

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

RHONDA ROE, DENISE DOE, JANE DOE
DANCER, AND JANE DOE DANCERS 2-7,

Appellants,

vs.

JACQUELINE FRANKLIN, et. al.

No. 84004

Electronically Filed
Jan 24 2022 12:59 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

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

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

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

1. Judicial District Eighth Department 31
County Clark Judge Hon. Joanna Kishner
District Ct. Case No. A-14-709372-C

2. Attorney filing this docketing statement:

Attorney Leon Greenberg, Ruthann Gonzales Telephone 702-383-6085
Firm Leon Greenberg Professional Corporation
Address 2965 S. Jones Boulevard, Suite E-3
Las Vegas, NV 89146

Client(s) RHONDA ROE, DENISE DOE, JANE DOE DANCER, see attached

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

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

Attorney Jeffery Bendavid, Stephanie J. Smith Telephone (702) 385-6114
Firm Bendavid law
Address 7301 Peak Drive, Suite 150, Las Vegas, NV 89128

Client(s) RUSSELL ROAD FOOD AND BEVERAGE, et al.

Attorney Kimball Jones Telephone (702) 333-1111
Firm Bighorn Law
Address 3675 W. Cheyenne Avenue, Suite 100 North Las Vegas, NV 89032

Client(s) JACQUELINE FRANKLIN, et. al.

(List additional counsel on separate sheet if necessary)

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

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

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

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

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

JACQUELINE FRANKLIN, ASHLEIGH PARK, LILLY SHEPARD, STACIE ALLEN, MICHAELA DEVINE, KARINA STRELKOVA and DANIELLE LAMAR, INDIVIDUALLY, AND ON BEHALF OF A CLASS OF SIMILARLY SITUATED INDIVIDUALS vs. RUSSELL ROAD FOOD AND BEVERAGE, LLC Supreme Court Case No. 74332

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

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

Nature of action was a putative class action claim by plaintiff for unpaid minimum wages pursuant to Article 15, Section 16 of the Nevada Constitution. Appellants were members of the settlement class, potential intervenors, and objectors to the class action settlement in this matter. Intervention was denied and the objectors objections were denied and overruled. The result in the district court was a final judgment incorporating an order granting final approval of a class action settlement under NRCP Rule 23 between the plaintiff and the defendants and binding all class members.

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

1. Final approval of this class action settlement and entry of final judgment was erroneous as that settlement failed to comply with the requirements of NRCP Rule 23 and due process.
2. The district court erred in denying intervention to the appellants.
3. The district court erred in refusing to allow appellants and plaintiffs to use pseudonyms and in denying appellants' request for a protective order.
4. The district court erred in granting summary judgment and denying class action certification in light of the decision in Doe Dancer I v. La Fuente, 481 P.3d 860 (Nev. Sup. Ct. 2021).
5. The district court erred in dismissing certain putative class member plaintiffs for lack of subject matter jurisdiction in light of the decision in A Cab LLC v. Murray, 137 Nev. Advance Opinion 84 (Nev. Sup. Ct. 12/30/21).

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

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

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

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

☒ A substantial issue of first impression

☒ An issue of public policy

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

☐ A ballot question

If so, explain: The Nevada Supreme Court has not opined on the criteria the district courts are to apply, and the processes they are to use, to determine whether a class action settlement is properly granted final approval in compliance with the requirements of NRCP Rule 23 and due process. This is an issue of first impression and public policy that also concerns the due process protections of the United States and Nevada Constitutions. The Nevada Supreme Court has not opined on when parties may use pseudonyms and that is an issue of first impression and public policy.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Appellants believe this appeal is properly considered by the Nevada Supreme Court pursuant to NRAP 17(a)(11)(12) as it involves, as stated in #12, issues of first impression involving due process protections of the United States and/or Nevada Constitution and issues of statewide public importance.

This appeal is not presumptively assigned to the Court of Appeals.

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

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Dec. 1, 2021

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

17. Date written notice of entry of judgment or order was served Dec. 1, 2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

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

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

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

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed December 21, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

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

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

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

(a)

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

(b) Explain how each authority provides a basis for appeal from the judgment or order:
This is an appeal from a final judgment.

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

(a) Parties:

RHONDA ROE, DENISE DOE, JANE DOE DANCER, AND JANE DOE
DANCERS 2-7, Appellants, JACQUELINE FRANKLIN, ASHLEIGH PARK, LILY
SHEPARD, STACIE ALLEN, MICHAELA DEVINE, SAMANTHA JONES,
KARINA STRELKOVA, DANIELLE LAMAR individually, and on behalf of Class
of similarly situated individuals, see attached

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

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

All claims of all parties were disposed of by the final judgment of the district court on December 1, 2021. All proposed intervenors/objectors and plaintiffs were alleged to have claims for unpaid minimum wages against defendants that were disposed of by the final judgment.

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

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

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

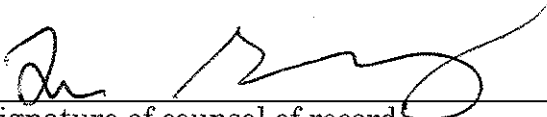
VERIFICATION

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

Rhonda Roe, Denise Doe, see attached
Name of appellant

Leon Greenberg
Name of counsel of record

Jan 24, 2022
Date


Signature of counsel of record

Clark County, Nevada
State and county where signed

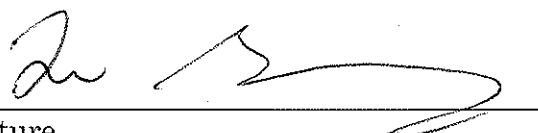
CERTIFICATE OF SERVICE

I certify that on the 24th day of January, 2022, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

By ECF system which served the parties electronically.

Dated this 24th day of January, 2022


Signature

2. Attorney filing this docketing statement:

clients continued:

JANE DOE DANCERS 2-7

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

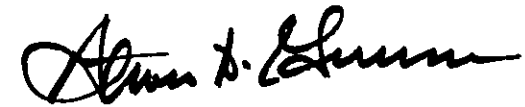
(a) Parties continued:

and RUSSELL ROAD FOOD AND BEVERAGE, LLC, a Nevada limited liability company (d/b/a CRAZY HORSE III GENTLEMEN'S CLUB), DOE CLUB OWNER, I-X, DOE EMPLOYER, I-X, ROE CLUB OWNER, I-X, and ROE EMPLOYER, I-X

Verification:

Name of appellant continued:

JANE DOE DANCER, AND JANE DOE DANCERS 2-7



CLERK OF THE COURT

1 **ACOM**

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19 *Attorneys for Plaintiffs*

14
15 **DISTRICT COURT OF THE STATE OF NEVADA**
16 **IN AND FOR CLARK COUNTY**

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

27 Plaintiffs,

28 v.

25 RUSSELL ROAD FOOD AND
26 BEVERAGE, LLC, SN INVESTMENT
27 PROPERTIES, LLC (both d/b/a Crazy
28 Horse III Gentlemen's Club), DOE
CLUB OWNERS I-X, and DOE CLUB
EMPLOYERS I-X,

Defendants.

CASE NO.: A-14-709372-C
DEPT. 31

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

FAILURE TO PAY WAGES;
UNJUST ENRICHMENT;
ATTORNEY FEES

DEMAND FOR JURY TRIAL

ARBITRATION EXEMPTION: CLASS
ACTION

1 Plaintiffs, on behalf of themselves and a class of all persons similarly situated
2 (collectively, the "Dancers"), allege as follows:

3 **JURISDICTION AND PARTIES**

4 1. This Court has jurisdiction over the subject matter and the person of defendants.
5 Venue is proper in Clark County.

6 2. Defendants Russell Road Food and Beverage and SN Investment Properties are
7 Nevada limited liability companies.

8 3. Russell Road Food and Beverage and SN Investment Properties own and
9 operate "Crazy Horse III Gentlemen's Club" (the "Club"). The Club is a Las Vegas strip club.

10 4. On information and belief, Defendants Doe Club Owners I-X are residents of
11 Clark County, Nevada, and are owners or operators of the Club.

12 5. On information and belief, Defendants Doe Club Employers I-X are residents
13 of Clark County, Nevada, and employed Dancers at the Club.

14 6. Plaintiffs do not know at this time the true names and capacities of defendants
15 Doe Club Owners I-X and Doe Club Employers I-X, but these defendants may include other
16 owners, operators, shareholders, officers, directors, or agents of the Club.

17 7. The defendants are referred to collectively in this complaint as "Crazy Horse."

18 8. Plaintiffs Jacqueline Franklin, Ashleigh Park, Lily Shepard, Stacie Allen,
19 Michaela Divine, Veronica Van Woodsen, Samantha Jones, Karina Strelkova, LaShonda
20 Stewart, Danielle Lamar, and Dirubin Tamayo were, at times relevant to this action, residents
21 of Clark County, Nevada. Each Plaintiff has worked at the Club as an exotic dancer at various
22 relevant times, including times within all applicable statutes of limitations.

23 **CLASS ACTION ALLEGATIONS**

24 9. This proposed class action is brought under NRCP 23(a) and 23(b)(3).

25 10. The proposed class consists of all persons who work or have worked at the Club
26 as dancers at any time during the time period prescribed by applicable statutes of limitations
27 and going forward until the entry of judgment in this action..

28 11. The proposed class is so numerous that joinder of all members is impracticable.

1 The exact number of class members is unknown, but is believed to be in excess of 3000
2 dancers.

3 12. There are questions of law and fact common to the class that predominate over
4 any questions solely affecting individual class members including, but not limited to, whether
5 Crazy Horse violated Nev. Const. Art. XV, Sec. 16 (the "Minimum Wage Amendment") by
6 not paying the class members any wages, and whether Crazy Horse was unjustly enriched at
7 the expense of class members.

8 13. Plaintiffs, like other members of the class, claim they were harmed in the same
9 manner and to the same extent by Crazy Horse's illegal employment practices, and have the
10 same interest in the outcome of the litigation.

11 14. Each class member's claim against Crazy Horse arises from the same course of
12 conduct by Crazy Horse.

13 15. Plaintiffs will fairly and adequately protect the interests of the class. There are
14 no conflicts between the Plaintiffs' claims and the claims of other class members.

15 16. Plaintiffs have retained competent counsel experienced in class action
16 litigation, and they will vigorously pursue the class claims throughout this litigation.

17 17. Individual class members have little interest in controlling the prosecution of
18 separate actions since the amounts of their claims are too small to warrant the expense of
19 prosecuting litigation of this volume and complexity.

20 18. A class action is superior to other available methods for the fair and efficient
21 adjudication of this controversy.

22 19. Plaintiffs anticipate no difficulty in the management of this litigation. Crazy
23 Horse's business records should permit identification of and notice to the class members.

24 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

25 20. Crazy Horse heavily monitors its dancers, including dictating their appearance,
26 interactions with customers, and work schedules.

27 21. An exotic dancer's opportunity for profit or loss working at the Club does not
28 depend upon her managerial skill, even though individual dancers may use their interpersonal

1 skills to solicit larger tips.

2 22. Crazy Horse provides all the risk capital, funds advertising, and covers facility
3 expenses for its strip club.

4 23. Working as an exotic dancer at the Club does not require the kind of initiative
5 demonstrated by an independent business owner.

6 24. Exotic dancers are integral to the operation and business success of the Club.

7 25. Exotic dancers are employees of the Nevada strip clubs in which they work
8 under Nevada law.

9 26. The Minimum Wage Amendment requires Nevada employers to pay their
10 employees at least a minimum hourly wage.

11 27. Tips or gratuities given to employees by an employer's patrons cannot be
12 credited as being a part of or offset against the wage rates required by the Minimum Wage
13 Amendment.

14 28. A Nevada employer cannot require employees contractually to waive their right
15 to a minimum wage.

16 29. At no time has Crazy Horse paid its Dancers a minimum wage as required by
17 Nevada law.

18 30. Crazy Horse imposed various monetary fines on the Dancers for failure to
19 comply with its rules and regulations.

20 31. Crazy Horse imposed various fees on the Dancers as a condition of
21 employment, such as fees to work a shift and fees for declining to dance on the stage during
22 a shift.

23 32. Crazy Horse required its Dancers, as a condition of employment, to pay fixed
24 sums to Crazy Horse management and other employees, including but not limited to, the
25 "house mom," the DJ, the manager, the bartenders and the bouncers.

26 33. Crazy Horse has retained benefits, including unpaid wages and improper fees
27 and fines described in this complaint. These benefits, in equity and good conscience, belong
28 to the Dancers.

COUNT TWO

(Unjust Enrichment)

45. Plaintiffs incorporate the foregoing allegations as though fully set forth herein.

46. The fees and fines paid by the Dancers to Crazy Horse as described in this Complaint constitute a benefit conferred on Crazy Horse by the Dancers. Crazy Horse appreciated, accepted, and retained this benefit.

47. The wages earned by Dancers but not paid by Crazy Horse as described in this complaint constitute a benefit conferred on Crazy Horse by the Dancers. Crazy Horse appreciated, accepted, and retained this benefit.

48. Crazy Horse has been unjustly enriched by accepting and retaining benefits from its Dancers, including the unpaid wages, fees and fines described in this complaint. These benefits, in equity and good conscience, belong to the Dancers.

REQUEST FOR RELIEF

Plaintiffs request an award of:

- A. Damages for all unpaid wages for each Plaintiff and class member, in an amount to be determined at trial;
- B. Damages for additional penalty wages specified by Nevada law for failure to pay wages to discharged or resigning employees when due, in an amount to be determined at trial;
- C. Restitution to the Dancers of all fees, fines, and other monies improperly extracted or withheld from them by Crazy Horse and not otherwise accounted for as damages for failure to pay wages;
- D. Pre-judgment and post-judgment interest due on such sums at the highest rate permitted by law;
- E. Reasonable attorney fees and costs; and
- F. Such other and further relief as may be fair and equitable under the circumstances.

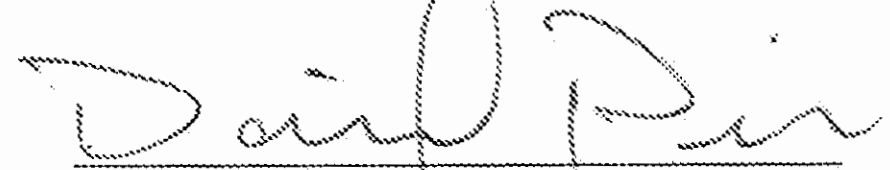
RUSING LOPEZ & LIZARDI, P.L.L.C.
6363 North Swan Road, Suite 151
Tucson, Arizona 85718
Telephone: (520) 792-4800

REQUEST FOR CLASS ACTION CERTIFICATION

Plaintiffs further request that the Court certify this action as a class action pursuant to NRCP 23, and designate plaintiffs as class representatives and their counsel as class counsel.

DATED this 16 day of September, 2015.

MORRIS // ANDERSON



RYAN M. ANDERSON, ESQ.

Nevada Bar No. 11040

DANIEL R. PRICE, ESQ.

Nevada Bar No. 13564

716 S. Jones Blvd

Las Vegas, Nevada 89107

RUSING LOPEZ & LIZARDI, PLLC

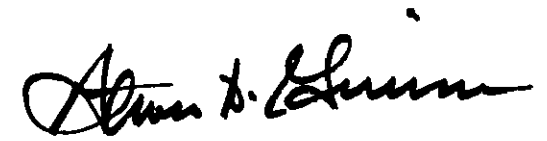
P. ANDREW STERLING, ESQ.

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Tucson, AZ 85718

Attorneys for Plaintiffs


CLERK OF THE COURT

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12 Las Vegas, Nevada 89101
13 (702) 384-8424
14 *Attorneys for Russell Road Food and Beverage, LLC*

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 JACQUELINE FRANKLIN, ASHLEIGH)
18 PARK, LILY SHEPARD, STACIE ALLEN,) Case No.: A-14-709372-C
19 MICHAELA DIVINE, VERONICA VAN)
20 WOODSEN, SAMANTHA JONES,) Dept. No.: 31
21 KARINA STRELKOVA, LASHONDA,)
22 STEWART, DANIELLE LAMAR, and)
23 DIRUBIN TAMAYO, individually,)
24 and on behalf of a class of similarly)
25 situated individuals,)

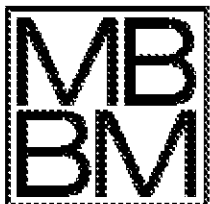
26 Plaintiffs,)

27 vs.)

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

Defendants.)

DEFENDANT, RUSSELL ROAD FOOD AND BEVERAGE, LLC'S ANSWER TO
PLAINTIFF'S THIRD AMENDED CLASS ACTION COMPLAINT AND
COUNTERCLAIMS



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-8568

1 COMES NOW, Defendant, RUSSELL ROAD FOOD AND BEVERAGE, a Nevada
2 limited liability, dba CRAZY HORSE III GENTLEMEN'S CLUB (the "Defendant"), by
3 and through its attorney of record, GREGORY J. KAMER, ESQ., of KAMER ZUCKER
4 ABBOTT, and JEFFERY A. BENDAVID, ESQ., of MORAN BRANDON BENDAVID
5 MORAN, hereby submit its ANSWER TO PLAINTIFFS' THIRD AMENDED CLASS
6 ACTION COMPLAINT AND COUNTERCLAIM.
7

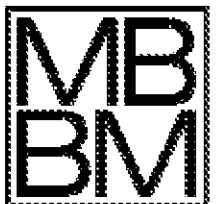
8 JURISDICTION AND PARTIES

9 1. As to Paragraph 1 of Plaintiffs' Third Amended Class Action Complaint on
10 file herein, Defendant is without knowledge or information sufficient to form a belief as to
11 the truth of the allegations contained therein and therefore denies the same.
12

13 2. As to Paragraph 2 of Plaintiffs' Third Amended Class Action Complaint on
14 file herein, Defendant hereby admits Russell Road Food and Beverage is a Nevada limited
15 liability company. As to the remaining allegations, Defendant is without knowledge or
16 information sufficient to form a belief as to the truth of the allegations contained therein and
17 therefore denies the same.
18

19 3. As to Paragraph 3 of Plaintiffs' Third Amended Class Action Complaint on
20 file herein, Defendant hereby admits Russell Road Food and Beverage owns and operates
21 "Crazy Horse III Gentlemen's Club (the "Club"). As to the remaining allegations Defendant
22 hereby denies the allegations contained therein and therefore denies the same.
23

24 4. As to Paragraph 4 of Plaintiffs' Third Amended Class Action Complaint on
25 file herein, Defendant is without knowledge or information sufficient to form a belief as to
26 the truth of the allegations contained therein and therefore denies the same.
27



28
MORAN BRANDON
BENDAUID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-6424
FAX: (702) 384-6568

1 5. As to Paragraph 5 of Plaintiffs' Third Amended Class Action Complaint on
2 file herein, Defendant is without knowledge or information sufficient to form a belief as to
3 the truth of the allegations contained therein and therefore denies the same.

