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

District Court Case No. A-14-709851-C

Appeal from the Eighth Judicial District Court, Clark County, Nevada

APPELLANTS' APPENDIX
VOLUME V

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CHRONOLOGICAL INDEX TO APPENDIX

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

Plaintiff Jane Doe Dancer III, individually and on behalf of all persons similarly situated, by and through her attorneys of record, hereby submits this Cross-Motion for Summary Judgment on Employee Status and Opposition to Defendants' Motion for Summary Judgment.

This Opposition and Countermotion made and based on the following Points and Authorities, all pleadings and documents on file with the Court, and any oral argument entertained at the hearing of this matter.

DATED this 15th day of May, 2018.

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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)

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

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

II. RESPONSE TO DEFENDANTS' STATEMENT OF FACTS ("DSOF")

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

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

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

18. At Cheetahs, entertainers can work as long as they wish. Entertainers had the discretion to arrive and leave Cheetahs when they wished. If entertainers work at least six (6) consecutive hours at Cheetahs, they get a discount on their house fee. -- *Disputed. The Dancer Performance Lease the Club drafted and required all dancers to sign specifies a 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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22. Cheetahs dancers are free to consume alcohol and smoke cigarettes while they work at Cheetahs. -- *Disputed. Cheetahs' rules prohibit dancers from smoking on the floor. PSOF ¶33.*

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

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

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

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

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

III. PLAINTIFF'S CONTROVERTING AND SEPARATE STATEMENT OF FACTS ("PSOF")

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

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

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

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

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

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

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

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

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

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

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

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.

16. The Club does not require Dancers to have any prior experience or dance training in order to work at the club. *See* Ex. 1 at 31.

17. The Club requires dancers to pay a fee to work each shift and another fee if they do not want to dance on stage. *See* Ex. 1 at 97, 118; Ex. 3 at 5, 11; and Defendant La Fuente, Inc.'s Answer to Plaintiffs' First Amended Class Action Complaint at ¶38.

18. The Club requires dancers who work two consecutive shifts to pay a $25 "stay over" fee. *See* Ex. 1 at 93-94; and Ex. 3 at 5.

19. The Club requires dancers to check in with the DJ at the beginning of a shift to get on the stage rotation list unless they paid an additional "off stage" fee. *See* Ex. 3 at 5, 11; and Ex. 1 at 97, 118.

20. The Club's managers could terminate or suspend dancers for any reason. *See* Ex. 1 at 116; and Ex. 6 at LF019913, LF019915, LF019962, LF020026, LF020060.

21. On March 29, 2015 the Club suspended a dancer because she "refused to finish her 6 hrs" shift and allegedly exhibited a "bad attitude." *See* Ex. 6 at LF019904.

22. On May 18, 2015, the Club terminated a dancer for "leaving early without any explanation" and for getting into a dispute with a customer over payment for dances. *See* Ex. 6 at LF019915.

23. On May 25, 2015, the Club informed a dancer that she could not work any afternoon shifts on Sunday, Monday, or Tuesday because of an alleged "negative attitude." *See* Ex. 6 at LF019917.

24. On August 30, 2015, the Club informed a dancer that she could not work on Sunday, Monday, or Tuesday because she asked to leave early on several occasions. *See* Ex. 6 at LF019944.

25. On November 14, 2015, the Club terminated a dancer because of her alleged "poor, rude, nasty attitude towards Cheetahs staff." *See* Ex. 6 at LF019962.

26. On August 16, 2016, the Club terminated a dancer for being "very disrepectable [sic] to mgr." *See* Ex. 6 at LF020026.

27. On August 16, 2016, the Club suspended a dancer from all shifts "until she speaks to a mgr to clarify a very vicious rumor." *See* Ex. 6 at LF020026.

28. On December 18, 2016, the Club terminated a dancer from "all shifts" allegedly for being "disrespectful to house mom." *See* Ex. 6 at LF020060.

29. On February 21, 2017, the Club prohibited a dancer from working past 1:00 p.m. because of "her attitude + being disrespectable [sic] towards house mom." *See* Ex. 6 at LF020084.

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*).

31. The Lease contains the following provisions:

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

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

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

d. 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" *Id.*

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

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

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

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

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

37. The Club requires Dancers dancing on stage to have removed their tops after the second 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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IV. ARGUMENT

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

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

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

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

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

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

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

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

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

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

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[1] 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).

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

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

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

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

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

The only reasonable interpretation of the MWA's definition of employee is that it is co-extensive with its identical federal counterpart and, notably, Cheetahs suggests no plausible alternative definition; however, even if the definition were ambiguous (*i.e.*, susceptible of more than one plausible interpretation), the next step would be to examine "the provision's history, public policy, and reason to determine what the voters intended." *Miller*, 124 Nev. at 590–91, 188 P.3d at 1119–20. As noted above, the historical and public policy connections are immediately apparent because the MWA's definition of employee is identical to the well-known FLSA definition and both laws serve the same remedial purpose. Interpreting the MWA definition to be consistent with the FLSA definition furthers public policy concerns and is faithful to the spirit of the provision because the MWA, like the FLSA, must be broadly construed to further its remedial purpose. *Terry* at 956. *See also Warren*, 59 Nev. 481, 97 P.2d at 795 ("For statutes so highly remedial, a broad and liberal construction is required, in order that the purposes designed by them shall be most completely served."). Additionally, in determining, for similar reasons, that the definition of employee in NRS 608.010 also should incorporate the FLSA economic realities test, the Nevada Supreme Court noted it would make no sense and sow considerable confusion to have different rules for who qualifies as an employee under state and federal wage laws. *Terry* at 957 ("having no substantive reason to break with the federal courts on this issue, judicial efficiency implores us to use the same test as the federal courts).

The MWA's history and considerations of public policy and reason thus all strongly indicate that, even if the MWA's definition of employee were ambiguous (it is not), it should be construed in the same manner as the identical definition in the parallel federal minimum wage law (*i.e.*, by reference to the economic realities test). To needlessly restrict or alter the definition would sow confusion and not comport with "the spirit of the provision." *Miller*, 124 Nev. at 590–91, 188 P.3d at 1119–20.

2. The Club's dancers are its employees under MWA's economic realities test.

"[T]he economic realities test examines the totality of the circumstances and determines 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. *See also Saleem v. Corp. Transportation Grp., Ltd.*, 854 F.3d 131, 139 (2d Cir. 2017) (noting purpose of economic realities test is to determine "whether, as a matter of economic reality, the workers depend upon someone else's business for the opportunity to render service or are in business for themselves.").

Courts in applying the "economic reality" test consider the following factors: (1) the degree of the alleged employer's right to control the manner in which the work is to be performed; (2) the alleged employee's opportunity for profit or loss depending upon his managerial skill; (3) the alleged employee's investment in equipment or materials required for his task, or his employment of helpers; (4) whether the service rendered requires a special skill; (5) the degree of permanence of the working relationship; and (6) whether the service rendered is an integral part of the alleged employer's business. *Terry* at 958. "Neither the

presence nor the absence of any individual factor is determinative." *Donovan v. Sureway Cleaners*, 656 F.2d 1368, 1370 (9th Cir. 1981). Neither contractual labels nor the subjective intent of the parties are relevant factors in this analysis. *Real v. Driscoll Strawberry Associates, Inc.*, 603 F.2d 748, 754 (9th Cir. 1979). "When a disposition in either direction can be justified, the Court must err in favor of a broader reading of 'employee.'" *Hanson v. Trop, Inc.*, 167 F.Supp.3d 1324, 1328 (N.D. Ga. 2016).

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

a. Substantial persuasive authority indicates strip club dancers are employees under the economic realities test.

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

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).

Clincy 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).[2]

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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[2] The cases cited in *Clincy* (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).

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

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

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

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

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

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

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

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

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

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

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

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

- The Club sets the pricing for dances. PSOF ¶¶8-11.

- The Club managers could fire or suspend dancers or restrict their shifts for any reason, including "being disrespectful" to Club employees. PSOF ¶¶20-29.

- The Club published and enforced many rules dancers had to follow while on the job, such as not wearing street clothes, wearing high heels, checking in and out with the DJ, not refusing drinks from customers, changing costumes at least three times during each shift, not carrying a purse or cellphone on the floor, no smoking or chewing gum on the floor, no running tabs on dancers, a requirement to talk to customers for at least one song before asking them for a dance and to remove tops on stage after the second song, and not allowing in the club any boyfriends or anyone giving the dancer a ride to the club. PSOF ¶¶30-39.

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

> [t]he club controls all the advertising, without which the entertainers could not survive. Moreover, the defendants created and controlled the atmosphere and surroundings at [the club], the existence of which dictates the flow of 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.

