 8:10:40 AND CH-15

1-15-17 MANNY V 1-9 SUN

"VERY GOOD DAY"  
No Problems

1-16-17 MANNY V 1-9 MON

No Problems

1-17-17 MANNY V 1-9 TUES

30 PM

I have Suspended HAITIAN FLOWER for Improper behavior towards other Dancers, I have Received 3 Complaints in AS MANY days, Her Suspension STARTS 1-18-17 thru 1-20-17, # 7019890.

2/20/17 Greg V 5-1 Days mon

647 Fined Melrose All shifts  
sc#(3083852) Marissa CATES. Fr  
stealing and causing me A Butt  
load of Drama Today AND possibly  
Dealing Cocaine. Still reviewing  
camera on that Deal.

2-20-17 MANNY V - 1-9 MON  
No Problems

2-21-17 MANNY V 1-9 TUES

2 Dancer CHARLIE #3071559 is NOT  
Allowed TO WORK PAST 1PM, I WILL TALK  
TO MGR. GREG CONCERNING HER ATTITUDE  
& being disrespectful TOWARDS House Mon  
Debbie, THINKS SHE'S A "PRIMA DONNA".

# EXHIBIT “7”

**BEFORE THE AMERICAN ARBITRATION ASSOCIATION**

IN THE MATTER OF THE ARBITRATION OF:

JESSICA HEDRICK,

Claimant,

Case No.: 01-16-0005-0109

vs.

LA FUENTE, INC. D/B/A CHEETAHS,

Respondent.

LA FUENTE, INC., D/B/A CHEETAHS,

Counterclaimant

vs.

JESSICA HEDRICK,

Counter-Respondent.

---

**ORDER ON CLAIMANT/COUNTER-RESPONDENT'S MOTION FOR PARTIAL  
SUMMARY DISPOSITION**

Claimant/Counter-Respondent Jessica Hedrick ("Claimant" or "Hedrick"), having brought this matter before the Arbitrator on her Motion for Partial Summary Disposition ("Motion"), the Respondent/Counter-Claimant La Fuente Inc., d/b/a/ Cheetahs ("Respondent" , "La Fuente" or the "Club") having timely filed its Opposition to the Motion and the Arbitrator, having taken the pleadings and exhibits into consideration, grants Respondent's Motion in part and denies it in part.

## **I. LEGAL STANDARD**

Neither the AAA Management Conference Guide dated February 16, 2017 nor the Respondent's Arbitration Policy specify controlling law. Relying on the AAA Employment Arbitration Rules and Mediation Procedures, Rule 6(a), the arbitrator has the power to rule on her own jurisdiction. For law regarding summary judgment (dispositive motions), this Arbitrator relies on the Federal Rule of Civil Procedure (FRCP) 56 and its interpretative case law.

Under a standard set by a trilogy of 1986 cases, the Supreme Court held a case survives summary judgment only if there are genuine issues of material fact sufficient to sustain a judgment at trial for the non-moving party. See, *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S. Ct. 1348, (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, (1986); and *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, (1986). Under *Celotex*, the moving party has the burden of demonstrating the absence of a genuine issue of material fact and the arbitrator must draw all inferences in favor of the non-moving party.

Nevada law is instructive. In 2005, *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P. 3<sup>rd</sup> 1026, held:

We now adopt the standard employed in *Liberty Lobby*, *Celotex*, and *Matsushita*. Summary Judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the Court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant. A factual dispute is genuine when the evidence is such that a rational

trier of fact could return a verdict for the non-moving party.  
(Emphasis added.)

See also *Bond v. Sterling, Inc.*, 77 F. Supp. 2d 300 (N.D.N.Y. 1999); *Raymond v. Albertson's, Inc.*, 38 F. Supp. 2d 866, (Dist. Nev. 1999).