4 6. As to Paragraph 6 of Plaintiffs' Third Amended Class Action Complaint on
5 file herein, Defendant is without knowledge or information sufficient to form a belief as to
6 the truth of the allegations contained therein and therefore denies the same.

7 7. As to Paragraph 7 of Plaintiffs' Third Amended Class Action Complaint on
8 file herein, Defendant is without knowledge or information sufficient to form a belief as to
9 the truth of the allegations contained therein and therefore denies the same.

10 8. As to Paragraph 8 of Plaintiffs' Third Amended Class Action Complaint on
11 file herein, Defendant hereby denies the allegations contained therein.

12 **CLASS ACTION ALLEGATIONS**

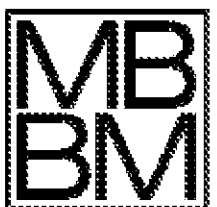
13 9. As to Paragraph 9 of Plaintiffs' Third Amended Class Action Complaint on
14 file herein, Defendant is without knowledge or information sufficient to form a belief as to
15 the truth of the allegations contained therein and therefore denies the same.

16 10. As to Paragraph 10 of Plaintiffs' Third Amended Class Action Complaint on
17 file herein, Defendant hereby denies the allegations contained therein.

18 11. As to Paragraph 11 of Plaintiffs' Third Amended Class Action Complaint on
19 file herein, Defendant hereby denies the allegations contained therein.

20 12. As to Paragraph 12 of Plaintiffs' Third Amended Class Action Complaint on
21 file herein, Defendant hereby denies the allegations contained therein.

22 13. As to Paragraph 13 of Plaintiffs' Third Amended Class Action Complaint on
23 file herein, Defendant hereby denies the allegations contained therein.



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BENDAVID MORAN
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1 14. As to Paragraph 14 of Plaintiffs' Third Amended Class Action Complaint on
2 file herein, Defendant hereby denies the allegations contained therein.

3 15. As to Paragraph 15 of Plaintiffs' Third Amended Class Action Complaint on
4 file herein, Defendant hereby denies the allegations contained therein.

5 16. As to Paragraph 16 of Plaintiffs' Third Amended Class Action Complaint on
6 file herein, Defendant hereby denies the allegations contained therein.

7 17. As to Paragraph 17 of Plaintiffs' Third Amended Class Action Complaint on
8 file herein, Defendant hereby denies the allegations contained therein.

9 18. As to Paragraph 18 of Plaintiffs' Third Amended Class Action Complaint on
10 file herein, Defendant hereby denies the allegations contained therein.

11 19. As to Paragraph 19 of Plaintiffs' Third Amended Class Action Complaint on
12 file herein, Defendant hereby denies the allegations contained therein.

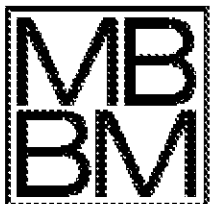
13 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

14 20. As to Paragraph 20 of Plaintiffs' Third Amended Class Action Complaint on
15 file herein, Defendant hereby denies the allegations contained therein.

16 21. As to Paragraph 21 of Plaintiffs' Third Amended Class Action Complaint on
17 file herein, Defendant hereby denies the allegations contained therein.

18 22. As to Paragraph 22 of Plaintiffs' Third Amended Class Action Complaint on
19 file herein, Defendant is without knowledge or information sufficient to form a belief as to
20 the truth of the allegations contained therein and therefore denies the same.

21 23. As to Paragraph 23 of Plaintiffs' Third Amended Class Action Complaint on
22 file herein, Defendant hereby denies the allegations contained therein.



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1 24. As to Paragraph 24 of Plaintiffs' Third Amended Class Action Complaint on
2 file herein, Defendant hereby denies the allegations contained therein.

3 25. As to Paragraph 25 of Plaintiffs' Third Amended Class Action Complaint on
4 file herein, Defendant hereby denies the allegations contained therein.

5 26. As to Paragraph 26 of Plaintiffs' Third Amended Class Action Complaint on
6 file herein, the Minimum Wage Amendment speaks for itself.

7 27. As to Paragraph 27 of Plaintiffs' Third Amended Class Action Complaint on
8 file herein, the Minimum Wage Amendment speaks for itself.

9 28. As to Paragraph 28 of Plaintiffs' Third Amended Class Action Complaint on
10 file herein, the Minimum Wage Amendment speaks for itself.

11 29. As to Paragraph 29 of Plaintiffs' Third Amended Class Action Complaint on
12 file herein, the Dancers were and/are not employees as such, were not required to be paid
13 minimum wage.

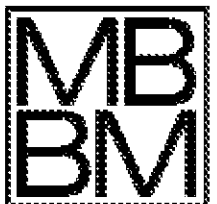
14 30. As to Paragraph 30 of Plaintiffs' Third Amended Class Action Complaint on
15 file herein, Defendant hereby denies the allegations contained therein.

16 31. As to Paragraph 31 of Plaintiffs' Third Amended Class Action Complaint on
17 file herein, Defendant hereby denies the allegations contained therein.

18 32. As to Paragraph 32 of Plaintiffs' Third Amended Class Action Complaint on
19 file herein, Defendant hereby denies the allegations contained therein.

20 33. As to Paragraph 33 of Plaintiffs' Third Amended Class Action Complaint on
21 file herein, Defendant hereby denies the allegations contained therein.

22 34. As to Paragraph 34 of Plaintiffs' Third Amended Class Action Complaint on
23 file herein, Defendant hereby denies the allegations contained therein.



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1 35. As to Paragraph 35 of Plaintiffs' Third Amended Class Action Complaint on
2 file herein, Defendant hereby denies the allegations contained therein.

3 36. As to Paragraph 36 of Plaintiffs' Third Amended Class Action Complaint on
4 file herein, Dancers are not and were not employees, as such, were not required to be paid
5 minimum wage.
6

7 37. As to Paragraph 37 of Plaintiffs' Third Amended Class Action Complaint on
8 file herein, Defendant hereby denies the allegations contained therein.

9 38. As to Paragraph 38 of Plaintiffs' Third Amended Class Action Complaint on
10 file herein, Dancers are not and were not employees, as such, were not required to be paid
11 minimum wage.
12

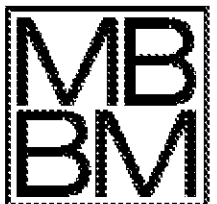
13 39. As to Paragraph 39 of Plaintiffs' Third Amended Class Action Complaint on
14 file herein, Defendant hereby denies the allegations contained therein.

15 40. As to Paragraph 40 of Plaintiffs' Third Amended Class Action Complaint on
16 file herein, Defendant hereby denies the allegations contained therein.

17 41. As to Paragraph 41 of Plaintiffs' Third Amended Class Action Complaint on
18 file herein, all punitive damage claims have been dismissed and struck and therefore, all
19 such allegations and pleadings should be struck in accordance with the Court's Order.
20 Defendant hereby denies the allegations contained therein.
21

22 **COUNT ONE**
23 **(NEV. Const.Art. XV, Sec. 16-Failure to Pay Wages)**

24 42. As to Paragraph 42 of Plaintiffs' Third Amended Class Action Complaint on
25 file herein, Defendant hereby repeats and re-alleges their prior responses to Plaintiffs' Third
26 Amended Class Action Complaint in Paragraphs 1 through 41.



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1 43. As to Paragraph 43 of Plaintiffs' Third Amended Class Action Complaint on
2 file herein, Defendant hereby denies the allegations contained therein.

3 44. As to Paragraph 44 of Plaintiffs' Third Amended Class Action Complaint on
4 file herein, Defendant hereby denies the allegations contained therein.

5
6 **COUNT TWO**
7 (Unjust Enrichment)

8 45. As to Paragraph 45 of Plaintiffs' Third Amended Class Action Complaint on
9 file herein, Defendant hereby repeats and re-alleges their prior responses to Plaintiffs' Third
10 Amended Class Action Complaint in Paragraphs 1 through 44.

11 46. As to Paragraph 46 of Plaintiffs' Third Amended Class Action Complaint on
12 file herein, Defendant hereby denies the allegations contained therein.

13 47. As to Paragraph 47 of Plaintiffs' Third Amended Class Action Complaint on
14 file herein, Defendant hereby denies the allegations contained therein.

15 48. As to Paragraph 48 of Plaintiffs' Third Amended Class Action Complaint on
16 file herein, Defendant hereby denies the allegations contained therein.

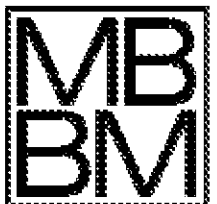
17
18 **AFFIRMATIVE DEFENSES**

19 **FIRST AFFIRMATIVE DEFENSE**

20 Plaintiffs' Third Amended Class Action Complaint fails to state a claim against
21 Defendant, Russell Road Food and Beverage upon which relief can be granted.

22 **SECOND AFFIRMATIVE DEFENSE**

23 Plaintiffs lack standing to bring their claims asserted in this lawsuit against the
24 Defendant, Russell Road Food and Beverage.
25
26



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1 **THIRD AFFIRMATIVE DEFENSE**

2 Defendant, Russell Road Food and Beverage denies the allegations of Plaintiffs'
3 Third Amended Class Action Complaint and demand strict proof thereof.

4 **FOURTH AFFIRMATIVE DEFENSE**

5 Defendant, Russell Road Food and Beverage pleads the applicable statute of
6 limitation to each of Plaintiffs' claims.

7 **FIFTH AFFIRMATIVE DEFENSE**

8 Plaintiffs' claims are barred by the Doctrine of Estoppel and Waiver.

9 **SIXTH AFFIRMATIVE DEFENSE**

10 There is no basis in law or facts for Plaintiffs' claims for punitive damages asserted
11 in Plaintiffs' Third Amended Class Action Complaint.

12 **SEVENTH AFFIRMATIVE DEFENSE**

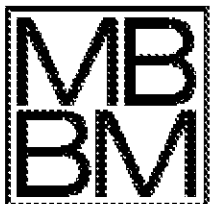
13 Defendant, Russell Road Food and Beverage is not guilty of any of the allegations
14 made against them in Plaintiffs' Third Amended Class Action Complaint.

15 **EIGHTH AFFIRMATIVE DEFENSE**

16 Defendant, Russell Road Food and Beverage's actions were justified and Defendant,
17 Russell Road Food and Beverage's actions are therefor, immune from liability.

18 **NINTH AFFIRMATIVE DEFENSE**

19 Defendant, Russell Road Food and Beverage has complied with all requirements of
20 Federal and State law with respect to the transactions with the Plaintiffs who bring suit
21 against Defendant, Russell Road Food and Beverage.



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1 **TENTH AFFIRMATIVE DEFENSE**

2 Some or all of Plaintiffs' claims are barred by the Doctrines of Set Off and
3 Recoupment.

4 **ELEVENTH AFFIRMATIVE DEFENSE**

5 Plaintiffs' claims are barred by the Doctrine of Unclean Hands.

6 **TWELFTH AFFIRMATIVE DEFENSE**

7 Plaintiffs' claims are barred by the Doctrines of Consent.

8 **THIRTEENTH AFFIRMATIVE DEFENSE**

9 Plaintiff's claims are barred by the Doctrines of Ratification and Acquiescence.

10 **FOURTEENTH AFFIRMATIVE DEFENSE**

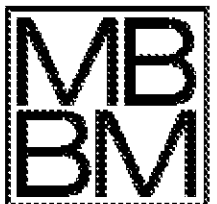
11 Plaintiffs have not suffered any injury by reason of any act, or omission, by the
12 Defendant, Russell Road Food and Beverage; therefore, they do not have any right or
13 standing to assert the claims at issue.

14 **FIFTEENTH AFFIRMATIVE DEFENSE**

15 This action cannot be maintained as a class action under Rule 23 of the Nevada
16 Rules of Civil Procedure because: (i) the questions of law and fact are not common to the
17 class, the legal issues differ from class member to class member, and the factual issues will
18 differ depending on a number of different facts applicable to the various punitive class
19 members; and (ii) the claims or defenses of the representative are not typical of the claims or
20 defenses of the class; and (iii) the Plaintiffs will not fairly and adequately protect the interest
21 of the class.

22 **SIXTEENTH AFFIRMATIVE DEFENSE**

23 This class is not certifiable as a class action.



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1 **SEVENTEENTH AFFIRMATIVE DEFENSE**

2 Defendant, Russell Road Food and Beverage denies that Plaintiffs are adequate class
3 representatives.

4 **NINETEENTH AFFIRMATIVE DEFENSE**

5 Defendant, Russell Road Food and Beverage is not liable because they acted in good
6 faith in conformity with applicable rules, regulations, and statutory interpretations.

7 **TWENTIETH AFFIRMATIVE DEFENSE**

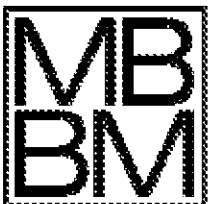
8 The actions alleged in the Plaintiffs' Third Amended Class Action Complaint are
9 barred, in whole or in part, by the Doctrine of Laches because Plaintiffs, having notice of
10 the facts constituting the basis of the alleged causes of action, nevertheless delayed
11 institution of the lawsuit, and such delay has worked to the disadvantage and prejudice of
12 the Defendant, Russell Road Food and Beverage.

13 **TWENTY FIRST AFFIRMATIVE DEFENSE**

14 Defendant, Russell Road Food and Beverage alleges that the actions,
15 communications, and conduct of the Defendant, Russell Road Food and Beverage alleged in
16 the Plaintiffs' Third Amended Class Action Complaint were ratified, approved and/or
17 agreed to by Plaintiffs.

18 **TWENTY SECOND AFFIRMATIVE DEFENSE**

19 Any Plaintiffs who performed at Russell Road Food and Beverage's business
20 establishment entered into an Entertainment Agreement with Russell Road Food and
21 Beverage, by its terms, covenants, conditions, and provisions, established the legal
22 relationship between the Russell Road Food and Beverage and Plaintiffs as being that of
23 Independent Contractor and Entertainer and further establishes that Plaintiffs' are not any
24



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1 other legal relationship of any type or kind. The Entertainment Agreement expressly
2 provides and the Plaintiffs who entered into such an Agreement expressly acknowledged
3 and agreed that by signing the Agreement they were not employees or agents of Russell
4 Road Food and Beverage, and are therefore, not entitled to minimum wages or other
5 employment compensations. Accordingly, Plaintiffs are not entitles to invoke Nevada
6 Minimum Wage Amendment.
7

8 **TWENTY THIRD AFFIRMATIVE DEFENSE**

9 Any and all Plaintiffs performing on the business premises of the Defendant, Russell
10 Road Food and Beverage did so as an Independent Contractor and are therefore, precluded
11 from evoking any of the provisions of Nevada Minimum Wage Amendment.
12

13 **TWENTY FOURTH AFFIRMATIVE DEFENSE**

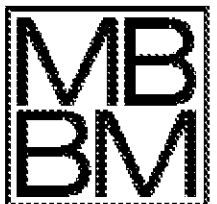
14 Plaintiffs' Third Amended Class Action Complaint is barred by the Principle of
15 Unjust Enrichment.
16

17 **TWENTY FIFTH AFFIRMATIVE DEFENSE**

18 Plaintiffs' Causes of Action for Equitable Relief are barred for the reasons that
19 Plaintiffs' have adequate remedies at law.

20 **TWENTY SIXTH AFFIRMATIVE DEFENSE**

21 Plaintiffs' Third Amended Class Action Complaint is frivolous, in that at the time
22 that any Plaintiffs who performed at the Russell Road Food and Beverage entered into an
23 Entertainment Agreement with the Russell Road Food and Beverage, such Plaintiff
24 specifically chose to enter into an Independent Contractor relationship and disclaimed any
25 desire to enter into an employment arrangement, thereby subjecting Plaintiffs', Unnamed
26 Class Members, and their counsels to sanctions, costs, and attorney fees.
27
28



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1 **TWENTY SEVENTH AFFIRMATIVE DEFENSE**

2 Plaintiffs' Third Amended Class Action Complaint is barred for the reason that
3 Plaintiffs' have failed to mitigate their damages.

4 **TWENTY EIGHTH AFFIRMATIVE DEFENSE**

5
6 Plaintiffs' Third Amended Class Action Complaint is barred by the Principle of
7 Payment.

8 **TWENTY NINTH AFFIRMATIVE DEFENSE**

9 Plaintiffs' Third Amended Class Action Complaint under Nevada Minimum Wage
10 Amendment is barred as the result of the Plaintiffs failure to comply with the legal
11 obligations of employees.