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

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

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

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

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

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

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

As the Nevada Supreme Court and many other courts have found, little specialized skill is required to be a nude dancer. *See* cases cited in A.1, above. The Club on this point admits no audition or formal dance training is required and that "[i]t takes a lot not to get hired." PSOF 15-16. Even viewing the evidence in the light most favorable to the Club, the

lack of specialized skills required for the job (or any skills, for that matter, other than looking good in a bikini) weighs strongly in favor of finding employee status.

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

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

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

The Club admits exotic dancers are necessary for it to operate as an exotic dance establishment. PSOF ¶12. Nor could it do otherwise, as it is "a self-evident conclusion that nude dancers form an integral part of [a strip club's] business." *Linda & A.*, 779 F.Supp.2d at 150. *See also Terry* at 960 ("Given that Sapphire bills itself as the 'World's Largest Strip Club,' and not, say, a sports bar or night club, we are confident that women strip-dancing

there are useful and indeed necessary to its operation."). This factor, too, points strongly towards employee status.

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

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

B. NRS 608.0155 does not apply.

1. NRS 608.0155 does not purport to apply to MWA claims.

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

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

2. NRS 608.0155 cannot apply to MWA claims.

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

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.

D. NRS 608.0155 cannot apply retroactively to impair employees' vested rights to wages.

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

The law in Nevada on this point is clear. The right to a minimum hourly wage (*a fundamental property right*) vests as soon as the worker performs each hour of labor. *See Sandpointe Apts. v. Eighth Jud. Dist. Ct.*, 313 P.3d 849, 856 (Nev. 2013) (lienholder's right to deficiency payment vests at time of trustee sale because that's when amount owed becomes "crystalized"). In *Sandpointe*, the Nevada Supreme Court held that a statute limiting deficiency judgments would impermissibly impair lienholders' vested rights if retroactively applied to deficiencies arising after trustee sales that took place before the statute became effective. *Id.* The court explained that a lienholder's right to a deficiency payment "crystalizes" (vests) as soon as the trustee sale results in a deficiency amount. *Id.* For the same reason, a statute erasing a minimum wage obligation would impair workers' vested rights if retroactively applied to hours already worked before the statute became effective. The rule that an employee's right to an hourly wage vests as soon as each hour of labor is performed makes intuitive sense and is widely recognized. *See, e.g., Sanders v.*

Loomis Armored, Inc., 614 A.2d 320 (Penn. 1992) (*employees had vested right in wages earned which could not be extinguished by legislation without violating due process*); *Fletcher v. Grinnell Bros.*, 64 F. Supp. 778, 780 (E.D. Mich. 1946) (Upon failure to pay minimum wages employee obtains "a vested right thereto regardless of whether or not the employee is forced to institute suit to recover the amount due."). The dancers' right to a minimum wage for each hour worked became absolute and unconditional upon performance of each hour of work.

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

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

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

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

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

G. The unjust enrichment claim is valid

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

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

H. Punitive damages are available as this is "an action for the breach of an obligation not arising from contract".

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

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

CONCLUSION

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

DATED this 15th day of May, 2018.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of **BIGHORN LAW**, and on the 15th day of May, 2018, I served the foregoing ***ERRATA TO PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT ON EMPLOYEE STATUS AND OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT*** as follows:

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

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

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

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EXHIBIT "1"

DISTRICT COURT
CLARK COUNTY, NEVADA

JANE DOE DANCER, I through V, Individually, and on behalf of Class of similarly situated individuals, Plaintiffs, vs. LA FUENTE, INC., an active Nevada Corporation, WESTERN PROPERTY HOLDINGS, LLC, an active Nevada Limited Liability Company (all d/b/a/) CHEETAHS LAS VEGAS and/or THE NEW CHEETAHS 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

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

Q. Not the dancers?
A. Maybe I'm misunderstanding the question.
Q. All right. Who's in charge of the setup of the club in terms of layout, decor, the ambiance you're attempting to achieve?
A. That would be the owner, DJ with the lighting, the club is -- there's no moveable objects inside there.
Q. The dancers wouldn't have anything to do with those items; correct?
A. Correct.
Q. Who's in charge of special promotions at the club?
A. Got to be Charles and myself.
Q. And the dancers wouldn't have anything to do with those; correct?
A. Not unless they were hired to work with the promotion.
Q. Right. They might participate in the promotion --
A. Correct.
Q. -- but you or Chuck would come up with it?
A. Correct.

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

A. Correct.

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

A. Correct.

Q. Not the dancers?

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

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

A. Correct.

Q. Same thing with bar and kitchen inventory --

A. I don't have a kitchen.

Q. Okay. Bar inventory, you and Chuck?

A. That would be Charles.

Q. Not the dancers; correct?

A. Correct.

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

take care of that, not the dancers; right?

A. Correct.

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

A. I have no knowledge.

Q. King of Diamonds in Miami?

A. No knowledge.

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

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

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

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

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

A. 24/7.

Q. And who set those hours?

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

Q. By whom?

A. By the previous owner.
Q. Mr. Galardi?
A. Mr. Galardi and his son -- his son.
Q. The -- I want to talk a little bit about some of the other workers at the club.
A. Okay.
Q. The floor or shift managers, are they -- are they treated as employees?
A. I want to say yes.
Q. They receive a paycheck?
A. Correct.
MR. FUCHS: I'm sorry, Mick, I don't mean to -- was it floor managers, is that who you asked about?
MR. RUSING: Shift managers.
MR. FUCHS: Shift manager, I'm sorry. I just didn't hear that.
BY MR. RUSING:
Q. Is there -- is there something called a floor manager that's --
A. No. People use the phrase, they'll use it as both, but I don't use it so I wouldn't refer to it.
Q. Okay. If -- so if there's a -- is there one shift manager at any given time?

managers?

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

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

A. Yes.

Q. What are they called?

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

Q. Do you have a DJ?

A. Yes.

Q. How is he paid or she paid?

A. Check.

Q. Employee?

A. Correct.

Q. Do you have a house mom?

A. Yes.

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

A. One house mom per shift.

Q. Are there three shifts?

A. Three shifts.

Q. And what are they called?

A. Employees.

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

me a question, but what are the shifts called?

A. Day, swing, grave.

Q. Okay. What is the day shift?

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

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

A. Front door cashier type thing?

Q. Yeah.

A. Yes.

Q. And are they employees?

A. Yes.

Q. And you have servers, like cocktail waitresses?

A. Yes.

Q. Are they employees?

A. Yes.

Q. Bartenders?

A. Yes.

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

A. It's subbed out.

Q. How -- how many dancers work there at

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

BY MR. RUSING:

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

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

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

Q. Who does the hiring of dancers?

A. The shift manager.

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

A. Correct.

Q. And what does that process consist of?

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

Q. I'm sorry?
A. Their outfit.
Q. Oh --
A. Whatever they were going to put on and we see what they look like and talk to them just to get a vibe where they're coming from.
Q. All right. It sounds like you've been involved in that process too?
A. I've done it.
Q. So when you say they put on a cos -- they would put on what they would wear to dance so you would see what they look like in a dance outfit?
A. Correct.
Q. Do they actually audition by dancing around or --
A. No.
Q. -- do they just turn in circles?
A. No.
Q. You don't make them do anything like that; correct?
A. No. Never have.
Q. Okay. Do you ever turn down people who apply?
A. Yes.
Q. Why?

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

Q. They got to rub you the wrong way?

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

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

A. 90 percent of them.

Q. Is any experience required?

A. No.

Q. No formal dance training required?

A. No.

Q. Do men ever apply?

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

Q. Do you ever have transgender applicants?

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

is not to stereotype in my building.

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

A. No.

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

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

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

A. Entertainers, yes.

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

A. Have I heard? Yes.

Q. When did you first hear?

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

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

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

A. Yes.

Q. Tell me what it is.

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

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

A. Okay.

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

A. Correct.

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

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

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

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

remember the year.

Q. Was it prior to 2010?

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

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

A. Yes.

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

A. It's been modified, yes.

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

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

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

A. Correct.

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

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

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

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

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

A. Performer.

Q. Okay. Performer is different than a worker.

A. Could you define that?

Q. I'll move on.

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

A. I'm sure.

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

A. Entertainers. Non-employees.

Q. Did Cheetahs ever treat the dancers as employees?

A. No.

THE WITNESS: Oh, I apologize.
BY MR. RUSING:
Q. The lease agreement which is Exhibits 1 and 2, provides at section 3 that the performer shall schedule days to perform at least one week in advance; correct?
A. It says that here.
Q. Okay. And it also provides that each day so as scheduled shall consist of a minimum of six consecutive hours as set; correct?
A. Correct. It says that there.
Q. Okay. And I've seen that stated on other materials from Cheetahs; is that correct?
A. No. Not correct.
Q. There's not other materials that say six hour shifts?
A. Six hours. If they wish to receive a discount on house fees.
Q. All right. So unless they work a full six hours, they pay more?
A. No, they pay their regular house fee. We give them a discount if they work at least six hours.
Q. When did you start that practice?
A. Four years ago.