## **II. POSITION OF THE CLAIMANT AS MOVING PARTY ON THE FLSA CLAIM**

Claimant relies on *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 326 (1992), citing to *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 728 (1947), for the concept “employment” is defined with “striking breadth” under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (FLSA). Claimant further relies on the “economic reality” test pursuant to *Rutherford*, 331 U.S. at 730, and *Saleem v. Corp. Transportation Grp., Ltd.*, 854 F.3d 131, 139 (2d Cir. 2017). These cases looked at whether the individual in question is economically dependent on the place at which she performs. Additionally, *Saleem* held the economic realities test relies on six (6) factors to determine if a totality of the circumstances indicates the worker depends on the business to have the opportunity to perform, versus whether the person is in business for herself. The following factors are considered: (1) the degree of the alleged employer’s right to control the manner in which the work is performed; (2) the individual’s opportunity for profit or loss depending upon her managerial skill; (3) the alleged employee’s investment in equipment or materials required for her services or employment of helpers; (4) whether the service rendered requires a special skill; (5) the degree of permanence in the relationship; and (6) whether the service rendered is an integral part of the alleged employer’s business. See, *Real v. Driscoll Strawberry Assocs., Inc.*, 603 F.2d 748, 754 (9<sup>th</sup> Cir. 1979). *Hanson v. Trop, Inc.*, 167 F. Supp. 3d 1324, 1328 (N.D. Ga. 2016), citing to *Usery v. Pilgrim Equip. Co., Inc.*, 527 F.2d 1308, 1311 (5<sup>th</sup> Cir. 1976), which held, in the event a disposition in either direction is justified, the decision maker must err in favor of a broad reading of “employee”.

### **III. POSITION OF RESPONDENT AS NON-MOVING PARTY REGARDING THE FLSA CLAIM**

Respondent admits the FLSA defines employee “broadly”, but argues independent contractors do not fall within that definition. Respondent also relies on the six (6) point economics realities test from *Real* to analyze the Claimant’s status and argues to the contrary on each point.

### **IV. DISCUSSION REGARDING THE FLSA CLAIM**

This Arbitrator is tasked with determining whether we have a genuine issue of material fact regarding the Claimant’s status which would be sufficient to sustain a judgment at trial for the non-moving party. *See, Matsushita, Celotex\_ and Anderson v. Liberty Lobby.* Under *Celotex*, the moving party has the burden of demonstrating the absence of a genuine issue of material fact and the adjudicator must draw all inferences in favor of the non-moving party. *Woods* holds substantive law controls which factual disputes are material and which are irrelevant and defines a genuine dispute of fact as one which could allow a rational trier of fact to rule in favor of the non-moving party. The unresolved question of whether the Claimant was an employee of the Respondent is a material fact which could sustain judgment at the arbitration hearing. The Claimant, as moving party, must demonstrate the absence of a genuine issue regarding this fact. Our analysis revolves around the potential proof of this issue at hearing.

Both sides rely on the six (6) point economics realities test from *Real* to analyze the Claimant’s status. This joint approach is helpful in sustaining a goal of ADR, which is to streamline the process. Let us consider the facts as stated by both sides in relationship to each point:

1. Regarding control of the work and workplace, Claimant notes the Respondent relies on Diana Pontrelli's deposition and its Responses to the Second Requests to Admit. Claimant uses this reliance to, in part; support her assessment that La Fuente exercises substantial control over the workplace. She points to the admitted fact that La Fuente selected the Club's location and pays utilities and insurance premiums, along with advertising and operational costs and licensing fees. She also notes that La Fuente sets the hours of operation and establishes the three (3) shifts for the dancers, as well as setting and enforcing costume requirements and behavioral rules for the performers and requiring them to check in. The evidence shows La Fuente also controls the layout, décor and ambiance of the Club, selecting and purchasing the furniture. La Fuente also controls promotions, such as discounts and package deals, and sets pricing for floor dances, the VIP rooms, cover charges and beverages. The Respondent also controls the webpage content and takes responsibility for cleaning the Club, hiring the DJs and paying employees. The Cheetah's Lounge cards, Exhibit 4 to the Claimant's Motion, and Exhibit 6 to Ms. Pontrelli's deposition, also make it clear the Club sets the house fees dancers pay.
2. Regarding the Claimant's opportunity for profit or loss depending on her managerial skill, as established above in the analysis of the first point, the Club admits it controls the location, design and ambiance of the facility. It also sets the prices charged to customers for the services rendered by the dancers and controls the prices for beverages. The individual dancer has no opportunity to determine her own profit or loss, because she does not control the finances of the services she provides.
3. The parties agree Claimant had no investment in equipment or materials required for the

performance of her services or any input regarding the employment of workers in other categories at the Club.

4. The record indicates the dancers are not required to have reached a certain level of skill. Ms. Pontrelli states in her deposition, p. 29, l. 16- p. 33, l. 3, the Club does not check references and does not require experience or formal dance training. She says they require only a sheriff's card, ID and state license and that the applicant has her own dance outfit.
5. The Club does allow the dancers to work other jobs, thus, there is not a high degree of permanence in the relationship between the dancers and the Club.
6. In her deposition, p. 33, ll. 4-12, Diana Pontrelli admits exotic dancers are part of the operation of a men's club and one cannot have such a club without these entertainers. In other words, the service of the dancers is an integral part of the Respondent's business.