12 **THIRTIETH AFFIRMATIVE DEFENSE**

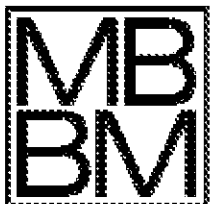
13
14 Defendant, Russell Road Food and Beverage contends that Plaintiffs would not make
15 fair and adequate representatives of any proported class, in that, their specific circumstances
16 are significantly different that most other members of any potential class.

17 **THIRTY FIRST AFFIRMATIVE DEFENSE**

18
19 Defendant, Russell Road Food and Beverage contends that Plaintiffs would not make
20 a fair and adequate representative of any proported class, in that, there would be conflicts
21 between their interest and the interest of many other members of any potential class.

22 **THIRTY SECOND AFFIRMATIVE DEFENSE**

23
24 Any claims of specific Plaintiffs' not common to the entire class of Plaintiffs' are
25 barred.



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1 **THIRTY THIRD AFFIRMATIVE DEFENSE**

2 The acts of Defendant, Russell Road Food and Beverage were neither willful,
3 wanton, intentionally improper, nor taken in reckless disregard of the rights of the Plaintiffs
4 and others.
5

6 **THIRTY FOURTH AFFIRMATIVE DEFENSE**

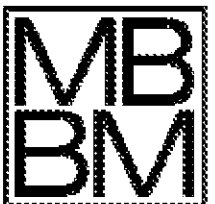
7 Any of the Plaintiffs' claims which seek avoidance of the terms of the Entertainment
8 Agreement are barred as a result of the Plaintiffs' violations of the implied covenants of
9 good faith and fair dealing applicable to each such Agreement.
10

11 **THIRTY FIFTH AFFIRMATIVE DEFENSE**

12 If Plaintiffs are found to be entitled to minimum wage and/or other monetary
13 compensation under Nevada Minimum Wage Claim, Russell Road Food and Beverage is
14 entitled to a set-off against such obligations for all amounts earned by Plaintiffs for their
15 performances at Russell Road Food and Beverage's establishment, exclusive of tips received
16 by Plaintiffs; these amounts being the income and property of the Russell Road Food and
17 Beverage if any employment relationship is determined to exist – the existence of which the
18 Russell Road Food and Beverage specifically denies.
19

20 **THIRTY SIXTH AFFIRMATIVE DEFENSE**

21 By bringing this suit as a Class Action proceeding pursuant to Rule 23 of Nevada
22 Rules of Civil Procedures, the Plaintiffs' are barred and estopped from later seeking, in this
23 action or otherwise, entitlement to any rights, privileges, benefits, or protections that are
24 contained in the Federal Fair Labor Standards Act; 29 USC Section 201, et. Seq.
25
26



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1 **THIRTY SEVENTH AFFIRMATIVE DEFENSE**

2 Some or all of the claims are barred by the Doctrines of Accord and Satisfaction,
3 Settlement, Payment, Release, Judicial Estoppel, and Res Judicata.

4 **THIRTY EIGHTH AFFIRMATIVE DEFENSE**

5 Plaintiffs' claims for unjust enrichment and conversion are barred because Plaintiff's
6 and any putative class members, who performed as an entertainer at Defendant's business
7 establishment, entered into agreements with Defendant, agreeing that the business
8 relationship between Defendant and entertainers were not that of employee-employer.
9

10 **THIRTY NINTH AFFIRMATIVE DEFENSE**

11 Plaintiffs' Third Amended Class Action Complaint, and each purported cause of
12 action therein, is barred because Plaintiffs (and any putative class member) who performed
13 at Defendant's business premises, did so as a independent contractor, and are therefore
14 precluded from invoking the provisions of the Nevada wage laws.
15

16 **FORTEITH AFFIRMATIVE DEFENSE**

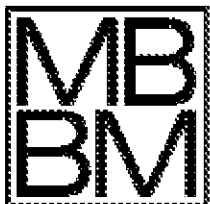
17 Plaintiffs' claims and each purported cause of action therein, are barred due to
18 Plaintiffs' and putative class members' breaches of contract.
19

20 **FORTY FIRST AFFIRMATIVE DEFENSE**

21 No actual, justiciable controversy exists between Defendant and Plaintiffs, and thus
22 Plaintiffs' Third Amended Class Action Complaint must be dismissed as to Defendant.
23

24 **FORTY SECOND AFFIRMATIVE DEFENSE**

25 Plaintiffs and any putative class member are barred from obtaining relief due to
26 unjust enrichment.



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1 **FORTY THIRD AFFIRMATIVE DEFENSE**

2 Plaintiffs' damages and claims are barred to the extent that Defendant is entitles to
3 offset monies already received by Plaintiffs.

4 **FORTY FOURTH AFFIRMATIVE DEFENSE**

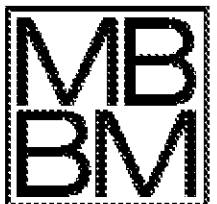
5
6 Plaintiffs' claims are barred to the extent that Plaintiff and putative class members
7 consented to or requested the alleged conduct of Defendant and accepted the benefit of the
8 non-employee status without complaint during the time that they performed at Defendant's
9 establishment.

10 **FORTY FIFTH AFFIRMATIVE DEFENSE**

11
12 That is has been necessary of the Defendant, Russell Road Food and Beverage to
13 employ the services of attorneys to defend the action and a reasonable sum should be
14 allowed Defendant, Russell Road Food and Beverage for attorney's fees, together with costs
15 of suit incurred herein.

16 **FORTY SIXTH AFFIRMATIVE DEFENSE**

17
18 Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have
19 been alleged herein insofar as sufficient facts were not available after reasonable inquiry
20 upon the filing of Defendant, Russell Road Food and Beverage's Answer, and therefore,
21 Defendant, Russell Road Food and Beverage reserves the right to amend this Answer to
22 allege additional affirmative defenses if subsequent investigation warrants.



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WHEREFORE, Defendant Russell Road Food and Beverage, prays for the following:

1. That Plaintiffs takes nothing by way of their Third Amended Class Action Complaint on file herein;

2. For reasonable attorneys’ fees and costs of suit incurred herein; and

3. For such other and further relief as this Court may deem just and proper in the premises.

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1 **COUNTERCLAIMS**

2 Comes now, Defendant/Counterclaimant, RUSSELL ROAD FOOD AND
3 BEVERAGE, LLC, a Nevada limited liability company, dba CRAZY HORSE III
4 GENTLEMEN'S CLUB ("Russell Road"), by and through its attorneys of record,
5 GREGORY J. KAMER, ESQ., of KAMER ZUCKER ABBOTT, and JEFFERY A.
6 BENDAVID, ESQ., of MORAN BRANDON BENDAVID MORAN, hereby asserts the
7 following Counterclaims against Plaintiffs/Counterdefendants, JACQUELINE FRANKLIN,
8 ASHLEIGH PARK, LILY SHEPARD, STACIE ALLEN, MICHAELA DIVINE,
9 VERONICA VAN WOODSEN, SAMANTHA JONES, KARINA STRELKOVA,
10 LASHONDA STEWART, DANIELLE LAMAR, DIRUBIN TAMAYO, DOES I through
11 XX, and ROE BUSINESS ENTITIES I through XX (collectively, the "Counterdefendants").
12

13
14 **I. PARTIES**

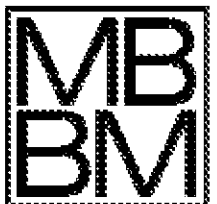
15 1. Defendant/Counterclaimant, Russell Road Food and Beverage, LLC, is a
16 Nevada limited liability company, dba Crazy Horse III Gentlemen's Club, properly
17 conducting business in Clark County, Nevada.
18

19 2. Upon information and belief, Plaintiff/Counterdefendant, Jacqueline
20 Franklin, at all times relevant to this action, was and is a resident of Clark County, Nevada.

21 3. Upon information and belief, Plaintiff/Counterdefendant, Ashleigh Park, at
22 all times relevant to this action, was and is a resident of Clark County, Nevada.

23 4. Upon information and belief, Plaintiff/Counterdefendant, Lily Shepard, at all
24 times relevant to this action, was and is a resident of Clark County, Nevada.

25 5. Upon information and belief, Plaintiff/Counterdefendant, Stacie Allen, at all
26 times relevant to this action, was and is a resident of Clark County, Nevada.
27
28



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1 6. Upon information and belief, Plaintiff/Counterdefendant, Michaela Divine, at
2 all times relevant to this action, was and is a resident of Clark County, Nevada.

3 7. Upon information and belief, Plaintiff/Counterdefendant, Veronica Van
4 Woodsen, at all times relevant to this action, was and is a resident of Clark County, Nevada.

5 8. Upon information and belief, Plaintiff/Counterdefendant, Samantha Jones, at
6 all times relevant to this action, was and is a resident of Clark County, Nevada.

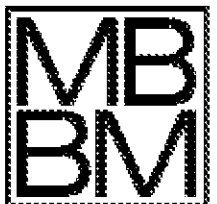
7 9. Upon information and belief, Plaintiff/Counterdefendant, Karina Strelkova, at
8 all times relevant to this action, was and is a resident of Clark County, Nevada.

9 10. Upon information and belief, Plaintiff/Counterdefendant, LaShonda Stewart,
10 at all times relevant to this action, was and is a resident of Clark County, Nevada.

11 11. Upon information and belief, Plaintiff/Counterdefendant, Danielle Lamar, at
12 all times relevant to this action, was and is a resident of Clark County, Nevada.

13 12. Upon information and belief, Plaintiff/Counterdefendant, Dirubin Tamayo, at
14 all times relevant to this action, was and is a resident of Clark County, Nevada.

15 13. The true names and capacities whether individual, corporate, associate or
16 otherwise of Counterdefendants named herein as DOES I through XX, inclusive, and ROE
17 BUSINESS ENTITIES I through XX, inclusive, and each of them, are unknown to Russell
18 Road who therefore sues these Counterdefendants by such fictitious names. Russell Road is
19 informed, believes and thereon alleges that each of the Counterdefendants designated herein
20 as a DOE or ROE BUSINESS ENTITY are agents, employees, servants and representatives
21 of the named Counterdefendant or persons and entities answering in concert with the named
22 Counterdefendant with respect to the allegations herein pled, who are liable to Russell Road
23
24
25
26



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1 by reason thereof, and Russell Road prays leave to amend these Counterclaims to insert their
2 true names or identities with appropriate allegations when same become known.

3 14. At the time of Russell Road's Counterclaims, the individual
4 Plaintiff/Counterdefendants have alleged, but have not certified a class pursuant to N.R.C.P.
5 23. In the event that such an alleged class is certified pursuant to N.R.C.P. 23, Russell Road
6 reserves the right to amend its Counterclaims to include a Counterdefendant class.
7

8 **II. JURISDICTION AND VENUE**

9 15. Jurisdiction is properly before this Court as Counterdefendants, upon
10 information and belief, are residents of Clark County, Nevada, and the contracts and related
11 acts allegedly performed or required to be performed occurred and were to occur in Clark
12 County, Nevada.
13

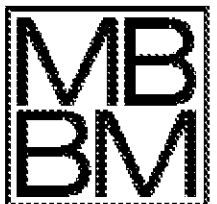
14 16. Venue is proper in this Court pursuant to NRS 13.010(1) in that this is the
15 Nevada County in which Counterdefendants contracted with Russell Road and were
16 required by such contract to perform certain obligations in Clark County, Nevada. Venue is
17 also proper pursuant to NRS 13.040, in that this is the Nevada County in which
18 Counterdefendants, upon information and belief, reside.
19

20 **GENERAL ALLEGATIONS**

21 17. The allegations of paragraphs 1 through 16 of these Counterclaims are
22 incorporated by reference herein with the same force and effect as set forth in full below.
23

24 18. Russell Road owns and operates the adult entertainment venue known as
25 Crazy Horse III ("Crazy Horse III").

26 19. Crazy Horse III is a venue for exotic dancers to perform exotic dances and
27 entertain customers who patronize Crazy Horse III.
28



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1 20. Exotic dancers who desire to perform at Crazy Horse III enter into individual
2 Entertainers Agreements (the "Entertainers Agreement") with Russell Road where pursuant
3 to the terms and conditions of the Entertainers Agreement each exotic dancer is granted the
4 privilege to perform at Crazy Horse III.
5

6 21. Pursuant to the terms and conditions of each Entertainers Agreement,
7 Counterdefendants agreed that each was not an employee of Russell Road and was not
8 entitled to receive by law or pursuant to the terms and conditions of the Entertainers
9 Agreement any of the benefits or privileges provided employees of Russell Road.
10

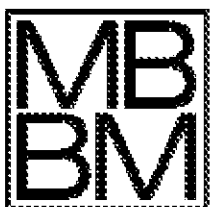
11 22. As consideration for the privilege to perform at Crazy Horse III, each exotic
12 dancer agreed to pay a fee for such privilege as provided in the Entertainers Agreement (the
13 "House Fee").

14 23. In return for the payment of the House Fee, each exotic dancer retained all
15 fees they generated and gratuities paid to them by patrons of Crazy Horse III for the
16 performance of individual dances.
17

18 24. The Entertainers Agreement also permitted each exotic dancer to redeem
19 "Dance Dollars" issued to the patrons of Crazy Horse III for a percentage fee based on the
20 face value of the Dance Dollars redeemed.

21 25. Counterdefendants each entered into an individual Entertainers Agreement
22 and agreed to be bound by the terms and conditions of the Entertainers Agreement,
23 including, but not limited to, the payment of a House Fee for the privilege of performing at
24 Crazy Horse III.
25

26 26. While performing at Crazy Horse III, Counterdefendants performed
27 individual dances for patrons in exchange for a minimum fee (the "Dance Fee").
28



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1 27. At all times, Counterdefendants collected and retained the "Dance Fee,"
2 along with any gratuity paid by each patron receiving an individual dance.

3 28. At all times, Counterdefendants also redeemed from Crazy Horse III and
4 retained the face value of the "Dance Dollars" provided to them by patrons less a percentage
5 redemption fee paid.
6

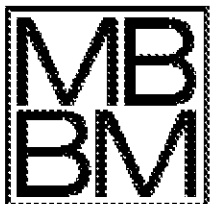
7 29. At no time while performing at Crazy Horse III has any Counterdefendant
8 refused to collect and retain the Dance Fees paid to them by patrons.

9 30. At all times while performing at Crazy Horse III has any Counterdefendant
10 refuse to redeem the face value of any Dance Dollars collected from Crazy Horse III less the
11 percentage redemption fee.
12

13 31. Upon information and belief, the amount of Dance Fees paid by patrons to
14 each Counterdefendant and the amount of Dance Dollars redeemed by each
15 Counterdefendant, exclusive of any gratuities paid by patrons, far exceeded the minimum
16 wage required under Nevada law.
17

18 32. At all times relevant to this matter, Russell Road complied with and
19 performed as required by every term and condition of each Entertainers Agreement entered
20 into by the Counterdefendants.

21 33. After retaining the full benefit of Russell's performance of the terms and
22 conditions of the Entertainers Agreement, including, but not limited to, the receipt and
23 retention of the Dance Fees and the redemption of the face value of the Dance Dollars issued
24 to patrons of Crazy Horse III, Counterdefendants now desire to repudiate the Entertainers
25 Agreement.
26



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1 34. Counterdefendants now demand that they be declared employees and be
2 returned the House Fees each paid to Russell Road for the privilege of performing at Crazy
3 Horse III while at the same time retaining the all of the monies retained or redeemed by each
4 Counterdefendant for the performance of their individual dances for patrons that they were
5 permitted to retain under the terms of their respective Entertainers Agreement.
6

7 **III. FIRST COUNTERCLAIM**
8 **(Breach of Contract-Offset)**

9 35. The allegations of paragraphs 1 through 34 of these Counterclaims are
10 incorporated by reference herein with the same force and effect as set forth in full below.

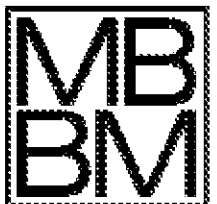
11 36. Russell Road entered into an individual and separate Entertainers Agreement
12 with each Counterdefendant wherein each Counterdefendant acknowledged and agreed to
13 bound by the terms and conditions of their respective Entertainers Agreement.
14

15 37. Pursuant to the terms and conditions of each Entertainers Agreement,
16 Counterdefendants agreed to pay Russell Road an individual House Fee for the privilege of
17 performing as an exotic dancer at the Crazy Horse III Gentlemen's Club owned and
18 operated by Russell Road.

19 38. In exchange for the payment of the House Fee and pursuant to the terms and
20 conditions of the Entertainers Agreement, Russell Road agreed that each Counterdefendant
21 would retain the Dance Fees and gratuities paid to them by patrons of Crazy Horse III for
22 the performance of individual exotic dances.
23

24 39. Such Dance Fees otherwise would be income owed to Russell Road.

25 40. In exchange for the payment of the House Fee and pursuant to the terms and
26 conditions of the Entertainers Agreement, each Counterdefendant could redeem the "Dance
27
28



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1 Dollars” issued to the patrons of Crazy Horse III for a percentage fee based on the face value
2 of the Dance Dollars redeemed.

3 41. The redemption of Dance Dollars issued to patrons otherwise also would be
4 income owed to Russell Road.

5 42. Pursuant to the terms and conditions of the Entertainers Agreement,
6 Counterdefendants paid the House Fee to Russell Road and retained the Dance Fees paid by
7 patrons of Crazy Horse III as well as retained the face value of the Dance Dollars redeemed
8 by each Counterdefendant less the required redemption fee.

9 43. At all times, Russell Road complied with and performed as required by the
10 terms and conditions of each Entertainers Agreement entered into with Counterdefendants.