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

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

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

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

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

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

Q. Okay. But what if they left?

A. They would be asked why they left, if

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

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

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

Q. Yeah. I'm talking before that.

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

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

A. Sometimes.

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

A. Well, yes.
Q. All right.
A. Well, there's always more to that.
Q. Now, in section four at the beginning at the top it says, "Owner hereby leases the premises for a minimum of one set per week."
Do you see that? It's the very first sentence, section four?
A. Okay.
Q. Does that mean the performer has to work a minimum of one set per week?
A. Well, this was made up for multiple places. As far as one dance, yes.
Q. And then the next paragraph provides -- okay. Let's go back to three for a second, I'm sorry. 3-I says that "The performer will produce the maximum gross sales possible for dance performances during the term of this lease for the benefit of both owner and performer."
Do you see that?
A. Okay.
Q. What does that mean?
A. We would ask them to sell waters, sell a drink. Didn't necessarily mean alcohol. No other way of putting. It just --

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

What does that mean?

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

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

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

Q. Is it a percentage commission?

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

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

A. As far as the dancers being fined or?
Q. Right.
A. Yeah. We've never -- never. I've never -- on the west coast have ever fined.
Q. So it's your testimony that Cheetahs has never fined a dancer?
A. Never.
Q. Now, going down to section six provides that "The owners shall establish a fixed fee for the price of table, taxi and couch dances performed on the premises and performer agrees not to charge a customer more than the fixed price for any such dance performance."

Do you see that?

A. Yes.
Q. Is that true?
A. The dancers do overcharge.
Q. No. But does the owner establish fixed --
A. We have pricing that is put on the walls. We do have signs that states what -- how much our dancers are in what area. There are signs that are placed throughout the club in front of each room or on the floor. We advertise it with the DJ and saying this is what it is and the girls get a

hundred percent of it.

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

A. Correct.

Q. Is that true?

A. Yes.

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

Do you see that?

A. Yes.

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

A. Okay.

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

A. Owner/performer, correct.

Q. Were the entertainers paid anything else to go to these parties?
A. No, not to my knowledge.
Q. Cheetahs didn't pay them?
A. Not to my knowledge, no.
Q. If the customer wanted to pay them something, that would be up to them I guess?
A. They're off duty, yes.
Q. Well, would the entertainers be entertaining before the -- at the pregame party?
A. No.
Q. Or the after party?
A. No. They all off shift.
Q. Now, the next one is -- next page is lap dance happy hour, two for 20 lap dances; correct?
A. Correct.
Q. So if a girl was working at that time she would be obligated to do two lap dances for $20; correct?
A. She's asked to do that, yes.
Q. And the next page, same thing, Super Bowl Sunday at Cheetahs, two for 20 lap dances during the game; correct?
A. Correct.

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

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

THE WITNESS: Correct.

BY MR. RUSING:

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

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

(Exhibit 4 marked.)

BY MR. RUSING:

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

A. Yes.

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

A. Correct.

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

A. April of '14. Somewhere close to that

department to who works at the club every month.

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

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

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

A. Yes.

Q. What is it?

A. It's a sign-in sheet.

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

A. Yes. Or reminder.

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

A. Correct.

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

MR. RUSING: Five.

THE WITNESS: Six, that's number six.
MR. RUSING: It should be five. It should be five, but we'll change it to five. Okay.
(Exhibit 5 marked.)
MR. FUCHS: I'm sorry, you want me just to change it on the exhibit, would that be --
MR. RUSING: Sure. That's fine.
MS. CALVERT: Yeah, I'll just put this on top. So it doesn't look...
MR. FUCHS: Okay. So we don't get confused.
MS. CALVERT: That's why they don't let me teach math.
MR. FUCHS: No worries. Okay. Five. Sorry.
MS. CALVERT: Thank you.
BY MR. RUSING:
Q. So we started talking about this, this is a sign-up sheet?
A. Sign-in.
Q. Sign-in sheet. And what are the three columns?
A. Where the girls put their names, sign-in when they walk in.
Q. Yeah, why there's three columns?
A. Why they make a bigger paper for them to -- it could be how many dancers are coming in.

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

A. Right.

Q. Why?

A. To add more names on the front sheet.

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

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

Q. Okay. So --

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

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

A. Correct.

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

A. No.

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

Okay. So everyday they have to acknowledge the rules?

A. It's a reminder, yeah.

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

A. I usually go every couple of years,

they'll change, add or subtract.

Q. Okay. I've seen some more recent. They're are pretty close to the same though; right?

A. Correct.

Q. And you've been using these for a long time; right?

A. Correct.

Q. Since the 1990s or -- 19 --

A. '91.

Q. '91, okay. And you expect the girls to abide by these; correct?

A. When it becomes to Metro City or state law, yes.

Q. Okay. Well, some of these don't apply, don't have anything to do with the law; correct?

A. Correct.

Q. All right. Let's talk about those. Costumes only, no street clothes --

A. Correct.

Q. -- that's not a law --

A. Correct.

Q. -- that's a Cheetahs' rule?

A. Yes.

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

A. There are reasons that go with that -- to go with the police department with that.
Q. That wasn't my question.
A. Okay.
MR. RUSING: Read the question back.
THE WITNESS: Okay. No street clothes; correct.
(Record read by reporter.)
BY MR. RUSING:
Q. And you expect the girls to abide by that rule; correct?
A. Correct.
Q. Number two, high heels required. No clog-type shoes?
A. Clogs. Clogs.
Q. Clog-type shoes. That's not a law; correct?
A. Correct.
Q. It's a Cheetahs' rule; correct?
A. Correct.
Q. And Cheetahs expects the dancers to abide by these rules?
A. Correct. Safety issue.
Q. Did I ask you if it was a safety issue?
A. No.

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

A. DJ.

Q. -- DJ, Cheetahs' rule?

A. Yes.

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

A. Yes.

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

A. Correct.

Q. That's not a law?

A. Correct.

Q. It's a Cheetahs' rule?

A. Correct.

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

A. Correct.

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

A. Correct.

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

A. Suggestion; correct.

Q. And you expect the girls to abide by

it; correct?

A. Correct.

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

A. Correct.

Q. You may never leave with a customer?

A. Correct.

Q. That's not a law?

A. That's a law.

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

A. Correct.

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

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

Q. That's an actual law?

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

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

correct?

A. Going back to that time?

Q. Yes.

A. All right. Correct.

Q. No smoking or gum chewing on the floor, another Cheetahs' rule; correct?

A. Correct.

Q. And those things you expected the girls to abide by?

A. Correct.

Q. What would happen if the girls violated it?

MR. FUCHS: I'm sorry. You're talking about the gum chewing rule?

BY MR. RUSING:

Q. Any of these rules, how -- how would you enforce the rules?

A. Take it off the bar where you stuck it under it and throw it away. Take your cigarettes to the dressing room. And what was the other one?

Q. Well, any of these rules.

A. Oh, and the purse if it becomes stolen, we are not liable for it and we will not chase down the customer. All actual incidents that have happened.

during the day?

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

Q. Okay.

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

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

A. Correct.

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

A. Correct.

Q. And is permission normally granted or not?

A. It depends on the individual.

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

A. That's their perception.

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

A. Yes.

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

A. Yes.

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

A. Yes.

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

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

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

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

Q. Okay.

A. It's for record.

Q. And what is the stay over fee?

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

additional 25.

Q. And what's the house fee special?

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

Q. Is Valentine's day slow?

A. Father's day slow, yes.

Q. So a dancer gets one of these everyday?

A. Every single day.

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

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

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

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

Q. And if they don't?

A. Then they just pay as they go along.

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

A. Yes.

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

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

Q. Right.

A. Put out by the police department.

BY MR. RUSING:

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

A. Yes.

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

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

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

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

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

BY MR. RUSING:

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

A. Yes.

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

A. Regular price.

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

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

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

A. Correct.

Q. That's more than the regular price?

A. $5.

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

A. Yes.

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

stage."

A. Correct.

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

A. Yes.

Q. That's a Cheetahs' rule?

A. Yes.

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

A. Yes.

Q. Cheetahs' rule?

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

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

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

BY MR. RUSING:

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

to --

A. After a citation, yes.

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

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

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

A. I'm not getting it.

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

A. No.

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

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

BY MR. RUSING:

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

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

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

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

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

A. Jackets?

Q. Yeah.

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

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

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

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

A. Yes.

Q. What is that?

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

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

you use other than pricing?