Applying the law to these undisputed material facts regarding Claimant's status, the analysis weighs in on the side of finding Ms. Hedrick was an employee. *Nationwide*, 503 U.S. at 326, and *Rutherford*, 331 U.S. at 728, broadly define employment under the FLSA. Furthermore, *Rutherford*, 331 U.S. at 730, and *Saleem*, 854 at 139, apply the economic realities test to determine if the business provides the individual with a place to perform and at least part of her livelihood, versus whether she is in business for herself.

In summary, the Respondent provides the venue, the organization and the expenditures which provide the Claimant with a place to perform. Then, it at least partially controls her means and methods of performing her job and, to a great extent, the amount she earns while dancing. La Fuente does not require the dancers to have special skills or training. The Club representative admitted under oath that her venue relies on the dancers as an integral part of the

business. In summary, La Fuente provided the Claimant with a place to perform and earn money. She was not in business for herself. While there is no degree of permanence between the Claimant and the Respondent, the other five (5) criteria are sufficiently met to rely on the totality of the circumstances and find the Claimant to be an employee of the establishment.

#### **V. THE POSITION OF THE CLAIMANT AS MOVING PARTY REGARDING RESPONDENT'S COUNTER-CLAIM FOR BREACH**

Claimant/Counter-Respondent alleges the Dancer Performance Lease Agreement ("Agreement") she signed for the Respondent is "illegal". She relies on *Reich v. Circle C. Investments, Inc.*, 998 F.2d 324, 329 (5<sup>th</sup> Cir. 1993), holding an employer cannot avoid its legal obligations by requiring workers to classify themselves as tenants and that the dancers in question were employees under the FLSA. Respondent has counter-sued the Claimant for breach of the Agreement. Claimant/Counter-Respondent argues for summary judgment to invalidate the Agreement.

#### **VI. THE POSITION OF THE RESPONDENT AS COUNTER-CLAIMANT AND NON-MOVING PARTY ON THE ISSUE OF THE AGREEMENT**

Respondent/Counter-Claimant argues that because Claimant/Counter-Respondent fails to explain why the Agreement is allegedly illegal, her Motion must be denied. Counter-Claimant states: "While the Agreement may not be *dispositive* on the issue of how Claimant should be classified, there is nothing inherently "illegal" about a performant lease agreement between two competent parties." P. 4, end of Counter-Claimant's Section "B".

#### **VII. DISCUSSION REGARDING THE COUNTER-CLAIM FOR BREACH OF THE AGREEMENT**

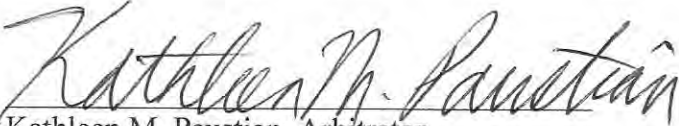
The Claimant/Counter-Respondent's treatment of the Agreement is lacking in specificity

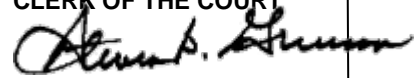
as to what renders it “illegal”. This issue can be better proven up with testimony during the Arbitration Hearing.

#### **VIII. ORDER**

Claimant’s Motion is granted to the extent that she qualifies for classification as an employee of the Respondent. Claimant/Counter-Respondent’s Motion for summary disposition of Respondent/Counter-Claimant’s counter-claims based on the Agreement is denied.

DATED this 29<sup>th</sup> day of September, 2017.

  
Kathleen M. Paustian, Arbitrator



1 AMEN

2 KIMBALL JONES, ESQ.

3 Nevada Bar No.: 12982

4 LAUREN CALVERT, ESQ.

5 Nevada Bar No.: 10534

6 **BIGHORN LAW**

7 716 S. Jones Blvd.

8 Las Vegas, Nevada 89107

9 Phone: (702) 333-1111

10 Email: [Lauren@BighornLaw.com](mailto:Lauren@BighornLaw.com)

11 MICHAEL J. RUSING, ESQ.

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

13 P. ANDREW STERLING, ESQ.

14 Nevada Bar No.: 13769

15 **RUSING LOPEZ & LIZARDI, PLLC**

16 6363 North Swan Road, Suite 151

17 Tucson, Arizona 85718

18 Phone: (520) 792-4800

19 Fax: (520) 529-4262

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

21 *Attorneys for Plaintiffs*

22 **DISTRICT COURT**

23 **CLARK COUNTY, NEVADA**

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

27 Plaintiffs,

28 v.

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

38 Defendants.

CASE NO.: A-14-709851-C  
DEPT. NO.: IV

**ERRATA TO PLAINTIFFS' CROSS-  
MOTION FOR SUMMARY JUDGMENT  
ON EMPLOYEE STATUS AND  
OPPOSITION TO DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

///