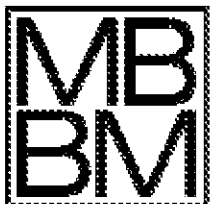
11 44. At all times, Counterdefendants retained all Dance Fees paid to them by
12 patrons of Crazy Horse III and retained the face value of the Dance Dollars redeemed less
13 the agreed upon redemption fee.

14 45. Counterdefendants never refused to collect, accept, or retain any Dance Fees
15 paid to them by patrons of Crazy Horse III.

16 46. Counterdefendants never refused to accept the redemption value of the Dance
17 Dollars redeemed by each Counterdefendant.

18 47. Counterdefendants now seek to repudiate their respective Entertainers
19 Agreement and have each declared an employee of Russell Road under Nevada law entitled
20 to receive minimum wage for work allegedly performed for Russell Road.

21 48. Further, Counterdefendants demand the return of all House Fees paid to
22 Russell Road pursuant to the terms and conditions of the Entertainers Agreement while
23 retaining the Dance Fees and face value of Dance Dollars redeemed.



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1 49. By claiming employee status, Counterdefendants have breached the terms
2 and conditions of their respective Entertainers Agreement.

3 50. Counterdefendants also have breached the terms and conditions of their
4 respective Entertainers Agreement by refusing to return the Dance Fees paid
5 Counterdefendants by patrons of Crazy Horse III and retained by Counterdefendants since
6 Counterdefendants now seek to be deemed employees of Russell Road.

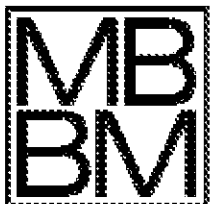
7 51. Counterdefendants also have breached the terms and conditions of their
8 respective Entertainers Agreement by refusing to return the cash value of the Dance Dollars
9 each redeemed from Russell Road.
10

11 52. In the event that Counterdefendants are deemed employees of Russell Road
12 entitled to the payment of Nevada's minimum wage, and/or entitled to receive the return of
13 the House Fees paid to Russell Road, the monies each retained pursuant to the terms and
14 conditions of the Entertainers Agreement should be offset against such amounts awarded
15 Counterdefendants.
16

17 53. In addition, Russell Road is entitled to receive any amount in excess of
18 Counterdefendants' claims.
19

20 54. As a result of Counterdefendants' breach of the Entertainers Agreement,
21 Russell Road was damaged in excess of \$10,000.

22 55. It has also become necessary for Russell Road to retain the services of an
23 attorney to assert these Counterclaims, and Russell Road is therefore entitled to reasonable
24 attorney's fees and the costs of this suit.
25
26



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1 **IV. SECOND COUNTERCLAIM**
2 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

3 56. The allegations of paragraphs 1 through 55 of these Counterclaims are
4 incorporated by reference herein with the same force and effect as set forth in full below.
5

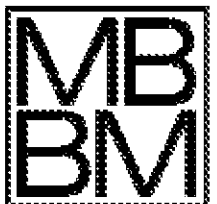
6 57. Russell Road entered into an individual and separate Entertainers Agreement
7 with each Counterdefendant wherein each Counterdefendant acknowledged and agreed to
8 bound by the terms and conditions of their respective Entertainers Agreement.

9 58. Consequently, Counterdefendants had a duty, under the implied covenant of
10 good faith and fair dealing, to comply, at all times and in good faith, with each terms and
11 condition of their respective Entertainers Agreement.
12

13 59. Counterdefendants have breached the implied covenant of good faith and fair
14 dealing by accepting and retaining the benefits of their respective Entertainers Agreement
15 while seeking to repudiate each Entertainers Agreement and have each declared an
16 employee of Russell Road contrary to the express terms and conditions of
17 Counterdefendants' respective Entertainers Agreement.
18

19 60. As a result of Counterdefendants' breach of Implied Covenant of Good Faith
20 and Fair Dealing present in each of Counterdefendants' respective Entertainers Agreement,
21 Russell Road was damaged in excess of \$10,000.
22

23 61. It has also become necessary for Russell Road to retain the services of an
24 attorney to assert these Counterclaims, and Russell Road is therefore entitled to reasonable
25 attorney's fees and the costs of this suit.
26



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V. THIRD COUNTERCLAIM
(Conversion)

62. The allegations of paragraphs 1 through 61 of these Counterclaims are incorporated by reference herein with the same force and effect as set forth in full below.

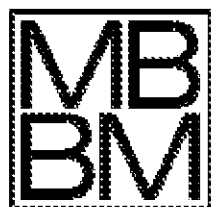
63. Russell Road entered into an individual and separate Entertainers Agreement with each Counterdefendant wherein each Counterdefendant acknowledged and agreed to bound by the terms and conditions of their respective Entertainers Agreement.

64. Pursuant to the terms and conditions of each Entertainers Agreement, Counterdefendants acknowledged and agreed that each was not an employee or agent of Russell Road and was not entitled to receive any benefits or privileges owed employees.

65. In reliance of Counterdefendants' acknowledgement that each was not an employee of Russell Road and pursuant to the terms and conditions of each Entertainers Agreement, Counterdefendants were permitted to collect, accept, and retain Dance fees from patrons of Crazy Horse III that otherwise would be lawful income of Russell Road.

66. In reliance of Counterdefendants' acknowledgement that each was not an employee of Russell Road and pursuant to the terms and conditions of each Entertainers Agreement, Counterdefendants also were permitted to collect, accept, and redeem Dance Dollars, which the cash value otherwise was lawful income of Russell Road.

67. In the event that Counterdefendants are deemed employees of Russell Road, Counterdefendants are not entitled to the retention of such Dance Fees or the cash value of any redeemed Dance Dollars as such Dance Fees and redeemed Dance Dollars are the exclusive personal property of Russell Road and not of its employees.



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1 68. As such, Counterdefendants have intentionally and wrongfully exercised
2 dominion over Russell Road's personal property by retaining and continuing to retain such
3 Dance Fees and the cash value of any redeemed Dance Dollars.

4 69. Counterdefendants' intentional and wrongful dominion was in denial of, or
5 inconsistent with, Russell Road's rightful title and rights to the Dance Fees and the cash
6 value of the redeemed Dance Dollars.

7 70. Therefore, Counterdefendants have intentionally and wrongfully converted
8 Russell Road's personal property.

9 71. As a result of Counterdefendants' Conversion of Russell Road's personal
10 property, Russell Road was damaged in excess of \$10,000.

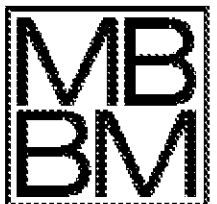
11 72. It has also become necessary for Russell Road to retain the services of an
12 attorney to assert these Counterclaims, and Russell Road is therefore entitled to reasonable
13 attorney's fees and the costs of this suit.

14
15
16 **VI. FOURTH COUNTERCLAIM**
17 **(Unjust Enrichment)**

18 73. The allegations of paragraphs 1 through 72 of these Counterclaims are
19 incorporated by reference herein with the same force and effect as set forth in full below.

20 74. Russell Road entered into an individual and separate Entertainers Agreement
21 with each Counterdefendant wherein each Counterdefendant acknowledged and agreed to
22 bound by the terms and conditions of their respective Entertainers Agreement.

23 75. Pursuant to the terms and conditions of each Entertainers Agreement,
24 Counterdefendants acknowledged and agreed that each was not an employee or agent of
25 Russell Road and was not entitled to receive any benefits or privileges owed employees.
26
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1 76. In reliance of Counterdefendants' acknowledgement that each was not an
2 employee of Russell Road and pursuant to the terms and conditions of each Entertainers
3 Agreement, Counterdefendants were permitted to collect, accept, and retain Dance fees from
4 patrons of Crazy Horse III that otherwise would be lawful income of Russell Road.
5

6 77. In reliance of Counterdefendants' acknowledgement that each was not an
7 employee of Russell Road and pursuant to the terms and conditions of each Entertainers
8 Agreement, Counterdefendants also were permitted to collect, accept, and redeem Dance
9 Dollars, which the cash value otherwise was lawful income of Russell Road.
10

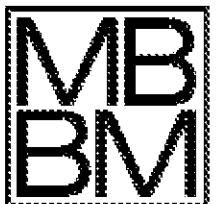
11 78. In the event that Counterdefendants are deemed employees of Russell Road,
12 Counterdefendants are not entitled to the retention of such Dance Fees or the cash value of
13 any redeemed Dance Dollars.

14 79. As such, Counterdefendants have been unjustly enriched to Russell Road's
15 detriment by collecting, accepting, and retaining Dance Fees paid to each Counterdefendant
16 that Counterdefendants, as employees of Russell Road, were not entitled to retain.
17

18 80. Counterdefendants also have been unjustly enriched to Russell Road's
19 detriment by retaining the cash value of Dance Dollars each redeemed from Russell Road, as
20 employees of Russell Road, were not entitled to retain.

21 81. Fundamental principles of justice, equity, and good conscience preclude
22 Counterdefendants preclude Counterdefendants from retaining Dance Fees and redeemed
23 Dance Dollars.
24

25 82. As a result of Counterdefendants' Unjust Enrichment, Russell Road was
26 damaged in excess of \$10,000, or is entitled to an award in equity for Dance Fees and
27 redeemed Dance Dollars unjustly retained by Counterdefendants in excess of \$10,000.
28



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1 83. It has also become necessary for Russell Road to retain the services of an
2 attorney to assert these Counterclaims, and Russell Road is therefore entitled to reasonable
3 attorney's fees and the costs of this suit.

4
5 **VII. FIFTH COUNTERCLAIM**
6 **(Declaratory Judgment)**

7 84. The allegations of paragraphs 1 through 83 of these Counterclaims are
8 incorporated by reference herein with the same force and effect as set forth in full below.

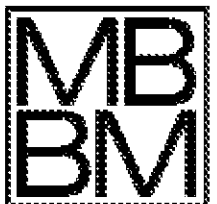
9 85. Russell Road entered into an individual and separate Entertainers Agreement
10 with each Counterdefendant wherein each Counterdefendant acknowledged and agreed to
11 bound by the terms and conditions of their respective Entertainers Agreement.

12 86. Pursuant to the terms and conditions of each Entertainers Agreement,
13 Counterdefendants agreed that each was not an employee of Russell Road and was not
14 entitled to receive by law or pursuant to the terms and conditions of the Entertainers
15 Agreement any of the benefits or privileges provided employees of Russell Road.

16 87. Counterdefendants have now sought to repudiate the terms and conditions of
17 their respective Entertainers Agreement and obtain a judicial determination that
18 Counterdefendants were employees of Russell Road entitled to the benefits and privileges
19 afforded such employees.
20

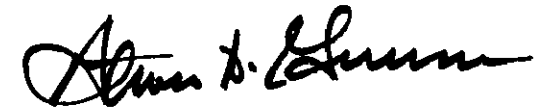
21 88. A justiciable controversy therefore has arisen between Counterdefendants
22 and Russell Road regarding the validity and enforceability of Counterdefendants'
23 Entertainers Agreement.
24

25 89. Russell Road is entitled pursuant to NRS 30.040(1) to a Declaratory
26 Judgment determining that each Entertainers Agreement with Counterdefendants is valid
27 and enforceable and each Counterdefendant was not an employee of Russell Road.
28



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CLERK OF THE COURT

1 **NEO**
2 **GREGORY J. KAMER, ESQ.**

Nevada Bar No. 0270

3 **BRYAN J. COHEN, ESQ.**

Nevada Bar No. 8033

4 **KAMER ZUCKER ABBOTT**

3000 W. Charleston Blvd., #3

5 Las Vegas, Nevada 89102

6 (702) 259-8640

7 **JEFFERY A. BENDAVID, ESQ.**

Nevada Bar No. 6220

8 **MORAN BRANDON BENDAVID MORAN**

630 South 4th Street

9 Las Vegas, Nevada 89101

10 (702) 384-8424

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

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

14 JACQUELINE FRANKLIN, ASHLEIGH)
15 PARK, LILY SHEPARD, STACIE ALLEN,)
16 JANE DOE DANCER, I through XI,)
17 Individually, and on behalf of Class of)
18 Similarly situated individuals,)

17 Plaintiffs,)

18 vs.)

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

Defendants.)

Case No.: A-14-709372-C

Dept. No.: 31

27 **NOTICE OF ENTRY OF ORDER**



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1 Please take notice that an ORDER GRANTING IN PART AND DENYING IN PART
2 DEFENDANT, RUSSELL ROAD FOOD AND BEVERAGE, LLC'S MOTION TO
3 DISMISS AND GRANTING DEFENDANT'S MOTION TO STRIKE PRAYER FOR
4 EXEMPLARY AND PUNITIVE DAMAGES was entered in the above entitled case by the
5 Honorable Joanna S. Kishner on the 25th day of June, 2015.
6

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

8 DATED this 26th day of June, 2015.
9

10 **KAMER ZUCKER ABBOTT**

11
12 /s/ Gregory J. Kamer

13 **GREGORY J. KAMER, ESQ.**

14 Nevada Bar No. 0270

15 3000 W. Charleston Blvd., #3

16 Las Vegas, Nevada 89102

17 **MORAN BRANDON BENDAVID MORAN**

18 /s/ Jeffery A. Bendavid

19 **JEFFERY A. BENDAVID, ESQ.**

20 Nevada Bar No. 6220

21 630 South 4th Street

22 Las Vegas, Nevada 89101

23 *Attorneys for Defendant*
24
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ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA

JACQUELINE FRANKLIN, ASHLEIGH PARK, LILY
SHEPARD, STACIE ALLEN, JANE DOE DANCER,
through XI, Individually, and on behalf of Class of
Similarly situated individuals,
Plaintiffs,

vs.

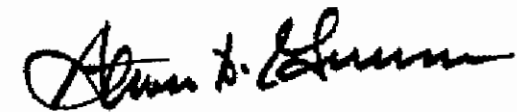
RUSSELL ROAD FOOD AND BEVERAGE, LLC, a
Nevada limited Liability company (d/b/a CRAZY
HORSE III GENTLEMEN'S CLUB), SN
INVESTMENT PROPERTIES, LLC, a Nevada
limited liability company (d/b/a CRAZY HORSE III
GENTLEMEN'S CLUB), DOE CLUB OWNER, I-X,
ROE CLUB OWNER, I-X, and ROE
EMPLOYER, I-X,

Defendants.

CASE NO: A-14-709372-C

Electronically Filed

DEPT NO: 06/25/2015 04:00:24 PM



CLERK OF THE COURT

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT, RUSSELL
ROAD FOOD AND BEVERAGE, LLC'S MOTION TO DISMISS AND GRANTING
DEFENDANT'S MOTION TO STRIKE PRAYER FOR EXEMPLARY AND PUNITIVE
DAMAGES**

Defendant, RUSSELL ROAD FOOD AND BEVERAGE, a Nevada limited
liability, dba CRAZY HORSE III GENTLEMEN'S CLUB's (the "Defendant"), Motion to
Dismiss Plaintiffs, JANE DOE DANCER I through XI, and/or Motion to Strike Plaintiffs,
JANE DOE DANCER II, III, VI, VIII, and IX through XI; Defendant's Motion to Dismiss
Plaintiffs' First Amended Complaint pursuant to N.R.C.P. 12(b)(5), and/or its Motion to
Strike Plaintiffs' First Cause of Action, Prayer for Exemplary and Punitive Damages,
and Prayers for Relief Pursuant to N.R.C.P. 12(f), having come on regularly for hearing
on May 7 and May 8, 2015, in Department 31 of the above-entitled Court; the

1 Honorable Joanna S. Kishner presiding; Plaintiffs being represented by Ryan M.
2 Anderson, Esq., of Morris//Anderson, and Defendant being represented by Gregory J.
3 Kamer, Esq., of Kamer Zucker Abbot, and Jeffery A. Bendavid, Esq., of Moran
4 Brandon Bendavid Moran. Based on the argument of the parties at the hearing and
5 the relevant case law, the Court allowed each party to file supplemental briefs on the
6 statute of limitations issue. Said supplemental briefs were filed on May 29, 2015, by
7 both parties.¹ After a full review of the briefs of the parties, including the supplemental
8 briefs; the arguments of counsel; and otherwise being fully advised in the premises,
9 and good cause appearing, the Court therefore, finds, concludes, and orders as
10 follows.²

11
12
13 **I. PROCEDURAL BACKGROUND AND SUMMARY OF ARGUMENTS RAISED**

14
15 On November 4, 2014, Plaintiff, Ashleigh Park, individually, and on behalf of the
16 Class of similarly situated individuals ("Park"), filed her Class Action Complaint for
17 Failure to Pay Wages, Pursuant to NRS 608.250; Failure to Pay Wages Upon
18 Termination, Pursuant to NRS 608.020, et seq., Conversion, Unjust Enrichment, and
19 Injunctive and Declaratory Relief.

20 On February 19, 2015, Park filed her First Amended Class Action Complaint.
21 This First Amended Complaint identified additional Plaintiffs: Jacqueline Franklin, Lily
22 Shepard, Stacie Allen, and Jane Doe Dancer, I through XI, on behalf of themselves
23

24
25 ¹ On June 4, 2015 a Notice of Dismissal without prejudice was filed on behalf of Defendant SN
Investment Properties LLC and thus they are not a party to the action.

26 ² On May 18, 2015 Plaintiffs filed a Motion for Leave to File Amended Complaint on Order
Shortening Time. The Order on that Motion is set forth separately. The Court's ruling on the
27 instant Motion to Dismiss is based on the First Amended Complaint filed in February, 2015 and is
not reflective of any attempted changes Plaintiff sought in their Motion for Leave to Amend that
28 was filed after the hearing in the present matter but prior to the instant decision.