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

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

A. Just the general manager.

Q. How frequently does he fire dancers?

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

Q. What are the grounds for firing typically?

A. Drugs, sexual activity, being a thief.

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

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

THE VIDEOGRAPHER: Excuse me, counsel. Can I

VIP?

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

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

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

Q. So it's $20 a shift?

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

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

A. I do not know.

Q. Do you have any knowledge of annual expenditures?

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

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

A. For their protection of their private property.

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

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

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

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

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

A. Yes.

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

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

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

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

A. Yes.

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

A. Yes.

Q. Have you done that?

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

Q. Was she a good employee?

A. For the most part.

Q. She didn't get fired you say?

A. No.

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

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

EXHIBIT "2"

Doreen Spears Hartwell,
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Attorneys for La Fuente Inc. and Western Properties Holdings, LLC

DISTRICT COURT

CLARK COUNTY NEVADA

Jane Doe Dancer, I Through V, et al. Plaintiff, vs. La Fuente, Inc. et al. Defendants.	Case No.: A-14-709851-C Dept No. IV **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 16th 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:

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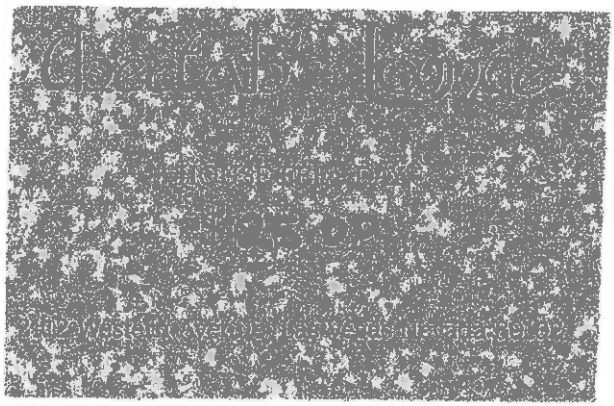
Attorneys for Plaintiffs

/s/ Dean R. Fuchs
DEAN R. FUCHS

EXHIBIT "3"



Cheetah's Lounge

HOUSE FEE - SWING

$ 45.00

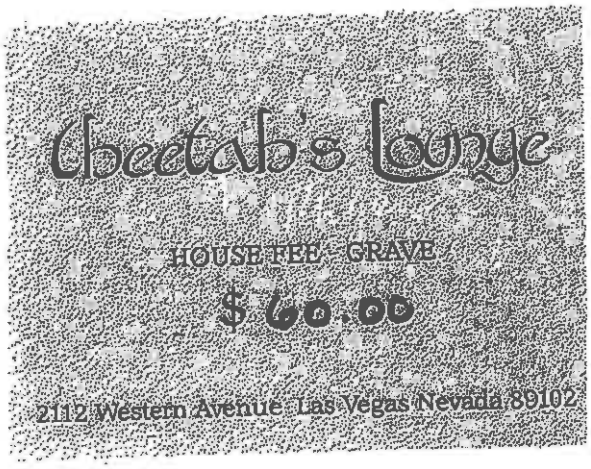
2112 Western Avenue Las Vegas Nevada 89102

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)

[redacted]

Employer Name: Cheetahs Lounge (702) 384-0074

Location: 2112 Western Ave. L.V. NV. 89102

The above listed Employer desires to report the employment of:

Name: _____

SHERIFF'S
ID#: _____ SS#: _____

Current Address: _____

Type of Work Card: non-gaming Position: entertainer

SHERIFFS
Work Permit Expiration Date: _____ Date Hired: _____

_____ _____
Signature of Payroll Clerk Signature of Applicant

Please 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

LVMPD TSD 22 (REV. 12-03)

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			
CITY		DATE OF BIRTH	
STATE			
ZIP CODE		EMERGENCY CONTACT	
PHONE #		PHONE #	

OFFICE USE ONLY. DO NOT WRITE BELOW THIS LINE.

MANAGER		COMMENTS:	
HOUSE MOM			
HIRE DATE			
FILED			
		CARD	
HOUSEMOM DATE STAMP AND SIGN			

881

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 AUTOMATICALY 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 COSTOMERS 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 PROHBITED MUNICODE: NO PERSON SHALL PUBLIICLY 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

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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
MURPHY, PAUL T
Code: A05Q
Tax Profile: 1 - NV/NV/NV
ROBERTS, JOSEPH L
Code: A077
Tax Profile: 1 - NV/NV/NV
SCHMIDT, KURT J
Code: A04B
Tax Profile: 1 - NV/NV/NV
SubTotal For Dept: 400
4000 - Marketing/Promot
HIGHAM, CORTNEY M
Code: A01K
Tax Profile: 1 - NV/NV/NV
SubTotal For Dept: 4000
500 - Floor Security
ADAMS, MICHAEL L
Code: A06X
Tax Profile: 1 - NV/NV/NV
AKERIPA, SUAANA U
Code: A06V
Tax Profile: 1 - NV/NV/NV
AULAVA, OGE
Code: A05B
Tax Profile: 1 - NV/NV/NV

LA FUENTE INC
Client: 0R037

Employee
BEDFORD, DONALD L
Code: A01B
Tax Profile: 1 - NV/NV/NV
BROOKS, JUSTIN B
Code: A03Y
Tax Profile: 1 - NV/NV/NV
CONNER, ACCIE J
Code: A04G
Tax Profile: 1 - NV/NV/NV
GONZALES, ANDRE M
Code: A00M
Tax Profile: 1 - NV/NV/NV
HARPER, MICHAEL J
Code: A00O
Tax Profile: 1 - NV/NV/NV
KESI, PATRICK V
Code: A03O
Tax Profile: 1 - NV/NV/NV
MONE III, MICHAEL J
Code: A00X
Tax Profile: 1 - NV/NV/NV
PARKER, JUSTIN
Code: A020
Tax Profile: 1 - NV/NV/NV
SCULL, TIMOTHY P
Code: A06N
Tax Profile: 1 - NV/NV/NV
THOMAS, JOSEPH S
Code: A07K
Tax Profile: 1 - NV/NV/NV
TRIMBLE, CLAYTON M
Code: A03R
Tax Profile: 1 - NV/NV/NV
VELASCO JR, MANUEL
Code: A00E

LA FUENTE INC
Client: 0R037

Employee
Tax Profile: 1 - NV/NV/NV
WAGERS, SHANE
Code: A06K
Tax Profile: 1 - NV/NV/NV
SubTotal For Dept: 500
5000 - Administrative
MAGTOTO, FLORIDA M
Code: A06Z
Tax Profile: 1 - NV/NV/NV
MARTINEZ, MARICAR ANGUS
Code: A001
Tax Profile: 1 - NV/NV/NV
SY, EMELITA P
Code: A005
Tax Profile: 1 - NV/NV/NV
SubTotal For Dept: 5000
600 - Outside Security
DUCHENE, JAMES J
Code: A00D
Tax Profile: 1 - NV/NV/NV
SubTotal For Dept: 600
700 - Drivers
DAVIS, PAUL M
Code: A05U

LA FUENTE INC
Client: 0R037

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

LA FUENTE INC
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

$$$$$$$$$$$$$$$$$$$$$$$$$$$$$$$$
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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 one DAY ~~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 EVERY ~~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 [redacted] DAYS TO PURCHASE LICENSE TO WORK HERE.

AFTER [redacted] 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 RESPONISBLE 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 NO 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.

(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)

PROSITUTION

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"

Deft / Steve 2/5/2014

CHEETAH'S LOUNGE RULES

1. Costumes only... *NO STREET* CLOTHES.
2. High Heels REQUIRED. NO CLOG 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 GRIND on the customers 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.

Jan — Cheyenne — Spice
Cece — Baxtonn
Cinnamon
Christina

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: [redacted]
Address: [redacted]
City, State, Zip Code: [redacted]
Telephone: [redacted]
Stage Name: [redacted]
Social Security Number: [redacted]

This Dancer Performance LEASE (referred to as "LEASE" is made and entered into this [redacted] day of [redacted], 20[redacted] 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 at 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. Location 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 schedule 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 a 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 terms 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 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 $20.00 for each missed dance performed during that set. 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):
   Pay Set Fees. PERFORMER agrees to pay rent to OWNER an amount equal to $40.00 for each morning day set, $50.00 for each afternoon set and $60.00 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, bed 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 as required by any governmental agencies;

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 separate 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 assure 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 and employer/employee relationship.

B. PERFORMER specifically acknowledges and agrees 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.

8. 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 assessed 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 (makeup, hairstyle, etc.); costumes and other wearing apparel; music; work habits; the selection of her customers; the nature, content, character, manner and means of her performance; 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 discretion of the PERFORMER. **PERFORMER SPECIFICALLY REPRESENTS THAT SHE DOES NOT DESIRE TO PERFORM AS AN EMPLOYEE FOR 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 assure that OWNER is so unjustly enriched and that PERFORMER is not unjustly enriched by the parties operating pursuant to the terms of this LEASE, OWNER and PERFORMER agree 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 segment of 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 the 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 ordinance.