1 and a class of all persons similarly situated (together with "Park," the "Plaintiffs"). This
2 First Amended Complaint excluded Park's prior claims for Conversion, Injunctive
3 Relief, and Declaratory Relief and included a newly-asserted claim for an alleged
4 Failure to Pay Wages, Pursuant to Nev. Const. Art. XV, Sec. 16 (the "Minimum Wage
5 Amendment").
6

7 According to Plaintiffs' allegations, Plaintiffs were employed by Defendant as
8 topless dancers, hostesses, entertainers, erotic dancers, and/or strippers at
9 Defendant's place of business, commonly known as Crazy Horse III. Plaintiffs alleged
10 that Defendant violated the Minimum Wage Amendment and NEV. REV. STAT. §
11 608.250 by failing to pay Plaintiffs Nevada's minimum wage, required by Nevada law,
12 for the hours that Plaintiffs worked as employees for Defendant. Plaintiffs also alleged
13 in their First Amended Class Action Complaint that Defendant failed to pay Plaintiffs
14 wages owed at the time of their respective resignation, termination, or discharge of
15 employment with Defendant as required by NEV. REV. STAT. § 608.020-050.
16

17 Plaintiffs further alleged in their First Amended Class Action Complaint that
18 Defendant was unjustly enriched as a result of: (a) Defendant's failure to pay any
19 wages to Plaintiffs; (b) Defendant's wrongful conversion, confiscation, and taking of
20 money from Plaintiffs as a condition of employment; and (c) improper imposition and
21 taking of fees, charges, fines, and penalties from Plaintiff as a condition of their
22 employment.
23

24 On March 16, 2015, Defendant filed its Motion to Dismiss and/or Strike. In their
25 Motion, Defendant sought the following relief:

- 26 1. Plaintiffs, JANE DOE DANCER I through XI, must be dismissed since
27 Plaintiffs have failed to properly identify the actual names of each these
28

1 fictitious Plaintiffs asserting claims against Defendant as required by
2 N.R.C.P. 17(a);

3 2. Plaintiffs, JANE DOE DANCER II, III, VI, VIII, and IX through XI, must
4 be struck from Plaintiffs' First Amended Complaint as redundant pursuant
5 to N.R.C.P. 12(f);

6 3. Plaintiffs' First Cause of Action must be dismissed pursuant to N.R.C.P.
7 12(b)(5) to the extent Plaintiffs' claims for unpaid minimum wages are
8 barred by the applicable two (2) year statute of limitations;

9 4. Plaintiffs' Second and Third Causes of Action must be dismissed
10 pursuant to N.R.C.P. 12(b)(5) to the extent Plaintiffs' claims for unpaid
11 minimum wages are barred by the applicable two (2) year statute of
12 limitations;

13 5. Plaintiffs' Fourth Cause of Action must be dismissed pursuant to
14 N.R.C.P. 12(b)(5) since Plaintiffs are not entitled to an equitable remedy
15 under Nevada law;

16 6. Plaintiffs' Fourth Cause of Action must be dismissed pursuant to
17 N.R.C.P. 12(b)(5) since Plaintiffs have failed to assert any factual
18 allegations demonstrating the necessary elements required for a claim of
19 unjust enrichment;

20 7. Plaintiffs' First Cause of Action must be struck as redundant pursuant to
21 N.R.C.P. 12(f);

22 8. Plaintiffs' prayers for relief asserted as part of Plaintiffs' Fourth Cause of
23 Action must be struck as immaterial pursuant to N.R.C.P. 12(f); and

24 9. Plaintiffs' prayer for exemplary and punitive damages must be struck
25 since Plaintiffs have not asserted any claims sounding in tort upon which
26 punitive damages may be awarded and Plaintiffs have not otherwise
27 asserted any factual allegations demonstrating that Defendant's conduct
28 was fraudulent, oppressive, or conducted with malice.

Plaintiffs filed their Opposition to the Motion to Dismiss and/or Strike on March
30, 2015. Defendant filed its Reply to Defendant's Opposition on May 1, 2015. A
hearing on Defendant's Motion to Dismiss and/or Strike commenced on May 7, 2015,
and concluded on May 8, 2015.

At the hearing on May 8, 2015, this Court allowed the parties to file
supplemental briefs by May 29, 2015, concerning the single issue of whether the two-
year statute of limitation provided by NEV. REV. STAT. § 608.260, or a four-year statute
of limitation provided by NEV. REV. STAT. § 11.220 applied to Plaintiffs' First Cause of
Action. Both parties submitted supplemental briefs.

1 In Defendant's Motion, and as argued at the hearing, Defendant maintained that
2 Plaintiffs, Jane Doe Dancer I through XI, must be dismissed; or in the alternative,
3 struck from Plaintiffs' First Amended Class Action Complaint since Plaintiffs failed to
4 provide the actual names of each of these Plaintiffs as required by NEV. R. Civ. P. 10(a)
5 and NEV. R. Civ. P. 17(a).
6

7 In Plaintiffs' Opposition and as argued at the hearing, (but not alleged in
8 Amended Complaint), Plaintiffs maintained that NEV. R. Civ. P. 10(a) permits Plaintiffs
9 to assert their claims against Defendant anonymously, by declaring so in the caption of
10 their Complaint because of the risk of harassment, injury, ridicule, harm, or personal
11 embarrassment associated with disclosing Plaintiffs true identities.
12

13 In Defendant's Motion and as argued at the hearing, Defendant maintained that
14 Plaintiffs, Jane Doe Dancer II, III, VI, VIII, and IX through XI must be struck as
15 redundant to already alleged Jane Doe Dancer Plaintiffs. Defendant maintained that
16 these unnamed Jane Doe Dancer Plaintiffs, II, III, VI, VIII, and IX through XI were
17 identical to previously alleged Jane Doe Dancer Plaintiffs without distinguishing each in
18 any way.
19

20 In Plaintiffs' Opposition and as argued at the hearing, Plaintiffs maintained that
21 Jane Doe Dancer Plaintiffs, II, III, VI, VIII, and IX through XI should not be struck as
22 redundant because they were separate individuals whose identities were noted with a
23 roman numeral, which was sufficient to distinguish Jane Doe Dancer Plaintiffs, II, III,
24 VI, VIII, and IX through XI from the other Jane Doe Dancer Plaintiffs.
25

26 In Defendant's Motion, Defendant's Supplemental Brief, and as argued at the
27 hearing, Defendant maintained that Plaintiffs' First Cause of Action must be dismissed
28

1 pursuant to NEV. R. CIV. P. 12(b)(5) to the extent that Plaintiffs' First Cause of Action
2 alleging a violation of the Minimum Wage Amendment is barred by the applicable two-
3 year statute of limitation prescribed by NEV. REV. STAT. § 608.260.

4 In Defendant's Motion, Defendant maintained that Plaintiffs' First Cause of
5 Action in actuality was a claim alleging that they have not been paid wages as
6 employees in violation of existing Nevada law and not the Minimum Wage Amendment.
7 Accordingly, Defendant argued in its Motion that Plaintiffs' First Cause of Action was
8 subject to the two-year statute of limitation prescribed by NEV. REV. STAT. § 608.260.

9 In Plaintiffs' Opposition and as argued in at the hearing, Plaintiffs maintained
10 that any argument regarding the application of a statute of limitation was premature
11 since an appropriate class of Plaintiffs had not yet been defined by the Court and no
12 statute of limitation could be applied until such time. Plaintiffs also argued that a four-
13 year limitations period based on the Constitutional Amendment was proper.

14 In Defendant's Supplemental Brief, Defendant further maintained that the
15 Nevada Supreme Court, in *Strickland v. Waymire*, 126 Nev. Adv. Op. 25, 4, 235 P.3d
16 605, 608 (2013), and *Thomas v. Yellow Cab Corp.*, 130 Nev. Adv. 52, 8, 327 P.3d 518,
17 521 (2014), requires the Court to apply the clear textual meaning of the Minimum
18 Wage Amendment. Since the Minimum Wage Amendment entitles an "employee"
19 asserting a claim for a violation of the Minimum Wage Amendment to make use of all
20 "remedies available under the law and in equity appropriate to remedy any violation" of
21 the Minimum Wage Amendment, Defendant contended that an "available" and
22 "appropriate" remedy under Nevada law based on Plaintiffs' allegations asserted in
23 their First Cause of Action was provided by NEV. REV. STAT. § 608.260, which expressly
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1 included a two-year statute of limitation. Accordingly, Defendant maintained that
2 Plaintiffs' First Cause of Action must be dismissed to the extent that Plaintiffs' claim for
3 a violation of the Minimum Wage Amendment is barred by the applicable two-year
4 statute of limitation.

5
6 In Defendant's Supplemental Brief, Defendant further maintained that the
7 Nevada Supreme Court, as evidenced in *Thomas v. Yellow Cab Corp.*, 130 Nev. Adv.
8 Op. 52, 327 P.3d 518 (2014), and *Terry v. Sapphire/Sapphire Gentlemen's Club*, 130
9 Nev. Adv. Op. 87, 336 P.3d 951 (October 30, 2014), have never determined that NEV.
10 REV. STAT. § 608, and in particular, NEV. REV. STAT. § 608.250 and 608.260 have been
11 impliedly repealed in their entirety. Accordingly, Defendant maintained that the
12 provisions of NEV. REV. STAT. § 608.260 can be construed in harmony with the
13 Minimum Wage Amendment and remains an "available" and "appropriate" remedy to
14 Plaintiffs based on the allegations of non-payment of Nevada's minimum wage alleged
15 in Plaintiffs' First Cause of Action.

16
17 In Defendant's Supplemental Brief, Defendant further maintained that applying
18 the four- year "catch-all" statute of limitation provided by NEV. REV. STAT. § 11.220
19 would result in a prohibited, absurd, and unreasonable outcome whereby an
20 "employee" could expand the his or her claim beyond the existing statutory scheme
21 encompassing two years to four years simply by foregoing a statutory claim under NEV.
22 REV. STAT. § 608.260, and only asserting a claim for the failure of an employer to pay
23 Nevada's minimum wage pursuant to the Minimum Wage Amendment.

24
25 In Defendant's Supplemental Brief, Defendant further maintained that applying
26 the two-year statute of limitations provided by NEV. REV. STAT. § 608.260 to Plaintiffs'

1 First Cause of Action conforms to Nevada's rule of construction that a specific statute
2 dealing in detail with a particular subject, controls over a general statute relating only in
3 general terms. Relying on *Western Realty Co. v. City of Reno*, 63 Nev. 330, 337, 172
4 P.2d 158, 161 (1946), and *Lader v. Warden*, 121 Nev. 682, 687, 120 P.3d 1164, 1167
5 (2005). Defendant maintained that the two-year statute of limitation provided by NEV.
6 REV. STAT. § 608.260 deals directly with the allegations of non-payment of Nevada's
7 minimum wage asserted in Plaintiffs' First Cause of Action, and as such, controlled
8 over the provisions of NEV. REV. STAT. § 11.220 which only provided a general "catch-
9 all" statute of limitation for those claims not otherwise specifically addressed by statute.
10

11 In Plaintiffs' Supplemental brief, they argued that the four-year limitations period
12 for Minimum Wage Amendment claims is correct as a matter of Constitutional and
13 Statutory interpretation. In so doing, they set forth that the relief the Minimum Wage
14 Amendment provided was a separate claim than the statute, and thus, the time period
15 should be different.
16

17 In their Supplemental Brief, Plaintiffs also asserted that the Minimum Wage
18 Amendment is silent. Thus, Plaintiffs argue that pursuant to the provisions of NEV.
19 REV. STAT. § 11.220, the limitations period for their Minimum Wage Amendment claim
20 should be four years.
21

22 Plaintiffs argued further in their Supplemental brief that a four-year limitation
23 period makes sense because it mirrors the limitations period for unjust enrichment
24 claims. They assert that since the Amendment allows for both claims in law and
25 equity, limitations periods for both should be the same. They asserted that it is
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1 Defendant's interpretation of the limitations period, not theirs, that provides an absurd
2 result.

3 Plaintiffs further contended that the Nevada Supreme Court's holding in *Thomas*
4 *v. Yellow Cab Corp.*, 130 Nev. Adv. Op. 52, 8, 327 P.3d 518, 521 (2014), provides an
5 analytical basis to state that the statutory provision should not be applied; and thus, the
6 longer limitations period is appropriate.

7
8 In Defendant's Motion, and as argued at the hearing, Defendant maintained that
9 Plaintiffs' First Cause of Action must be struck as redundant, pursuant to NEV. R. CIV.
10 P. 12(f), since Plaintiffs' First Cause of Action is not an actual Constitutional claim, but
11 a claim alleging a violation of NEV. REV. STAT. § 608.250 which was already asserted in
12 Plaintiffs' Second Cause of Action.

13
14 Plaintiffs argue in their Opposition, and at the hearing, that the relief that can be
15 sought under the Amendment is different than what can be sought pursuant to statute.
16 Accordingly, the claims are not redundant. Plaintiffs acknowledged that they are not
17 seeking double recovery for unpaid wages.

18 In Defendant's Motion, and as argued at the hearing, Defendant maintained that
19 Plaintiffs' Fourth Cause of Action for Unjust Enrichment must be dismissed, pursuant to
20 NEV. R. CIV. P. 12(b)(5), since Defendants are afforded a full and adequate remedy
21 under Nevada law (*i.e.* NEV. REV. STAT. § 608) to sue and recover actual unpaid wages
22 owed to Plaintiffs as alleged "employees" of Defendant. Defendant further maintained
23 that Nevada's regulatory scheme permits Nevada's Labor Commission to assess an
24 administrative penalty against any violator of Nevada's minimum wage laws, thereby
25 providing another legal remedy available Plaintiffs.
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1 In Plaintiffs' Opposition, and as argued at the hearing, Plaintiffs maintained that
2 Plaintiffs' Fourth Cause of Action for Unjust Enrichment should not be dismissed since
3 Plaintiffs only include a claim for unjust enrichment as an "alternative equitable basis"
4 for relief to the claims for legal relief set forth in the First Amended Class Action
5 Complaint.
6

7 In Defendant's Motion, and as argued at the hearing, Defendant maintained that
8 Plaintiffs' Fourth Cause of Action for Unjust Enrichment must be dismissed, pursuant to
9 NEV. R. CIV. P. 12(b)(5), since Plaintiffs failed to assert an actual claim for Unjust
10 Enrichment under Nevada law, and further failed to set forth any facts sufficient for
11 Plaintiffs to recover on such a claim.
12

13 In Defendant's Motion, and as argued at the hearing, Defendant maintained that
14 the prayer for relief associated with Plaintiffs' Fourth Cause of Action must be struck as
15 immaterial pursuant to NEV. R. CIV. P. 12(f). Relying on *Asphalt Prods. Corp. v. All Star*
16 *Ready Mix, Inc.*, 111 Nev. 799, 802, 898 P.2d 699, 701 (1995), Defendant maintained
17 that the correct measure of damages in an unjust enrichment case is limited to the
18 "reasonable value of services performed." Accordingly, Defendant concluded that
19 Plaintiffs' associated prayer for relief must be struck as immaterial, pursuant to NEV. R.
20 Civ. P. 12(f), since Plaintiffs' prayer for relief never seeks the payment of "the
21 reasonable value of the services" allegedly provided by Plaintiffs to Defendant.
22 Further, Defendant maintained that Plaintiffs could never obtain such relief since
23 Plaintiffs' Fourth Cause of Action never identifies any actual services provided to
24 Defendant by Plaintiffs.
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1 In Defendant's Motion, and as argued at the hearing, Defendant maintained that
2 Plaintiffs' prayer for exemplary and punitive damages asserted in Plaintiffs' First,
3 Second, and Third Causes of Action must be struck since none of these causes of
4 action "sound in tort" as required by Nevada law for the recovery of exemplary and
5 punitive damages.
6

7 In Plaintiffs' Opposition, and as argued at the hearing, Plaintiffs maintained that
8 their prayer for exemplary and punitive damages asserted in their First, Second, and
9 Third Causes of Action cannot be stricken since each cause of action alleges a tort not
10 based in contract. Plaintiffs, therefore, concluded that they are entitled to an award of
11 exemplary and punitive damages at trial.
12

13 In Defendant's Motion, and as argued at the hearing, Defendant maintained that
14 Plaintiffs' prayer for exemplary and punitive damages asserted in Plaintiffs' First,
15 Second, and Third Causes of Action also must be stricken since Plaintiffs' First,
16 Second, and Third Causes of Action failed to assert any specific factual allegations
17 demonstrating the statutory definition of "fraud, oppression, or malice," as defined by
18 NEV. REV. STAT. § 42.001.
19

20 In Plaintiffs' Opposition, and as argued at the hearing, Plaintiffs maintained that
21 their prayer for exemplary and punitive damages asserted in their First, Second, and
22 Third Causes of Action cannot be stricken since Plaintiffs' First Amended Complaint
23 alleged multiple facts that could allow a jury to conclude that Defendant is guilty of
24 oppression, fraud, and malice as defined by NEV. REV. STAT. § 42.001.
25
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II. DISCUSSION

The allegations in Plaintiffs' First Amended Class Action Complaint must be accepted as true for purposes of a Motion to Dismiss. *San Diego Prestressed Concrete Co. v. Chicago Title Ins.*, 555 P.2d 484 (Nev. 1976). A pleading is sufficient if it contains a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief the pleader seeks. NEV. R. CIV. P. 8(a). The test for determining whether the allegations of a complaint are sufficient to state a claim is whether the allegations give fair notice of the nature and basis of a legally sufficient claim and the relief requested. *Ravera v. City of Reno*, 100 Nev. 68, 675 P.2d 407, 408 (Nev. 1984). A Motion to Dismiss is properly granted when "it appears beyond a doubt that [Plaintiff] could prove no set of facts which, if true, would entitle it to relief." *Buzz Stew, L.L.C. u. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). The "court presumes all factual allegations in the complaint are true and draws all inferences in favor of the plaintiff." *Stubbs v. Strickland*, 129 Nev. Adv. Op. 15, 297 P.3d 326, 329 (2013). Further, the Nevada Supreme Court has held "[a] complaint will not be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him or her to relief." *Blackjack Bonding v. City of Las Vegas Mun. Court*, 14 P.3d 1275, 1278 (Nev. 2000).