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 ordinance. 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 two liquidated damage amounts as set forth in paragraph 5 for a missed set. In lieu or and/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 Dancer 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 this 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 1:

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 (ultimately female), and explicit language from time to time, and that she may 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 hereto, 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 Cleopatra's

By: Beatrice Lopez

Title: Employee

Date: 8/22/2003

"PERFORMER"

(signature)

(printed name)

A

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.

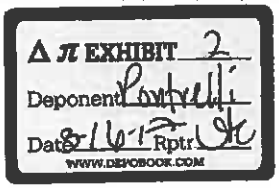
WHEREAS, OWNER operates a retail business establishment at the PREMISES where live nude and/or semi-nude dance entertainment is presented to adult members of the general public; and

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:
   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 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

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 20th day of February, 2018.

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

SCHULTEN WARD TURNER & WEISS, LLP
260 Peachtree Street, NW
Suite 2700
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Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on the 20th 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:

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/s/ Dean R. Fuchs
DEAN R. FUCHS

3/27/15 Steve 1-9 10 Prob

3/28/15 Steve 1-9 10 Prob

3-29-15 MANNY ✓ 1-9 Susd

8:30pm Suspended Dancer Rose #2824493 "NIA 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 OUTCOME, Checked IN AT 6PM, WALKED OFF the floor AT 8:44 PM

3-30-15 MANNY ✓ 1-9 MON

5-3-15 MANNY ✓ 1-9 SUN

4PM PAT, NITE DOOR MAN Called IN SAYING He WOULD NOT be IN TONITE, NO EXPLANATION.

5-4-15 MANNY ✓ 1-9 MON

Good Ring ON the BAR Regi

5-5-15 MANNY ✓ 1-9 TUES

12PM MEETING With the DOOR MAN CHAD, MIKE, DON, CONCERNING "TIPPIN FROM OUR ENTERTAINERS, SEEMS CERTAIN ONE'S ARE EXPRESSING their VIEWS AS TO LACK of TIPS FROM C GIRLS, I EXPRESSED TO them MYSE & STEVE DO NOT WANT TO HEAR ANY MORE ABOUT this MATTER.

5/15/15 Steve NO Probl

5/16/15 Steve NO Probl

5-17-15 MANNY ✓ 1-9 SUN

5.17.15 SCOTT 9.5- SUN

TATIANA (BARTENDER) SHOWED UP AT 10:15 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 FROM A CUSTOMER AT THE BAR. NO DANCES WERE RENDERED, I RETURNED THE $100 TO THE CUSTOMER, CECAN #2682894

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

I've informed Dancer Lollipop
305 6132 THAT SHE IS NOT TO WORK
MY 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 (DANIELLE NOTIFIED
15 SCOTT - Suspended Standing Apart 7 Days
5/28/15 Steve 1-9 Steve
15 guy hit Pole w/ Lexus # 150528-3655

8-30-15 MANNY V 1-9 SUN
(CAN'T 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 1½ 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 Scott NO Problem

8/31/15 Clay V S-1 MON

NO PROBLEMO

8-31-15 MANNY V 1-9 MON

No Problems

8-31-15 Scott 9-5

No problem

9-29-15 - Scott -

NO AMEX AT 6-BUCKS

Sent home Rainbell she to
b afternoon mgr. Dirty

Sent hom Mischief Mom
girl. Needs to speak to Do
Grey - Dirty

9-30-15 - MY Cell Phone
HAS COMPLETLY GONE OUT OF
SERVICE, I HAVE ORDERED A NEW
ONE, IT WILL TAKE 3 DAYS TO DELI
IN THE MEAN TIME IF YOU NEED
TO CONTACT ME PLEASE FEEL FREE
TO CALL MY WIFE'S CELL AER IT
IS 702-281-8879, THANKS
NANCY V

9-30-15 - DOWN TO 5-1 W Peoker

10-16-2015 SCOTT 9-5

4:30 pm

CALLED ATM MERCHANT 303 [illegible]

10/27/2015 DAYS GRY V 5-1

Fired Red sc#(6030072) A
WARNINGS. All STAFFS. Her Services are.
longer needed.

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

11-1-15 MANNY V 1-9 SUN

11/2/15 GRY V 5-1 MON

I HAVE SUSPENDED SA
sc#(6025624) FOR REFUSING TO P
THE STAY OVER FEE. I GNORED THE
MOM AND WALKED OUT THE DOOR
WITHOUT ESCORT. SHE WAS VERY DRUN
CANNOT WORK UNTIL SHE TALKS T

11-13-15 Victor Swing

At around 6:45pm, 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 5-1 Sat DAYS

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

2 have Suspended DANCER JILL # 2546979 NAUGHTY, NAUGHTY dancing, FOR 3 DAYS.

TERMINATED DANCER TINA # 6051580, TRYING TO get (buy) DRUGS, COCAINE, ~~MARIJUANA~~ MARIJUANA, FROM CUSTOMERS + OUR DANCERS.

12-1-15 Saad 9-5
No Problems

12-2-15 DOD (5-1)

12-3-15 DOD (5-1)

12-3-15 VEGAS GRAVE
NO PROBLEMS

12-4-15 VEGAS GRAVE
NO PROBLEMS

Maybe Thistle is hooking.
Three drug dealers out then she
left. Keep an eye ON her. 440 AM
Parking comes 453 they came Back
Red | Silver cars out of state Plates
ON video.

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

1-9
3-22-16 Jessica Lewis - Trans Needs Lic
NOW been 24HRS. Think she
Is Pregnant - got Drunk called
D Driven because she Try to leave
In Dance Clothes. Drunk ass her ASS
then called Boyfriend cuz D Driver Sit
here.

3-23-2016 DOM 5-1 WED

-CONTINUED-
TERMINATED FROM ALL SHIFTS
BEAR 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 THON 1-9 "DON"
No Problems

8-16-16 MANNY V 1-9 TUES
Dancer LUXX #2657234 (Laren Knetemeyer)
has been TERMINATED ALL SHIFTS; Complete
disregard And VERY DISRESPECTABLE TO MGR
DON D, AFTER being WARNED TWICE FOR
THE SAME OFFENCES, NO MORE.

8-16-16 - Also DANCER BLAZE #3037251
(JEANETTE GASDANO) IS NOT Allowed TO
WORK ANY SHIFT UNTIL She SPEAKS TO
MAGR MANNY TO CLARIFY A VERY VICIOUS
RUMOR made PUBLIC TO HOUSE Mom Debbie
IN THE DRESSING RM, DRUNK OF COURSE.

(MARIA ARIAS)

750 TERMINATED DANCER VERSACE #666133: 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 LEW CMAW

9/17/16 Cry Days Sat.

AT OR AROUND 7 PM 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
RAIN & WINDY

12-17-2016 (1-9) DON SATURDAY
CCCCOLD LOTS OF FAKE IDs
TRYING TO GET IN. 3RD IN TWO DAYS

CONSOLE TONAS.

12-18-16 MANNY ✓ 1-9 SUN

DANCER KEYSA # 1951628 IS TERMINATED
ALL SHIFTS, DISRESPECTFUL TO HOUSEMOM
TRACY, SHE WAS TRASHED; TOTAL GHETTO,
GOOD BY. (CHRYSTAL 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 ✓ 1-9 SUN

"VERY GOOD DAY"
No Problems

1-16-17 MANNY ✓ 1-9 MON

No Problems

1-17-17 MANNY ✓ 1-9 TUES

2:30 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, at 7019890.

2/20/17 Cag V 5-1 Days Mon

Found Melrose All Shifts
s#(3083852) Marissa CATES. For
Stealing and carrying the 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

DANCer Charlie # 3071559 IS NOT
Allowed TO WORK PAST 1PM, I WILL TALK
TO MGR. GREG Concerning HER ATTITUde
& being disrespectable TOWARDS HouseMom
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 judgement (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.3rd 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 (9th 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 (5th 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 (5th 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 29th day of September, 2017.

Kathleen M. Paustian, Arbitrator

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

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

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

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

Plaintiff Jane Doe Dancer III, individually and on behalf of all persons similarly situated, by and through her attorneys of record, hereby submits this Reply in Support of her Cross-Motion for Summary Judgment on Employee Status.

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

DATED this 1st day of August, 2018.