In addition, a court may grant a Motion to Strike, pursuant to NEV. R. CIV. P. 12(f), if contested language constitutes an "insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." NEV. R. CIV. P. 12(f). Courts have further found that Motions to Strike should not be granted unless it is clear that the

1 matter to be stricken could have no possible bearing on the subject matter of the
2 litigation. *Germaine Music v. Universal Songs of Polygram*, 275 F.Supp.2d 1288, 1300
3 (D.Nev.2003).

4 In the present case, Defendant has filed both a Motion to Dismiss and a Motion
5 to Strike various portions of Plaintiffs First Amended Complaint so the Court will
6 address all requests for relief herein.
7

8
9 **A. Defendant's Motion to Dismiss Plaintiffs, JANE DOE DANCER I through**
10 **XI for Failing to Properly Identify the Actual Names of Each of the**
11 **Fictitious Plaintiffs as Required by N.R.C.P.17(a)³**

12 NEV. R. CIV. P. 17(a) and NEV. R. CIV. P. 10(a) requires every action commenced
13 in Nevada to be prosecuted in the name of the real parties in interest and identify each
14 in the caption of the complaint. Plaintiffs' First Amended Class Action Complaint fails
15 to identify the actual names of all of the Plaintiffs bringing suit against Defendant.
16

17 Further, Plaintiffs' First Amended Class Action Complaint fails to provide any
18 allegations supporting the use of anonymous names for Plaintiffs, Jane Doe Dancer I
19 through XI, in the place of providing the actual name of these individual Plaintiffs.
20 Instead, with reference to Jane Doe Dancers I-III, the allegations merely state in
21 relevant part that the Plaintiff Jane Doe Dancer "was at all times relevant to this action
22 a resident of Clark County, Nevada, and, at the present time and at various other
23
24

25 ³ Defendant's filed their Motion as a Motion to Dismiss and/or Motion to Strike various aspects of
26 Plaintiffs First Amended Class Action Complaint. The Court has analyzed the standard by which
27 the Court deemed it appropriate to address the relief requested. The Court considered both the
28 Motion to Dismiss standard and the Motion to Strike standard, with respect to each of the aspects
of relief requested, but has only set forth the analysis of the standard that was applied as noted
further herein.

1 relevant times, has been employed by Defendants as an exotic dancer." (See Am.
2 Compl. at ¶¶ 7-9). With reference to Jane Doe Dancers IV-VIII, the allegations merely
3 state in relevant part that the Plaintiff Jane Doe Dancer "was at all times relevant to this
4 action a resident of Clark County, Nevada and, as recently as at least [2012 to 2014]
5 and at various other relevant times, has been employed by Defendants as an exotic
6 dancer." (See Am. Compl. at ¶¶ 10-14). With reference to Jane Doe Dancers IX and
7 X, the allegations merely state in relevant part that each was "at all times relevant to
8 this action a resident of Clark County, Nevada and, at all relevant times, has been
9 employed by Defendants as an exotic dancer." (See Am. Compl. at ¶¶ 15-16). This
10 failure to provide any supporting reasons for the necessity to use anonymous names
11 for some of the Plaintiffs, and not for the others who are individually named, as well as
12 the fact that the Amended Complaint states that some of the anonymous Plaintiffs are
13 no longer working at Defendant's establishment, does not provide a basis for the Court
14 to allow the use of anonymous names for those Plaintiffs listed in the First Amended
15 Complaint. Further, as argued by Defendant, the current method of pleading does not
16 sufficiently put Defendant on notice of who is making the claim in accordance with
17 *Buzz Stew* and *Ravera*. ("The test for determining whether the allegations of a cause of
18 action are sufficient to assert a claim for relief is whether the allegations give fair notice
19 of the nature and basis of the claim and the relief requested." *Ravera* at 70.)
20
21
22

23 Therefore, Plaintiffs Jane Doe Dancer I through XI are hereby DISMISSED
24 without prejudice from Plaintiffs' First Amended Class Action Complaint with leave to
25 amend since Plaintiffs are required by NEV. R. CIV. P. 10(a) and NEV. R. CIV. P. 17(a) to
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1 assert their claims against Defendant as real parties in interest identifying their true
2 individual names.⁴

3
4 **B. Defendant's Motion to Dismiss Plaintiffs' First Cause of Action to the**
5 **Extent Plaintiffs' Claims for Unpaid Minimum Wages are Barred by the**
6 **Applicable Two Year Statute of Limitations**⁵
7

8 Constitutional interpretation seeks "to determine the public understanding of a
9 legal text" leading up to and "in the period after its enactment or ratification."
10 *Strickland v. Waymire*, 126 Nev. Adv. Op. 25, 235 P.3d 605 (2010). Further,
11 when interpreting a constitutional provision, the starting point is the text itself. The
12 text "must . . . not be read in a way that would render words or phrases
13 superfluous[.]" *Blackburn v. State*, 129 Nev. Adv. Op. 8, 294 P.3d 422, 426 (2013).
14 To that end, *Strickland v. Waymire*, 126 Nev. Adv. Op. 25, 4, 235 P.3d 605, 608
15

16
17
18 ⁴ Defendant also asserts that the Doe Dancers should be dismissed because they are duplicative of either
19 each other or of the named Plaintiffs. As the Court needs to take the allegations as true at the Motion to
20 Dismiss stage and the designation of different Roman numerals at the end of each individual's name, as
21 well as the fact Plaintiffs have in some instances inserted differing years in the paragraphs that set forth
22 the employment status, shows a sufficient distinction between each potential Plaintiff. Accordingly, the
23 Court DENIES, without prejudice, Defendant's Motion to Dismiss the Doe Dancers on the grounds that
24 they are duplicative.

25 ⁵ Defendant also sets forth that "Plaintiffs' Second and Third Causes of Action must be dismissed
26 pursuant to NEV. R. Civ. P. 12(b)(5) to the extent Plaintiffs' claims for unpaid minimum wages are barred
27 by the applicable two-year statute of limitations." The Court finds that request to be inapposite based on
28 the allegations of Plaintiffs' Complaint. Specifically, Paragraph 27 of Plaintiffs' First Amended Complaint
alleges: "The Class Period is the four-year period immediately preceding the filing of this Complaint for
the First Cause of Action, **the two-year period immediately preceding the filing of this Complaint for**
the Second and Third Causes of Action, and the three-year period immediately preceding the filing of
this Complaint for the Fourth Cause of Action, and going forward into the future until entry of judgment in
this action." See, Am. Compl. at ¶ 27. (emphasis added) Given the First Amended Class Action
Complaint sets forth that Plaintiffs are only seeking statutory unpaid wages for a two-year period, the
Defendant's Motion is MOOT under either a Motion to Dismiss or Motion to Strike standard with respect to
this assertion. As Plaintiffs are not making such a claim, the Court need not address that portion of
Defendant's Motion.

1 (2013), and *Thomas v. Yellow Cab Corp.*, 130 Nev. Adv. Op. 52, 8, 327 P.3d 518, 522
2 (2014), require the Court to apply the clear textual meaning of the Minimum Wage
3 Amendment. The text of the Minimum Wage Amendment entitles an "employee"
4 asserting a claim for a violation of the Minimum Wage Amendment to make use of all
5 "remedies available under the law and in equity appropriate to remedy any violation" of
6 the Minimum Wage Amendment.
7

8 The existing statutory scheme regarding the payment of Nevada's minimum
9 wage set forth in NEV. REV. STAT. § 608, provides "available" and "appropriate"
10 remedies at law to rectify an "employee's" claim for a violation of the Minimum Wage
11 Amendment for individuals such as the present Plaintiffs as they are only making
12 claims alleging Defendant failed to pay them the minimum wage.
13

14 Plaintiffs' First Cause of Action alleges that Plaintiffs were employed by
15 Defendant as topless dancers, hostesses, entertainers, erotic dancers, and/or strippers
16 at Defendant's place of business, commonly known as Crazy Horse III. Plaintiffs' First
17 Cause of Action further alleges that Defendant violated the Minimum Wage
18 Amendment by failing to pay Plaintiffs Nevada's minimum wage required by Nevada
19 law for the hours that Plaintiffs worked as employees for Defendant.
20

21 Based on Plaintiffs' allegations asserted in their First Cause of Action, NEV. REV.
22 STAT. § 608.260 is an "available" and "appropriate" remedy at law to rectify the violation
23 of the Minimum Wage Amendment alleged by Plaintiffs in their First Cause of Action.
24 NEV. REV. STAT. § 608.260, provides, in part:

25 If any employer pays any employee a lesser amount than the minimum wage
26 prescribed by regulation of the Labor Commissioner pursuant to the provisions
27 of NRS 608.250, the employee may, at any time within 2 years, bring a civil
28

1 action to recover the difference between the amount paid to the employee and
2 the amount of the minimum wage.⁶

3 As stated above, NEV. REV. STAT. § 608.260 plainly permits an "employee" who
4 was not paid Nevada's minimum wage to recover the difference between the amount
5 paid and the amount owed. Indeed, the Nevada Supreme Court in *Terry v.*
6 *Sapphire/Sapphire Gentlemen's Club*, 130 Nev. Adv. Op. 87, 336 P.3d 951 (October
7 30, 2014) recently applied many of the provisions of NEV. REV. STAT. § 608 in
8 determining that exotic dancers of a different establishment were employees of that
9 establishment. In that case too, the Plaintiffs were claiming that they were categorized
10 as independent contractors, and thus, not paid the minimum wage they were entitled to
11 under applicable law.⁷

12 Since NEV. REV. STAT. § 608.260 is an "available" and "appropriate" remedy
13 available to Plaintiffs to rectify their alleged violation of the Minimum Wage Amendment
14 for Defendant's alleged failure to pay Plaintiffs, as "employees," Nevada's minimum
15
16
17

18 ⁶ The Court is cognizant that arguments have been made in other cases that the Minimum Wage
19 Amendment modifies in part the role of the Labor Commissioner, and that the regulations that she
20 promulgates are different than they were pre-Amendment. There is nothing in the Minimum
21 Wage Amendment, however, or subsequent case law that expressly changes the limitations
22 period in NEV. REV. STAT. § 608.260, or sets forth that it does not apply to minimum wage claims
23 made pursuant to the Amendment. Thus, the Court does not adopt the reasoning that the
24 limitations provision was implicitly repealed. In other words, there was no support provided to the
25 Court that an expansion of who a claimant may be and an expansion of what claims that
26 individual may bring impliedly repeals when those claims can be brought. Further, the Court does
27 not find that a change in the baseline of the minimum wage rate or a change in how that rate is
28 promulgated would double the limitations period for a Plaintiff pursuing a minimum wage claim
they could make, pursuant to statute, by relabeling it a Constitutional claim. This would be
particularly applicable in the present case as Plaintiffs' claims in their original Complaint were
statutory claims and then they amended the Complaint to add a claim pursuant to the Minimum
Wage Amendment.

⁷ The Court is cognizant that the Plaintiffs in the *Terry* case did not assert a claim pursuant to the
Minimum Wage Amendment, but the analysis is still valid as it demonstrates that the Statute does
provide an available and appropriate remedy for alleged minimum wage violations. It also shows
that the Nevada Supreme Court looked to both the Minimum Wage Amendment and the Statutory
framework harmoniously when evaluating a minimum wage claim.

1 wage amount for the work they performed, Plaintiffs' First Cause of Action would be
2 properly subject to the two-year statute of limitation expressly provided in NEV. REV.
3 STAT. § 608.260.

4 To the extent that Plaintiffs assert that the Amendment should provide for a four-
5 year limitations period as the two-year period was impliedly repealed by the Minimum
6 Wage Amendment, the Court does not find that argument persuasive. In *Thomas v.*
7 *Yellow Cab Corp.*, 130 Nev. Adv. Op. 52, 327 P.3d 518 (2014), The Nevada Supreme
8 Court specifically stated:

10 We will construe statutes, "if reasonably possible, so as to be in harmony with
11 the constitution." *State v. Glusman*, 98 Nev. 412, 419, 651 P.2d 639, 644
12 (1982). But when a statute "is irreconcilably repugnant" to a constitutional
13 amendment, the statute is deemed to have been impliedly repealed by the
14 amendment. *Mengelkamp v. List*, 88 Nev. 542, 545-46, 501 P.2d 1032, 1034
15 (1972). The presumption is against implied repeal unless the enactment
conflicts with existing law to the extent that both cannot logically coexist. See *W.*
Realty Co. v. City of Reno, 63 Nev. 330, 344, 172 P.2d 158, 165 (1946)."

16 *Thomas* at 5.

17 In that case, the issue was whether taxi cab drivers were still exempt from
18 minimum wage provisions after the Constitutional Amendment became effective in
19 2006. The Nevada Supreme Court in that case found that since there was a direct
20 conflict between the explicit exemptions listed in the Amendment and those that
21 existed in the statute, that portion of the statutory provision, NEV. REV. STAT. §
22 608.250(2)(e), which listed the exemptions, was in conflict and inconsistent with the
23 Amendment. Hence, that statutory provision was supplemented by the Minimum Wage
24 Amendment. In so finding, the Court stated that its ruling was based on the fact that
25 there was an express conflict between the two provisions. *Thomas* at 6. Indeed, the
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1 Nevada Supreme Court reiterated the canon of construction that "the expression of
2 one thing is the exclusion of another" thereby making it clear that the two
3 provisions were in direct conflict with one another. The Court noted that the
4 Minimum Wage Amendment's express enumeration of "specific exceptions" to the
5 minimum wage requirements "supersedes and supplants" the conflicting
6 exceptions in NEV. REV. STAT. § 608.250(2). *Id.* at 9. Here, there are no express
7 conflicts. Instead, the language of the Minimum Wage Amendment can either be read
8 as a direct reference to the statutory scheme, which includes a two-year statute of
9 limitations in NEV. REV. STAT. § 608.260, or as silent on the issue. Under either
10 interpretation, there is no direct conflict between the provisions at issue in the present
11 case. In the absence of a conflict, the Court needs to take heed of the Nevada
12 Supreme Court's admonition that, "The presumption is against implied repeal unless
13 the enactment conflicts with existing law to the extent that both cannot logically
14 coexist." *Thomas* at 5, citing *W. Realty Co. v. City of Reno*, 63 Nev. 330, 344, 172 P.2d
15 158, 165 (1946). In so doing, this Court finds that there is not an implicit repeal of the
16 statutory limitations period of two years.
17
18

19 The Nevada Supreme Court's decision in *Terry* further supports that the
20 statutory limitations period was not implicitly repealed. In *Terry*, the issue before the
21 Court, as noted above, was whether exotic dancers could pursue their claims that they
22 were not paid the minimum wage owed them or whether they were precluded from
23 doing so as they were categorized as independent contractors. In its analysis of their
24 claims, the Nevada Supreme Court expounded on the Minimum Wage Amendment's
25 interaction with the statutes in NEV. REV. STAT. § 608. While the Court noted that the
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1 Minimum Wage Amendment "supplants our statutory minimum wage laws to some
2 extent," it recognized the continued viability of causes of action raised under NEV. REV.
3 STAT. § 608.250 and NEV. REV. STAT. § 608.260. Indeed, if the Court felt that the
4 statute was no longer in existence, the Court could have easily stated so rather than
5 provide an entire analysis as how the Plaintiffs in that case fell within the parameters of
6 the statutory scheme and were hence eligible to make their claim for relief as
7 employees.

8
9 Given neither *Thomas* nor *Terry* stand for the proposition that the Minimum
10 Wage Amendment intended to repeal the entirety of the statutory framework for
11 minimum wage claims, the Court must determine how to best reconcile the two so that
12 they are in harmony with one another. To do so would be consistent with what is
13 viewed to be what the voters intended to do when they passed the Minimum Wage
14 Amendment. This Court finds that the voters modified discrete portions of Nevada's
15 minimum wage law, such as NEV. REV. STAT. § 608.250(2)'s exceptions noted in
16 *Thomas*. The Minimum Wage Amendment also established a new "baseline" wage
17 rate including setting forth a two-tier payment schedule depending on whether
18 insurance was provided or not provided. It also expanded the minimum wage
19 protections to more Nevadans, and included a specific anti-retaliation provision as
20 well as additional remedies. The voters did not, however, demonstrate any intent to
21 modify the statute of limitations for alleged violations of the minimum wage. Thus,
22 allowing Plaintiffs the same time period to allege Constitutional violations of the
23 minimum wage, as they have to allege statutory violations of the minimum wage, meets
24 the goal of harmonizing the two as directed by the Nevada Supreme Court in *Thomas*
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1 and *Terry*. As the Minimum Wage Amendment provides that Plaintiffs may use
2 "available" and "appropriate" remedies, and the statutory framework already has an
3 available limitations period, a two-year statute of limitations set forth in NEV. REV.
4 STAT. § 608.260 applies to the Plaintiffs' first cause of action⁸.