BIGHORN LAW

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MEMORANDUM OF POINTS AND AUTHORITIES

The Minimum Wage Amendment to Nevada's Constitution, Nev. Const. Art. XV, sec. 16 (the "MWA") guarantees a minimum wage to all Nevada "employees." The two most important questions in this case are (1) what test should be used by courts to determine employee status under the MWA; and (2) are the exotic dancers who work at Defendant's Las Vegas strip club its employees under that test. Defendant fails to address either key question.

As for the first question, binding Nevada Supreme Court precedent (which is entirely ignored by the Defendant in its briefing) makes clear that constitutional terms are interpreted by courts based on the provision's text and, if ambiguous, based also "on the provision's history, public policy, and reason." *MDC Restaurants, LLC v. The Eighth Judicial Dist. Court of the State of Nevada in & for Cty. of Clark*, 134 Nev. Adv. Op. 41, 419 P.3d 148, 155 (2018) (holding "interpretation of the MWA … is a responsibility that we cannot abdicate to an agency [or to the legislature]."). *See* Pl. MSJ at Sec. IV.A. As explained in Plaintiff's summary judgment motion and for the reasons outlined by the Nevada Supreme Court in *Terry v. Sapphire*, 336 P.3d 951 (2014), the MWA's definition of employee should be interpreted to incorporate the "economic realities" test, which has been used for decades to construe the identical definition in the parallel federal wage law, the Fair Labor Standards Act. *See* Pl. MSJ at Sec. IV.A. And, notably, Defendant in its response does not suggest the term is ambiguous and does not offer any alternative definition of the term.

As for the second question, Defendant does not attempt to argue that its dancers are not employees under the economic realities test (another admission pursuant to EDCR 2.20(e)). Any such argument is foreclosed by *Terry* and the numerous federal cases cited with approval in *Terry* finding exotic dancers are economically dependent on strip clubs and therefore employees as a matter of law. *See Terry* at 960 (noting its holding that dancers are employees as a matter of law is "in accord with the great weight of authority, which has almost without exception found an

employment relationship and required nightclubs to pay their dancers a minimum wage.") (quotation omitted).

The only argument raised by Defendant is that this Court should ignore the MWA and instead apply a statutory test for independent contractor status that allegedly "supplements a former gap within the MWA." MSJ Oppo. at 10:12-13. This "gap filling" theory has been expressly rejected by the Nevada Supreme Court. *See MDC Restaurants*, 419 P.3d at 152 (rejecting argument that "the text of the MWA leaves a definitional gap when it comes to 'health insurance'" that can be "filled" by an agency or legislature) and the Nevada Supreme Court in *Thomas v. Nevada Yellow Cab Corp.*, 327 P.3d 518 (2014), expressly foreclosed any legislative attempt to constrict the MWA's broad scope when it struck down a statute purporting to exclude taxicab drivers from the MWA's definition of employee. *Thomas* at 522 ("the principle of constitutional supremacy prevents the Nevada Legislature from creating exceptions to the rights and privileges protected by Nevada's Constitution."). For the reasons set forth at length in *Thomas*, a threshold statutory test that would accomplish a similar result as the legislative exemption at issue in *Thomas* (*i.e.*, excluding a class of individuals from the MWA's broad definition of employee) also would be preempted. Defendant in its briefing does not even acknowledge *Thomas*, let alone attempt to argue around it.

Even if the Nevada Supreme Court in *Thomas* and *MDC Restaurants* had not foreclosed the notion that a statute could "gap fill" away the broad substantive protections afforded by the MWA, Plaintiffs also persuasively argue NRS 608.0155 is a non-issue because (a) the first six words of that statute indicate its test for independent contractor status applies only "[f]or the purposes of this chapter [*i.e.*, Chapter 608]" and not for purposes of MWA claims (Pl. MSJ at 22:22-24); (b) NRS 608.0155 would be conflict preempted by the FLSA if it did apply to MWA claims (*id.* at Sec. IV.C);

and (c) NRS 608.0155 cannot apply retroactively to impair vested rights (*id.* at Sec. IV.D).[1] Defendant fails to respond to points (a) and (c) which, pursuant to EDCR 2.20(e), must be taken as an admission and Defendant's only response to the conflict preemption argument is a single sentence suggesting, erroneously and with no citation to authority, that preemption cannot for some reason arise in actions involving only state law claims. *See* Def. Oppo. at 12:11-12 (claiming application of conflict preemption doctrine "makes no sense because NRS 608.0155 applies only to wage claims brought under Nevada law, not to claims brought under the FLSA."). Defendant completely misunderstands the doctrine of conflict preemption which, as the Nevada Supreme Court has held on many occasions (including in the wage and hour context), applies to bar application of state laws in any context, including in actions raising only state law claims. *See, e.g., W. Cab Co. v. Eighth Judicial Dist. Court of State in & for Cty. of Clark*, 390 P.3d 662, 665-66 (Nev. 2017) (analyzing whether MWA claims are preempted by the NLRA or ERISA); *Nanopierce Techs., Inc. v. Depository Tr. & Clearing Corp.*, 123 Nev. 362, 366, 168 P.3d 73, 76 (2007) (analyzing whether state securities laws and related state law claims are preempted by the federal Securities Exchange Act) and Defendant entirely fails to address the obvious conflict preemption concerns identified in Plaintiffs' brief - *i.e.*, that that it would be impossible for employers to comply with different federal and state tests for determining whether its workers must be classified and paid as employees. Defendant cannot comply both with a state wage law requiring it to treat dancers as independent contractors and a federal wage law requiring it to treat dancers as employees and the federal objective to provide wage protections to all persons who are employees under the broad economic realities test would be frustrated if Nevada employers could avoid their federal wage obligations by hiding

[1] It might also be noted that Defendant classifies its dancers as "tenants" and requires them to pay a daily fee to "rent" space in the club. *See* PSOF 30. Defendant should be estopped from arguing to this Court that, in fact, its dancers should be classified (and presumably paid) as independent contractors.

behind less protective state wage laws. For these reasons, as the Nevada Supreme Court already has held, "to avoid preemption, our state's minimum wage laws may only be equal to or more protective than the FLSA." *Terry* at 956.

For the reasons set forth in Plaintiffs' motion, this Court should hold the MWA's definition of employee is co-extensive with the identical definition in the parallel federal wage law and therefore is construed with reference to the broad "economic realities" test. The Court further should find (and Defendant does not contest) that, as a matter of economic reality, the undisputed facts show its dancers are dependent on the club for work and therefore are its employees under the economic realities test as a matter of law. As for NRS 608.0155, the Court should find that on its face it does not purport to apply to MWA claims (a point not contested by Defendant). If the Court determines it was intended to apply to MWA claims, then the Court should find that (a) a mere statute cannot limit the scope of the MWA for the reasons set forth by the Nevada Supreme Court in *Thomas*; (b) even if a statute could limit MWA claims it could not be applied retroactively to impair vested rights (also not contested by Defendant); and (c) the statute is preempted by the FLSA to the extent it attempts to establish a narrower definition of employee that the FLSA definition.

DATED this 1st day of August, 2018.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of **BIGHORN LAW**, and on the 1st day of August, 2018, I served the foregoing ***REPLY IN SUPPORT OF PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT ON EMPLOYEE STATUS*** as follows:

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

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

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

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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

SUPPLEMENTAL BRIEF IN SUPPORT OF PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT ON EMPLOYEE STATUS

Plaintiffs, individually and on behalf of all persons similarly situated, hereby submit this Supplemental Brief in Support of Plaintiffs' Cross-Motion for Summary Judgment on Employee Status.

This Supplemental Brief is made and based on the following Memorandum of Points and Authorities, all pleadings and documents on file with the Court, and any oral argument entertained at the hearing of this matter.

DATED this 5th day of September, 2018.

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MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to this Court's request, Plaintiffs submit this supplemental brief regarding (1) the salient differences between claims brought directly under the Nevada Constitution's Minimum Wage Amendment, Nev. Const. Art. XV, sec. 16 (the MWA) and claims brought under NRS Chapter 608; and (2) the interpretation and application of various elements of the test set forth in NRS 608.0155.

A. Differences between MWA and Chapter 608 claims.

1. As the Nevada Supreme Court recently explained, employees in Nevada may pursue separate and independent claims for back wages under both the Minimum Wage Amendment and NRS Chapter 608.

Plaintiffs in this class-action complaint allege (1) failure to pay wages in violation of the MWA (Count One); (2) failure to pay wages in violation of NRS Chapter 608 (Counts Two and Three); and (3) unjust enrichment (Count Four).

The separate and distinct nature of the constitutional and statutory counts recently was addressed by the Supreme Court in *Neville v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 406 P.3d 499 (Nev. 2017). In that case, as here, the plaintiff's class-action complaint for back wages against a putative employer alleged claims under both the MWA and Chapter 608. *Neville*, 406 P.3d at 501. The trial court granted the defendant's motion to dismiss these claims on the grounds that no private right of action exists to enforce them. *Id.* The Supreme Court granted the plaintiff's writ petition and reversed the trial court's decision. *Id.* at 504.

First, the Supreme Court held dismissal of the MWA claim "indisputedly was an arbitrary and capricious exercise of discretion" because "[t]he constitution expressly provides for a private cause of action to enforce the provisions of the Minimum Wage Amendment. Nev. Const. art. 15, § 16 ('An employee claiming violation of this section may bring an action against his or her employer in the courts of this State to enforce the provisions of this Section....')." *Id.* at 501.

Second, the Supreme Court held dismissal of the Chapter 608 claim also was improper because, although Chapter 608 does not expressly authorize a private cause of action, the Court determined the Legislature intended to create such a right. *Id.* at 504.

2. The Legislature can amend or limit Chapter 608 claims, but not MWA claims.

The lesson of *Neville* is clear: Employees in Nevada may pursue wage claims against a putative employer under both the MWA (to enforce the provisions of the Minimum Wage Amendment) and NRS Chapter 608 (to enforce the provisions of NRS Chapter 608). These claims are related but not identical. Chapter 608, for example, provides for certain penalties for failing to timely pay wages upon discharge, which is not available under the MWA. *See* NRS 608.040-050. The MWA expressly authorizes the remedies of "reinstatement or injunctive relief," which is not available under Chapter 608. Nev. Const. Art. XV. sec. 16(B). Another key difference is that the Legislature can amend or limit claimants' rights under Chapter 608 but cannot limit rights under the MWA. *Thomas v. Nevada Yellow Cab Corp.*, 130 Nev. Adv. Op. 52, 327 P.3d 518, 522 (2014) ("the principle of constitutional supremacy prevents the Nevada Legislature from creating exceptions to the rights and privileges protected by Nevada's Constitution.").[1]

If the Court interprets NRS 608.0155 to apply to MWA claims (even though it states it applies only "[f]or the purposes of this chapter" (*i.e.*, Chapter 608)), then the Court must find it is

[1] As noted in Plaintiff's counter-motion for summary judgment, however, NRS 608.0155 is conflict-preempted and therefore without effect even as to the statutory claim. *See* Pl. MSJ at 24. The Legislature cannot enact a wage scheme using a narrower definition of employee than the FLSA's definition because it would be impossible for covered employers, like strip clubs, to comply with different federal and state tests for determining whether its workers must be classified and paid as employees. Clubs could not comply both with a state wage law requiring it to treat dancers as independent contractors and a federal wage law requiring it to treat dancers as employees. And the federal objective to provide wage protections to all persons who are employees under the broad economic realities test would be frustrated if Nevada employers could avoid their federal wage obligations by hiding behind less protective state wage laws. *Id.* Also NRS 608.0155 could not be applied retroactively to impair vested rights. *Id.* at 25.

unconstitutional pursuant to the Supreme Court's holding in *Thomas*. In that case, the Nevada Supreme Court foreclosed any legislative attempt to restrict or alter the MWA's broad scope when it struck down a pre-existing statute purporting to exclude taxicab drivers from the MWA's broad definition of employee. *Thomas* at 522. For the reasons set forth at length in *Thomas*, a threshold statutory test that would accomplish a similar result as the legislative exemption at issue in *Thomas* (*i.e.*, excluding individuals from the "rights and privileges protected by Nevada's Constitution") also would be preempted. That a specific statutory exemption (at issue in *Thomas*) and a statutory test excluding an entire category of individuals from the constitution's protections (at issue here) are equally impermissible seems beyond argument. To hold otherwise would render meaningless the Supreme Court's ruling in *Thomas* (and the principle of constitutional supremacy it enforced) because it would permit the Legislature to re-establish the supposedly preempted statutory exemption for taxicab drivers simply by enacting a statute that said "any person who transports passengers in a vehicle for a fee" is an independent contractor. The principle of constitutional supremacy cannot be so easily subverted.

The Nevada Supreme Court has held the MWA was enacted by Nevada voters to ensure that "more, not fewer, persons would receive minimum wage protections." *Terry v. Sapphire Gentlemen's Club*, 130 Nev. Adv. Op. 87, 336 P.3d 951, 955 (2014). If the Legislature for some reason wanted to ensure that fewer, not more, persons would receive minimum wage protections under Nevada law, it would need to amend or repeal the MWA.

B. Thoughts on how NRS 608.0155 would be interpreted and applied.

1. The NRS 608.0155 test does not apply if there is no contract between the parties to perform work.

As the Court noted at the previous hearing, the various criteria in in NRS 608.0155 for determining presumptive independent contractor status are not particularly clear. But the statute does

make clear its purpose is limited to determining whether a relationship between a worker and the person hiring the worker is that of independent contractor and principal. Consistent with this limited purpose, all five criteria in NRS 608.0155(1)(c) either assume the existence of a contract between the two parties to perform work or, more critically, cannot meaningfully be applied unless there is such a contract. *See* NRS 608.0155(1)(c)(1) (asking whether "the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the principal in the contract"); *id.* at (c)(2) (asking whether principal gave putative contractor "control over the time the work is performed"); *id.* at (c)(3) (asking whether putative contractor "is required to work exclusively for one principal"); *id.* at (c)(4) (asking whether putative contractor "is free to hire employees to assist with the work"); *id.* at (c)(5) (asking whether putative contractor leased any "work space from the principal required to perform the work for which the person was engaged.").

This specific understanding (that an independent contractor renders services to a principal for a fee) consistently is used by the Legislature throughout the Nevada Revised Statutes and thus further confirms that NRS 608.0155 means what it says. *See, e.g.*, NRS 286.045 ("Independent contractor means any person who renders specified services [to a principal] for a stipulated fee…"); NRS 616A.255 ("'Independent contractor' means any person who renders service for a specified recompense for a specified result…"); NRS 617.120 (same definition as 616A.255); NRS 333.700(2) ("An independent contractor is a natural person, firm or corporation who agrees to perform services for a fixed price according to his, her or its own methods and without subjection to the supervision or control of the other contracting party.…").

As such, the test cannot coherently be applied where, as here, the Club at all times has characterized its dancers merely as "tenants" who, in exchange for a fee, are allowed into the club to perform entertainer services for club patrons. *See* Def. MSJ SOF 8. The only classification question in this case is whether the Club's dancers are employees, as the Dancers contend, or tenants

who pay to use the Club's facilities, as the Club contends. NRS 608.0155 has nothing to say about the propriety of this alleged landlord-tenant relationship.

2. Interpretation and Application of Sub-factor (1)(c)(1).

Three out of five criteria or "sub-factors" listed in NRS 608.0155(1)(c) must be met for the relationship between a hiring party and a worker to be presumptively classified as that of principal and independent contractor. The first sub-factor, (1)(c)(1), has two components that must be satisfied. First, "[n]otwithstanding the exercise of any control necessary to comply with any statutory, regulatory or contractual obligations" the putative independent contractor must have "control and discretion over the means and manner of the performance of any work." NRS 608.0155(1)(c)(1). Second, "the result of the work, rather than the means or manner by which the work is performed [must be] the primary element bargained for by the principal in the contract." *Id.*

The first component (degree of "control and discretion over the means and manner of the performance of any work") appears similar to the control analysis in the economic realities test. *See McFeeley v. Jackson St. Entm't, LLC*, 47 F. Supp. 3d 260, 268–69 (D. Md. 2014), *aff'd*, 825 F.3d 235 (4th Cir. 2016) (finding "Defendants exercised significant control over the atmosphere, clientele, and operations of the clubs" and holding dancers were employees as a matter of law).

On this point the Nevada Supreme Court already has held strip clubs exert a tremendous amount of control over their dancers and emphatically has rejected efforts by clubs to suggest dancers are independent businesswomen because they enjoy "freedoms" such as being able to "choose" not to dance for a particular customer or to "choose" to not perform a stage rotation by paying a fee. Despite these superficial "choices," the Supreme Court held, strip clubs are:

> able to 'heavily monitor the performers, including dictating their appearance, interactions with customers, work schedules, and minute to minute movements when working' while ostensibly ceding control to them. This reality undermines [the club's] characterization of the 'choices' it offers performers and the freedom it suggests that these choices allow them; the performers are, for all practical purposes,

'not on a pedestal but in a cage.'

Terry at 959 (*quoting* Sheerine Alemzadeh, Baring Inequality: Revisiting the Legalization Debate Through the Lens of Strippers' Rights, 19 Mich. J. Gender & L. 339, 347 (2013)). *See also Harrell v. Diamond A Entm't, Inc.*, 992 F.Supp. 1343, 1349 (M.D.Fla.1997) ("The mere fact that [the club] has delegated a measure of discretion to its dancers does not necessarily mean that its dancers are elevated to the status of independent contractors.").