5
6 In finding that the two-year limitations period would be appropriate, the Court
7 also looked at the actual relief being sought as an independent basis for its decision.
8 As set forth by the Nevada Supreme Court, the term "action," as used in NEV. REV.
9 STAT. § 11.190, refers to the nature or subject matter of the claim and not to what the
10 pleader says it is. See *Hartford Insurance Group v. Statewide Appliances, Inc.*, 87
11 Nev. 195, 484 P.2d 569 (1971). While the *Hartford* court was looking at the issue of
12 which statute of limitations to apply from an insurance subrogation standpoint, their
13 determination that it is the nature or subject matter of the claim that will determine what
14 limitation period applies is instructive to the instant case. In *Hartford*, the insurance
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18 ⁸ Recent federal decisions by Judges Mahan, Jones, and Navarro reached the same result
19 although their analysis was slightly different. For example in *McDonagh v. Harrah's Las Vegas,*
20 *Inc.*, Case No. 2:13-CV-1744 JCM-CWH, 2014 (December 6, 2014) the Honorable James C.
21 Mahan held, "While article 15, section 16 of the Nevada Constitution does create a new two-
22 tiered minimum wage in the state, the section is silent on whether it changes the two-year statute
23 of limitations in the Nevada Revised Statutes. Therefore the court finds that the constitutional
24 provision was not intended to change this two-year statute of limitations." *McDonagh*, 2014 U.S.
25 Dist. LEXIS 82290 at *11-12. Similarly, in *Rivera v. Peri & Sons Farms*, the Court reached a
26 similar conclusion. After considering the various arguments, the Honorable Robert C. Jones held,
27 "The state also has a two year statute of limitations, and Section 16 is silent on the limitation
28 period for minimum wage actions, so the Court will not imply a repeal of section 608.260's
two-year limitation period." *Rivera*, 805 F. Supp. 2d 1042 at 1046. The Court notes that the
Rivera case was appealed to the Ninth Circuit (see 735 F.3d at 892, at 902) but the statute of
limitations argument was not raised on appeal. In *Tyus v. Wendy's of Las Vegas*, Case No 2:14-
CV-00729-GMN-VCF, the Honorable Gloria Navarro also found that "[u]nlike the statutory
provision in *Thomas*, the two year statute of limitations period found in NRS 608.260 does not
necessarily and directly conflict with the Minimum Wage Amendment...although the Minimum
Wage Amendment is silent on a limitations period, the Court finds that this silence does not
impliedly repeal the two-year statute of limitations. 2015 WL 1137734 at * 3. While none of these
cases are binding precedent for the instant Court, the Court can review them as persuasive
authority for the guidance that they offer. See e.g. *Executive Management v. Ticor Title*, 118
Nev. 46, 38 P.3d 872 (2002).

1 company as the subrogee of its insured, filed an action for breach of express and
2 implied warranties due to its insured's personal property being damaged. In
3 addressing which statute of limitations applied, the Court had the option of applying
4 NEV. REV. STAT. § 11.190(2)(c) which governed "an action upon a contract, obligation
5 or liability not founded upon an instrument in writing" or NEV. REV. STAT. §
6 11.190(3)(c) which covers "an action for injuring personal property." In looking past the
7 titling of the cause of action to what was the true nature of the action actually sought to
8 recover, the Nevada Supreme Court determined that NEV. REV. STAT. § 11.190(3)(c),
9 rather than NEV. REV. STAT. § 11.190(2)(c), applied because the Plaintiff sought
10 recovery for injuries to personal property.
11

12 The Nevada Supreme Court engaged in a similar analysis in *Blotzke v.*
13 *Christmas Tree, Inc.* 88 Nev. 449, 499 P.2d 647 (1972). In that case, Plaintiff sued his
14 employers for personal injuries alleging that they had not provided a safe place to
15 work, but based his claim upon contract to have the benefit of a longer statute of
16 limitations. The Court did not adopt the Plaintiff's contract analysis, and instead, found
17 that the relief he was actually seeking sounded in tort rather than contract, and thus,
18 applied the shorter limitation period even though it barred the claim.
19

20 In the present case, from a review of the entire First Amended Class Action
21 Complaint and in particular the First and Second Causes of Action, it is clear that
22 Plaintiffs are utilizing the Nevada Supreme Court's analysis in *Terry* to state that: 1.
23 They are Defendant's employees rather than independent contractors, and; 2. As
24 employees, they are entitled to be paid the minimum wage, which due to their prior
25 classification as independent contractors, they have not been paid. Plaintiffs have pled
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1 this failure to pay the minimum wage both under the Minimum Wage Amendment and
2 the statutory framework of NEV. REV. STAT. § 608. The former does not have a
3 limitations period directly stated in the body of the Minimum Wage Amendment. The
4 latter has an express two-year statute of limitations provision.

5 Other than labeling the first claim as one under the Minimum Wage Amendment,
6 and the second one as one pursuant to NEV. REV. STAT. § 608, the apparent nature of
7 the relief sought by Plaintiffs appears to be the same - payment of alleged unpaid
8 minimum wage payments. As is discussed further below, the Court cannot
9 affirmatively determine, at the motion to dismiss stage, if the actual relief sought is
10 identical; but the Court can determine what is the nature of the relief sought. In the
11 present case, the nature of the relief sought is the payment of the minimum wage rate
12 due employees pursuant to the Labor Commissioner Bulletins for the time period each
13 Plaintiff worked for Defendant. The relief sought falls squarely within the statutory
14 framework of NEV. REV. STAT. § 608, which has a limitations period of two years.
15 Accordingly, whether the claim is titled as one pursuant to Minimum Wage Amendment
16 or NEV. REV. STAT. § 608, Plaintiffs should bring forth their claims within the time period
17 already provided for claims that allege a failure to pay the minimum wage, i.e. two
18 years.
19

20
21 This analysis is also consistent with Nevada's rule of construction that a specific
22 statute dealing in detail with a particular subject controls over a general statute relating
23 only in general terms. See, e.g. *Western Realty Co. v. City of Reno*, 63 Nev. 330, 337,
24 172 P.2d 158, 161 (1946), and *Lader v. Warden*, 121 Nev. 682, 687, 120 P.3d 1164,
25 1167 (2005). Given that the two-year statute of limitation provided by NEV. REV. STAT.
26
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1 § 608.260 deals directly with the allegations of non-payment of Nevada's minimum
2 wage asserted in Plaintiffs' First Cause of Action, utilizing applicable precedent that
3 provision controls over the provisions of NEV. REV. STAT. § 11.220, which only provides
4 a general "catch-all" statute of limitation for those claims not otherwise specifically
5 addressed by statute.
6

7 Applying a two-year statute of limitations to both types of minimum wage claims
8 in the present case and, thereby, harmonizing the statutory framework with the
9 Minimum Wage Amendment is also supported by sound public policy. Statutes of
10 limitations exist because they provide a necessary, remedial constraint on a
11 Plaintiff's ability to bring stale claims. *State Indus. Ins. Sys. v. Jesch*, 101 Nev. 690,
12 694, 709 P.2d 172, 175 (1985). This constraint is inextricably tied to due process
13 considerations. Limitations periods also serve an evidentiary function. Here, the
14 imposition of a four-year statute of limitations could provide a conflict with state and
15 federal record retention requirements, including NEV. REV. STAT. § 608.115, and
16 unfairly prejudice Defendant's due process rights. NEV. REV. STAT. § 608.115 provides
17 the parameters of records that must be maintained by every employer and sets forth
18 that the "[r]ecords of wages must be maintained for a two-year period following the
19 entry of the information in the record." NEV. REV. STAT. § 608.115(3). Pursuant to the
20 Fair Labor Standards Act, federal law also requires that employers maintain, for at
21 least three years, payroll records and records on which wage computations are based
22 should be retained for two years, i.e., time cards, piece work tickets, wage rate tables,
23 work and time schedules, and records of additions to or deductions from wages. See,
24 29 U.S.C.A. § 211 (West) and 29 CFR Part 516. If the Minimum Wage Amendment
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1 were to have a four-year statute of limitations, then employers could be liable for wage
2 claims that exceed the time period for which they are required to maintain records of
3 the wages paid to the individual(s) who would be making the claim. To require an
4 employer to maintain records for a longer period than set forth in the statute would also
5 be inconsistent with the statutory record retention requirement.
6

7 Based on the forgoing, not only does the language of the Amendment favor a
8 two-year limitations period, the nature of the relief sought as well as public policy also
9 favor a consistent, harmonious, limitations period of two years. Therefore, Plaintiffs'
10 First Cause of Action is DISMISSED in part with prejudice to the extent Plaintiffs' claim
11 for unpaid minimum wage is barred by the applicable two-year statute of limitation
12 provided in NEV. REV. STAT. § 608.260, which, by extension, also applies to minimum
13 wage claims pursuant to the Minimum Wage Amendment.
14

15 **C. Defendant's Motion to Dismiss Plaintiffs First and Second Causes of**
16 **Action Asserting that they are Duplicative**

17 While the nature of Plaintiffs' First and Second Causes of Action both seek relief
18 for their contention that Defendant failed to pay Plaintiffs Nevada's minimum wage
19 during the time each was employed by Defendant as set forth in more detail infra,
20 pursuant to applicable motion to dismiss standard, the Court cannot determine whether
21 the relief sought is identical or not. Accordingly, the Court finds it appropriate to treat
22 the Motion to Dismiss as one for a More Definite Statement as the nature of the Motion
23 is to determine what relief Plaintiff is seeking in each of the claims. See *Mays v. Dist.*
24 *Ct.*, 105 Nev. 60, 768 P.2d 877. In reviewing the Motion, pursuant to the appropriate
25 standard as one for a More Definite Statement, the Court GRANTS the Motion for a
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1 More Definite Statement and allows Plaintiffs leave to amend to the extent Plaintiffs
2 wish to amend either their First Cause of Action or their Second Cause of Action or
3 both to clarify what relief they are seeking in both if they deem it appropriate to
4 maintain two causes of action for payment of the minimum wage.

5
6 **D. Defendant's Motion to Dismiss Plaintiffs' Fourth Cause of Action for**
7 **Unjust Enrichment**

8 It is a foundational aspect of pleading that relief in the alternative may be
9 demanded. NEV. R. CIV. P. 8(a). "Unjust enrichment exists when the plaintiff confers a
10 benefit on the defendant, the defendant appreciates such benefit, and there is
11 acceptance and retention by the defendant of such benefit under circumstances such
12 that it would be inequitable for him to retain the benefit without payment of the value
13 thereof." *Certified Fire Prot. Inc. v. Precision Construction*, 283 P.3d 254 at 256 (Nev.
14 2012).

15
16 Construed liberally, and drawing every fair intendment in favor of the Plaintiff,
17 Count Four states a claim for unjust enrichment by, *inter alia*, alleging Defendant
18 improperly imposed various fees and fines on Plaintiffs as a condition of employment,
19 and required Plaintiffs to give money to managers and other employees. Though a
20 Plaintiff may not recover equitable remedies where a Plaintiff has a full and adequate
21 remedy at law, unjust enrichment is appropriately pled as an alternative equitable basis
22 for relief in addition to the claims for legal relief set forth in the other Counts. NEV. R.
23 CIV. P. 8(a).

24
25 Plaintiffs' Fourth Cause of Action asserts a claim in equity against Defendant for
26 Unjust Enrichment. As the Minimum Wage Amendment allows claims to be brought in
27

1 equity, and based on the standards a Court must utilize when presented with a Motion
2 to Dismiss, the Court finds that Defendant has failed to meet its burden and hence
3 Defendant's Motion to Dismiss Plaintiffs' Fourth Cause of Action is DENIED without
4 prejudice.⁹

5
6 **E. Defendant's Motion to Strike Plaintiffs' Prayer for Exemplary and Punitive**
7 **Damages**

8 NEV. REV. STAT. § 42.005 provides that a Plaintiff may only obtain an award of
9 exemplary and punitive damages in an action for the breach of an obligation not arising
10 from a contract. Further, *Sprouse v. Wentz*, 105 Nev. 597, 603, 181 P.2d 1136, 1139
11 (1989), requires that an award of exemplary or punitive damages pursuant to NEV. REV.
12 STAT. § 42.005 must be based upon a cause of action sounding in tort and not based
13 on a contract theory.
14

15 Plaintiffs' claims are based on Defendant's alleged failure to pay Plaintiffs
16 Nevada's minimum wage while working as alleged employees of Defendant and/or at
17 the time of each Plaintiff's resignation, termination, or discharge. As alleged by
18 Plaintiffs in their First Amended Class Action Complaint, none of these allegations and
19 accompanying causes of action sound in tort, and in fact, are based on a contract
20 theory. Since none of Plaintiffs' causes of action sound in tort, nor have Plaintiffs set
21 forth the appropriate standard for the imposition of punitive or exemplary damages,
22 Plaintiffs' accompanying prayer for an award of exemplary and punitive damages is
23 hereby stricken from Plaintiffs' First Amended Class Action Complaint.
24

25
26 ⁹ Defendant has also sought to dismiss Plaintiffs' Unjust Enrichment claim on the basis of how it
27 is pled. That portion of the Motion is also DENIED without prejudice. Further, the Motion to
28 Strike part of Plaintiffs Prayer for Relief as irrelevant is also DENIED without prejudice based on
the analysis set forth in the pleadings.

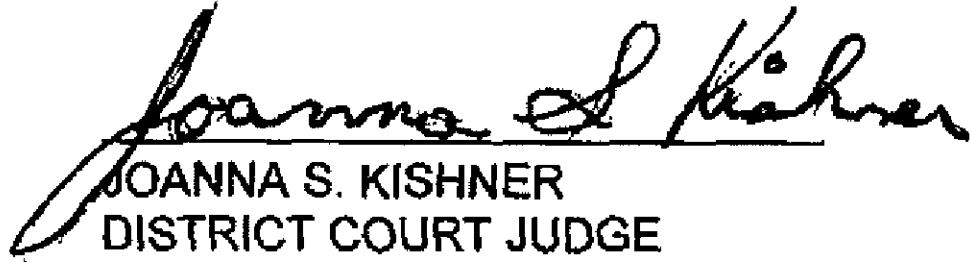
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ORDER

Based on the foregoing, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant's Motion to Dismiss and/or Strike is GRANTED in part and DENIED in part, without prejudice. The Motion to Dismiss the anonymous Doe Dancer Plaintiffs is GRANTED, without prejudice, and with leave to amend as detailed above. The Motion to Dismiss the First Cause of Action to the extent the relief sought exceeds the two-year statute of limitations period is GRANTED with prejudice. The Motion to Dismiss the First (or Second) Cause of Action to the extent that it is duplicative with the Second (or First) Cause of Action is more properly a Motion for a More Definite Statement with regards to either of these Causes of Action, and in that context, the Court GRANTS the Motion for a More Definite Statement and GRANTS Plaintiffs leave to amend as detailed above. The Motion to Dismiss the Second and Third Causes of Action to the extent they seek relief outside the two-year limitations period is MOOT as Paragraph 27 of the First Amended Class Action Complaint sets forth that Plaintiffs are only seeking relief for claims within a two-year period. The Motions to Dismiss the Fourth Cause of Action for Unjust Enrichment on the grounds stated are DENIED, without prejudice, as set forth above. The Motion to Strike the Request and Prayer for Punitive and/or Exemplary Damages is GRANTED based on the claims alleged in the Amended Complaint as further set forth above. To the extent Defendant sought to dismiss any of the claims set forth above, and in the alternative sought to strike the claim or requested relief, the Court addressed both standards and analyzed the Motion in what it deemed the proper context. Accordingly, with respect to where the Motion to

1 Dismiss was DENIED, the Motion to Strike was also DENIED based on its applicable
2 standard.

3
4 Dated this 25th day of June, 2015.
5

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8 JOANNA S. KISHNER
9 DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was provided to all counsel, and/or parties listed below via one, or more, of the following manners: via email, via facsimile, via US mail, via Electronic Service if the Attorney/Party has signed up for Electronic Service, and/or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

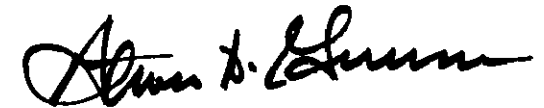
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13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

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

21 Plaintiffs,

22 vs.

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

26 Defendants.

27 AND RELATED COUNTERCLAIMS
28

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

**NOTICE OF ENTRY OF ORDER
DENYING PLAINTIFFS' MOTION
FOR CLASS CERTIFICATION**



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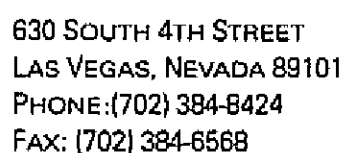
DATED this 12th day of April, 2017.

/s/ Jeffery A. Bendavid

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

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

Plaintiffs,

vs.

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

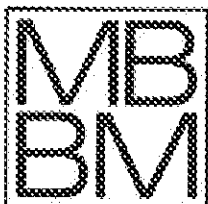
Defendants.

Case No.: A-14-709372-C

Dept. No.: 31

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

AND RELATED COUNTERCLAIMS



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1 Plaintiffs, JACQUELINE FRANKLIN, ASHLEIGH PARK, LILY SHEPARD,
2 STACIE ALLEN, MICHAELA DIVINE, VERONICA VAN WOODSEN, SAMANTHA
3 JONES, KARINA STREKLOVA, LASHONDA STEWARD, DANIELLE LAMAR, and
4 DIRUBIN TAMAYO'S, individually and on behalf of all persons similarly situated (the
5 "Plaintiffs") Motion for Class Certification, having come on for hearing and on January 10,
6 2017 and again on March 16, 2017, in Department 31 of the above-titled Court, with the
7 Honorable Judge Joana S. Kishner presiding. LAUREN CALVERT, ESQ. of
8 MORRIS//ANDERSON, MICK RUSING, ESQ., PRO HAC VICE, having appeared on
9 March 16, 2017, on behalf of Plaintiffs and JEFFERY A. BENDAVID, ESQ. of MORAN
10 BRANDON BENDAVID MORAN, having appeared on behalf of Defendant, RUSSELL
11 ROAD FOOD AND BEVERAGE, LLC, a Nevada Limited Liability Company, d/b/a
12 CRAZY HORSE III GENTLEMEN'S CLUB (the "Defendant"), the Court having
13 considered the pleadings, papers, and supplements thereto and filed herein, the arguments of
14 counsel, and good cause appearing finds and orders as follows:

15
16
17 **THE COURT FINDS** that SB 224, as codified in NRS 608.0155 and NRS
18 608.255(3), applies to actions to recover unpaid wages asserted under Nevada's Minimum
19 Wage Amendment as set forth in Article 15, § 16 of Nevada's Constitution and therefore,
20 applies in this case as Plaintiffs have stated that their claims for unpaid wages were brought
21 only under Nevada's Minimum Wage Amendment.
22

23 **THE COURT FURTHER FINDS** that a review of some of the deposition
24 testimony of the currently named lead Plaintiffs and potential class establishes that Plaintiffs
25 do not meet the standard for class representation at this juncture of the case.
26



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1 **THE COURT FURTHER FINDS** that reviewing SB 224, as codified in NRS
2 608.0155 and NRS 608.255(3), in totality of the pleadings of this case, the potential class
3 representatives' own statements made as part of their individual depositions, in themselves,
4 do not meet the standard for class representation at this juncture.
5

6 **THE COURT FURTHER FINDS** that while cognizant of the low threshold with
7 regards to class certification, there must be a minimum establishing that the representatives
8 of the potential class are already in the category in which they are seeking to represent
9 individuals.
10

11 **THE COURT FURTHER FINDS** that here, based on the provided, undisputed
12 deposition testimony of some the actual specific lead, currently named Plaintiffs, the
13 representatives of the potential class do not establish that they are already in the category in
14 which they are seeking to represent.