But, regardless of the degree of control, which may be a disputed factual issue, the second requirement (that the result of the work be the primary element bargained for by the Club in the contract) cannot be met here as a matter of law because, according to the contract the Club drafted and required its dancers to sign, its dancers are mere tenants who do not perform any work for it at all. Def. MSJ SOF 8. To the extent a court intelligibly could discern the "primary element bargained for" by the Club in its "Dancer Performance Lease," presumably it would be the payment of the rental fee by the Dancers. It would strain credulity to suggest that "the primary element bargained for" by a landlord in a lease is the result of any work the tenant may happen to perform for its own customers in the landlord's facility.

3. Interpretation and Application of Sub-factor (1)(c)(2).

The second sub-factor asks whether "the person has control over the time the work is performed." NRS 608.0155(1)(c)(2). But this provision expressly states it does not apply "if the work contracted for is entertainment." NRS 608.0155(1)(c)(2). Here, even if the Club had contracted with its dancers to provide dancing services (instead of entering a "Dancer Performance Lease"), section (c)(2) simply would not apply because the work contracted for would be entertainment.

4. Interpretation and Application of Sub-factor (1)(c)(4).

The fourth sub-factor asks whether the dancers are "free to hire employees to assist with the work." NRS 608.0155(1)(c)(4). The Club suggests this factor is met because it submitted a

declaration from a manager saying "dancers are free to hire or use (female) assistants to help them get ready to perform their jobs at Cheetahs, including using hairstylists and/or make-up artists in the dancers' dressing room." Def. MSJ at 16.

As a threshold matter, this declaration is facially deficient. It was not included in the Club's statement of facts and therefore fails to comply with NRCP 56(c) (requiring motions for summary judgment to "include a concise statement setting forth each fact material to the disposition of the motion which the party claims is or is not genuinely in issue…"). Also, the allegation in the Club's affidavit regarding the dancers' alleged "freedom to hire assistants" is conclusory, inadmissible, and a violation of NRCP 56(e), which requires affidavits to be made on personal knowledge and to "set forth such facts as would be admissible in evidence." NRCP 56(e). *See also Gunlord Corp. v. Bozzano*, 95 Nev. 243, 245, 591 P.2d 1149, 1150 (1979). No provision in the Dancer Performance Lease the Club drafted and made its dancers sign suggests dancers could bring assistants into the club. Nor is there any admissible evidence in the record that any dancer in fact brought assistants into the club, or that any of these assistants were actually employed by the dancers.

More fundamentally, NRS 608.0155(1)(c)(4) does not ask whether a worker can hire assistants "to help them get ready to perform their jobs," as the Club seems to suggest. Nor would it make any sense to ask such a question when determining independent contractor status. It is beneficial for workers in many jobs to look good and attractive, especially in the service industries. The fact that such workers generally are free to go to a hairdresser or manicurist to help them look good for their jobs is not probative of whether they are independent contractors or employees. What is probative (and therefore presumably is what the Legislature intended) is whether the worker can hire employees to help complete the work she was hired by the putative principal to do. Thus, for example, a painter hired to paint a building may be an independent contractor to the extent she is free to hire employees to help her with the painting project. This is the meaning suggested by the

plain language of the statute, which asks whether worker is "free to hire employees *to assist with the work*." NRS 608.0155(1)(c)(4) (emphasis added). A finding that a worker is "free to hire employees to assist with the work" for purposes of NRS 608.0155(1)(c)(4) should require a showing that the worker was allowed by the putative principal to hire employees to assist with the work being done. Here, this sub-factor is not met because no provision in the "Dancer Performance Lease" or any other admissible facts in the record suggests the Club's dancers were free to hire employees to come to the club to "assist with the work" of dancing.

5. Interpretation and Application of Sub-factor (1)(c)(5)

The fifth sub-factor asks whether the dancers contribute "a substantial investment of capital in the business of the person." NRS 608.0155(1)(c)(5). This determination "must be made on the basis of the amount of income the person receives, the equipment commonly used, and the expenses commonly incurred in the trade or profession in which the person engages." *Id.*

This sub-factor cannot be met here at the summary judgment stage because Club in its Statement of Facts identifies no admissible evidence regarding how much dancers earn and no evidence regarding the cost of "equipment commonly used" or "expenses commonly incurred" in the exotic dance business. *See generally* Def. MSJ SOF. The only alleged expenses identified by the Club are anecdotal – for example the fact that one dancer spent "between $50 and $100 per month on her hair and another $40-70 per month on her nails." *Id.* at SOF 36.

More critically, even if the Club could establish that dancers spend several hundred dollars a month or more on expenses relating to dancing, it is clear this sub-factor cannot be met because "the trade or profession in which the person engages" is exotic dancing. As the Nevada Supreme Court has held, the exotic dance business requires a capital investment that vastly exceeds what any dancer could spend on hair, nails, and shoes. *See Harrell*, 992 F.Supp. at 1352 ("Defendant would have us believe that a dancer . . . could hang out her own shingle [if this were legal in Las Vegas],

pay nothing in overhead, no advertising, no facilities, no bouncers, and draw in a constant stream of paying customers.") (cited with approval in *Terry*).

Here, it is undisputed that dancers are required to make no capital investment in the most critical and costly components of the business exotic dancing, namely paying for a performance venue, advertising, maintenance, music, food, beverage, other inventory and staffing efforts (all of which is provided by the Club or its investors). Pl. MSJ SOF 3-6. All these substantial capital expenditures are absolutely essential to engage in the business of exotic dancing. As the Nevada Supreme Court noted in *Terry*, it is facially implausible to suggest the amount of money a dancer spends on costumes, makeup, or anything else could ever amount to a "substantial investment of capital" that might indicate dancers are independent entrepreneurs in business for themselves. *See Terry*, 336 P.3d at 959 (noting "performers' financial contributions are limited to . . . their costume and appearance-related expenses and house fees" and thus "are far more closely akin to wage earners toiling for a living, than to independent entrepreneurs seeking a return on their risky capital investments").

CONCLUSION

NRS 608.0155 is a complete non-issue. It does not purport to apply to MWA claims. It cannot apply to MWA claims. And it is preempted by the FLSA and therefore does not apply to Chapter 608 claims. Even if it did apply, the test would not met here as a matter of law.

DATED this 5th day of September, 2018.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of **BIGHORN LAW**, and on the 5th day of September, 2018, I served the foregoing ***SUPPLEMENTAL BRIEF IN SUPPORT OF PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT ON EMPLOYEE STATUS*** as follows:

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

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

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DISTRICT COURT
CLARK COUNTY NEVADA

Jane Doe Dancer, I Through V, et al.

Plaintiff,

vs.

La Fuente, Inc. et al.

Defendants.

Case No.: A-14-709851-C

Dept. No. IV

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

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

good cause shown, the Court rules as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18. In interpreting the meaning of the word "employee" as used in the MWA, this Court must first look to the MWA's language and give that language its plain effect, unless the language is ambiguous. The Supreme Court has already observed that the MWA's use of the word "employee" is vague. *Terry*, 336 P.3d at 955. Therefore, the Supreme Court looked for the "most closely analogous" statute to aid in interpreting "employee" and distinguishing it from other business relationships, like that of independent contractor. *Perry*, 383 P.3d at 262; *Thomas v. Nevada Yellow Cab Corp.*, 327 P.3d 518, 521, 130 Nev. Adv. Op. 52, *4 (Nev. 2014).

19. In 2015, a year after *Terry* was decided, the Nevada Legislature remedied that ambiguity by passing S.B. 224, which clarified what it meant to be an "employee." S.B. 224, now codified at NRS § 608.0155 creates a five-part test that, when met, results in a "conclusive presumption" that a worker is an independent contractor.

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

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

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

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

Internal Revenue Service in the previous year;

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

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

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

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

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

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

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

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

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

25. At all relevant times, Cheetahs dancers were required by law to have a business license issued by the Nevada Secretary of State to perform as an exotic dancer. (Jane Doe Dancer III Depo. 20-22, 73:7-9 (MSJ020-22, MSJ073; JLH Dancer Depo. at pp. 18:24 – 19:8, 47-48, (MSJ142-43, MSJ171-72); Depo. Ex. 4 (MSJ258); *see also* Diana Pontrelli Deposition

Transcript dated 3.16.17 ("Pontrelli Depo.)" at 29:23 (MSJ288).

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

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

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

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

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

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

32. The Dancer Performance Lease signed by Cheetahs dancers expressly provides that Cheetahs "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 on the PREMISES." (Jane Doe III Depo., Ex. 1, Section 10 (MSJ118).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

Therefore , for good cause shown,

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

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

Dated: this 9 day of Nov., 2018.

DISTRICT COURT JUDGE

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