15 **THE COURT FURTHER FINDS** that even in the alternative, where reviewing SB
16 224, as codified in NRS 608.0155 and NRS 608.255(3), would not apply, the Court's
17 analysis would be the same in that the potential class representatives' own statements made
18 as part of their individual depositions, in themselves, do not meet the standard for class
19 representation at this juncture.
20

21 **THE COURT FURTHER FINDS** that the Court's analysis in making its findings
22 is limited to looking at whether or not these actual specific lead, currently named Plaintiffs
23 are considering for their own purposes that they would be similarly situated to the very class
24 they are seeking to represent, and that the information provided in their undisputed
25 deposition testimony shows that these actual specific lead, currently named Plaintiffs are not
26



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1 considering for their own purposes that they would be similarly situated to the very class
2 they are seeking to represent.

3 **IT IS THEREFORE ORDERED** that Plaintiffs' Motion for Class Certification is
4 denied without prejudice.
5

6 DATED this 6 day of April, 2017.

7
8 JOANNA S. KISHNER

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

11 Respectfully Submitted by:

Approved as to form and content:

12 MORAN BRANDON BENDAVID MORAN

MORRIS//ANDERSON

13
14 /s/ Jeffery Bendavid, Esq.

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19 *Attorneys for Defendant*

/s/ Lauren Calvert, Esq.

RYAN M. ANDERSON, ESQ.

Nevada Bar No. 11040

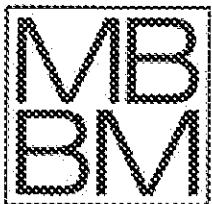
LAUREN CALVERT, ESQ.

17 Nevada Bar No. 10534

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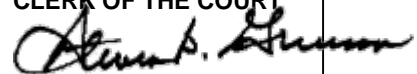
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17 (702) 259-8640

18 *Attorneys for Defendant/Counterclaimant*

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

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

21 Plaintiffs,

22 vs.

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

26 Defendants.

27 **AND RELATED COUNTERCLAIMS**
28

Case No.: A-14-709372-C

Dept. No.: 31

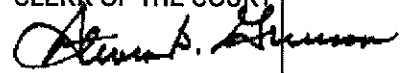
NOTICE OF ENTRY OF ORDER



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1 **ORDR**

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

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

Plaintiffs,

vs.

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

Defendants.

AND RELATED COUNTERCLAIMS

Case No.: A-14-709372-C

Dept. No.: 31

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

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

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



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

15
16
17 **THE COURT FINDS** that Defendant's Motion to Dismiss Plaintiffs' Third
18 Amended Complaint pursuant to N.R.C.P. 12(b)(1) AND N.R.C.P. 12(h)(3), is GRANTED
19 as to Plaintiffs, Ashleigh Park, Danielle Lamar, Lily Shepard, Karina Strelkova, Stacie
20 Allen, and Michaela Devine aka Moore, based on the arguments set forth in Defendant's
21 Motion to Dismiss. Defendant's Motion to Dismiss Plaintiffs' Third Amended Complaint
22 pursuant to N.R.C.P. 12(b)(1) AND N.R.C.P. 12(h)(3), is Denied with respect to Plaintiff,
23 Jacqueline Franklin, only.
24
25
26
27
28



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THE COURT FURTHER FINDS that Plaintiffs' Renewed Motion for Class Certification is DENIED, on the bases set forth in Defendant's Opposition to Plaintiffs' Renewed Motion for Class Certification.

DATED this 16 day of Nov, 2017.

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

Approved as to form:

MORRIS//ANDERSON

/s/ Lauren Calvert
RYAN M. ANDERSON, ESQ.

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LAUREN CALVERT, ESQ.

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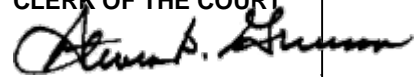
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18 *Attorneys for Defendant/Counterclaimant*

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

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

25 Plaintiffs,

26 vs.

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

Defendants.

Case No.: A-14-709372-C

Dept. No.: 31

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

AND RELATED COUNTERCLAIMS



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

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

7 DATED this 12th day of October, 2017.

8 **MORAN BRANDON BENDAVID MORAN**

9
10 /s/ Jeffery A. Bendavid

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

12 Nevada Bar No. 6220

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

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15 Las Vegas, Nevada 89101

16
17 **KAMER ZUCKER ABBOTT**

18 /s/ Gregory J. Kamer

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

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26
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(702) 259-8640
Attorneys for Defendant/Counterclaimant

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

AND RELATED COUNTERCLAIMS

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

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

AND

**PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

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



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

11 PROCEDURAL HISTORY

12
13 The Parties' Motions for Summary Judgment were both filed on June 19, 2017, at
14 which time there were five remaining named Plaintiffs who still had a claim for allegedly
15 unpaid wages and unjust enrichment, and two remaining named Plaintiffs that had only,
16 unjust enrichment claims. The Parties filed their respective Oppositions, also addressing the
17 five remaining Plaintiffs. Subsequently, on July 11, 2017, Defendant's Motion to Dismiss all
18 Plaintiffs pursuant to lack of subject matter jurisdiction came on for hearing and was granted
19 with respect to all Plaintiffs, except for Jacqueline Franklin. Accordingly, the Reply Briefs
20 of the Parties dealt specifically with Jacqueline Franklin. At the time for hearing on the
21 Parties' respective motions for summary judgment, the Court determined it was considering
22 each Party's motion with respect to the employment status of Jacqueline Franklin.
23

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



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1 FINDINGS OF FACT

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

13 CONCLUSIONS OF LAW

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

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

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

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



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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

14 13. Additionally, it is an undisputed material fact that Plaintiff Franklin had complete
15 control and discretion over the means and manner of the performance of her work and the
16 result of her work, as the undisputed material facts and Findings of Fact, are that Defendant
17 did not instruct her on how to dance, Plaintiff Franklin could perform as many lap dances as
18 she wanted or perform none if she chose, Plaintiff Franklin had the option of paying a fee to
19 avoid performing on stage, Plaintiff Franklin could approach any number of patrons she
20 chose and talk to them for as long as she chose. Additionally, it is undisputed material fact
21 that Defendant did not keep track of cash payments to Plaintiff Franklin, did not require
22 Plaintiff Franklin to tip any of its employees or agents, and did not otherwise require
23 Plaintiff Franklin to sell alcohol or VIP time, or require Plaintiff Franklin to otherwise
24 market it. It is an undisputed material fact that Plaintiff Jacqueline Franklin had a regular
25 customer at one point in time, and would choose to attend promotional events to save on
26
27
28



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1 paying house fees. Plaintiff Franklin could also take breaks whenever she chose for however
2 long she chose to do so, and did not report those breaks to anyone. Furthermore, Defendant
3 did not fine Plaintiff Franklin, Plaintiff Franklin was free to refuse to be paid in "dance
4 dollars", and Plaintiff Franklin could choose her outfits and accessories, as well as her stage
5 name. As such, Plaintiff Franklin satisfies the criterion set forth in NRS 608.0155(1)(c)(1).
6

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

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

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

26 17. The fact that Plaintiff Franklin's testimony indicated that she individually chose to
27
28



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1 usually perform only at Crazy Horse III gentlemen's club is not a factor in determining
2 whether she satisfies the criterion set forth by NRS 608.0155(1)(c)(3), as she testified that it
3 was her choice.

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

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

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

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

26 22. The fact that Plaintiff Franklin's investment of capital in her body as part of the
27
28



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

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

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

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

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

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

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



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

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

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

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

12 DATED this 19 day of September, 2017.
13

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

17 Respectfully Submitted by:
18 **MORAN BRANDON BENDAVID MORAN**

Approved as to form:
MORRIS//ANDERSON

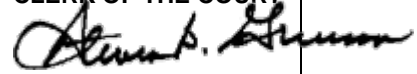
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20 /s/ Jeffery A. Bendavid, Esq.
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1 **ORDR**

2
3 **DISTRICT COURT**
4
5 **CLARK COUNTY, NEVADA**

6 JACQUELINE FRANKLIN, ASHLEIGH
7 PARK, LILY SHEPARD, STACIE ALLEN,
8 MICHAELA DIVINE, VERONICA VAN
9 WOODSEN, SAMANTHA JONES, KARINA
10 STRELKOVA, LASHONDA STEWART,
11 DANIELLE LAMAR, and DIRUBIN TAMAYO,
12 individually, and on behalf of a class of
13 similarly situated individuals,

14 Plaintiffs,

15 vs.

16 RUSSELL ROAD FOOD AND BEVERAGE,
17 LLC, a Nevada limited Liability company
18 (d/b/a CRAZY HORSE III GENTLEMEN'S
19 CLUB, I-X, ROE EMPLOYER, I-X)

20 Defendants.

21 **AND RELATED COUNTERCLAIMS**

Case No.: A-14-709372-C

Dept. No.: XXXI

**ORDER ON OBJECTORS AND
PROPOSED INTERVENORS
RHONDA ROE AND DENISE
DOE'S MOTION FOR
PROTECTIVE ORDER AND TO
ALLOW OBJECTORS AND
INTERVENORS TO PROCEED
PSEUDONYMOUSLY**

22 This matter, having come before the Court for hearing on October 5, 2021,
23 with appearances by Leon Greenberg, Esq. on behalf of Proposed Intervenor and
24 Objectors; Kimball Jones, Esq., on behalf Plaintiffs; and Stephanie J. Smith, Esq.,
25 on behalf of Defendant; and following the arguments of such counsel, and after
26 due consideration of the parties' respective briefs, and all pleadings and papers on
27 file herein, and good cause appearing; therefore, the Court hereby finds as follows:
28

1 **PROCEDURAL HISTORY**

2 The underlying Complaint in the above-captioned matter was filed on
3 November 4, 2014. After multiple years of litigation, on or about July 11, 2017,
4 Defendant prevailed in striking the Plaintiffs' Motion for Class Certification, and the
5 Court granted a Motion to Dismiss on Plaintiffs' operative Complaint pursuant to
6 NRCP 12(b)(1) and NRCP 12(h)(3). Subsequent thereto, Defendant also prevailed
7 in obtaining Summary Judgment against the remaining named Plaintiff. The
8 Findings of Fact and Conclusions of Law were entered on October 12, 2017. On
9 October 17, 2017, Plaintiffs filed a Notice of Appeal. The Appeal was subsequently
10 fully briefed on December 21, 2018. The Appeal was thereafter scheduled for oral
11 argument by the Nevada Supreme Court. During the pendency of that scheduling,
12 Plaintiffs and Defendant reached an agreement for a proposed class action
13 settlement after significant negotiations, on or about October 16, 2019. Plaintiffs
14 and Defendant filed Joint Motion to Dismiss the Appeal on February 27, 2020. On
15 February 28, 2020, the Nevada Supreme Court filed an Order Dismissing the
16 Appeal and Remanding to the District Court for the purposes of approving the
17 parties proposed class settlement, and that Appeal being subject to potential
18 reinstatement by Motion in the event that final approval was not granted. On June
19 25, 2020, Plaintiffs and Defendant submitted a Joint Motion to Conditionally Certify
20 Class, Preliminarily Approve Class Settlement and Directing Notice to Class
21 Members. The Court granted this Motion on August 6, 2020, as well as a motion
22 to conditionally set aside rulings on dispositive motions in order for the District Court
23 to have full jurisdiction over administration of the settlement.
24
25
26
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28

1 Plaintiffs and Defendants engaged in the process of notifying the
2 conditionally certified class, and the first Notice Mailing occurred on November 6,
3 2020. The Notice process extended through into 2021. In order to effectuate the
4 Notice Mailing to additional Class Members who did not have any address on
5 record with Defendant, the Parties subsequently agreed for the Settlement
6 Administrator to perform a “skip trace” of individuals who were not sent Notice in
7 the November 6, 2020, Notice Mailing, and to remove the previously agreed-upon
8 term that reversion would occur of the settlement proceeds, with the net settlement
9 funds to be distributed pro rata amongst valid claimants. Plaintiffs and Defendant
10 submitted this Stipulation and Order for the Court’s approval on April 29, 2021,
11 which the Court granted, and the Court continued the hearing regarding Final
12 Approval of the Class Settlement to September 30, 2021. Due to the Court’s
13 granting of the settlement modification, a continued Notice Mailing occurred on
14 June 23, 2021, to 2,573 conditional Class Members who were not sent the initial
15 Notice Mailing. The deadline by which to object to the continued Notice Mailing
16 was specified in that mailing as 60 days after its mailing, or on August 23, 2021.

17
18
19 On September 3, 2021, a document entitled, “Motion to Intervene to Hear
20 and Uphold Objections To Proposed Class Action Settlement And Reinstate
21 Appeal on Order Shortening Time” was filed by Leon Greenberg. That pleading
22 failed to comply with several Court rules as set forth in the Order regarding the
23 Proposed Intervenors’ Motion to Intervene to Hear and Uphold Objections to
24 Proposed Class Action Settlement and Reinstate Appeal on an Order Shortening
25 Time date November 3, 2021. Attached, towards the end of the document, were
26
27
28

1 two purported redacted Declarations of a Rhonda Roe and a Denise Doe, but no
2 request pursuant to Supreme Court Rule 3 had been sought or granted to file
3 redacted documents, nor had there been any Court ruling allowing the filing of
4 anonymous pleadings or those using pseudonymous names¹. The Declarations
5 were very similar, other than the years each individual asserted she worked for
6 Defendant and one of the two Declarations set forth that the individual had already
7 filed a class claim but wished to withdraw that claim.
8

9 Previously, on August 31, 2021, Mr. Greenberg had filed a document titled
10 "Notice of Filing Written Objections To Proposed Class Action Settlement And
11 Intent to Appear At Hearing" which also filed, contrary to several procedural rules
12 as set forth in the November 3, 2021, Order on the Motion to Intervene. That
13 pleading also had attached, towards the end of the document, the two purported
14 redacted Declarations of a Rhonda Roe and a Denise Doe. Similarly, there had
15 been no request pursuant to Supreme Court Rule 3 sought, nor had permission
16 been granted to file redacted documents. As noted above, there had not been any
17 Court ruling allowing the filing of anonymous pleadings or those using
18 pseudonymous names².
19
20

21 Thereafter, additional documents entitled Notices of Joinder to Written
22 Objections were filed on September 2, 2021; September 9, 2021; September 14,
23 2021; September 22, 2021; September 23, 2021; and September 27, 2021. In
24

25 ¹ Indeed, when individual Plaintiffs had several years earlier sought to use pseudonymous names,
26 there was no good cause shown; and thus, the Court had denied the request of those individual
27 Defendants and said Order was part of the Record of the case.

28 ² The Parties informed the Court that although pseudonymous names in their names in their public
filings, Mr. Greenberg provided their true names to the counsel for the parties. He did not,
however, provide their names to the Court.

1 each of these documents, the names of the purported Declarants were redacted
2 and, instead, pseudonymous names were used. There had been no request,
3 pursuant to Supreme Court Rule 3, sought; nor had permission been granted to file
4 redacted documents. As noted above, there had not been any Court ruling
5 allowing the filing of anonymous pleadings or those using pseudonymous names.
6

7 On September 23, 2021, as set forth in the Order regarding the Proposed
8 Intervenors' Motion to Intervene to Hear and Uphold Objections to Proposed Class
9 Action Settlement and Reinstate Appeal on an Order Shortening Time, dated
10 November 3, 2021, the Court DENIED the Motion to Intervene. On September 30,
11 2021, the Court heard the parties' arguments regarding final approval and
12 GRANTED the Joint Motion for Final Approval after also hearing Mr. Greenberg's
13 argument regarding the purported Objector's Objections. Thus, as of the October
14 5, 2021, hearing on the instant Motion, there was no pending proceeding that
15 would have involved either of the Proposed Intervenors. Accordingly, the Court
16 finds that the Motion of Proposed Intervenors Denise Doe and Rhonda Roe for a
17 Protective Order and to Allow Objectors and Intervenors to Proceed
18 Pseudonymously is DENIED as MOOT. The Court had DENIED Intervention as
19 set forth in its prior Order, and the Court had already heard the Motion for Final
20 Approval prior to the hearing on the instant Motion, and Proposed Intervenors had
21 not filed any request for Order Shortening Time or sought to have the instant
22 Motion heard prior to the other Motions. The Court also finds that in denying the
23 instant Motion, the Court is not striking the previously filed pleadings even though
24 they were not filed in compliance with the Rules, as those pleadings were
25
26
27
28

1 addressed in prior rulings of the Court. The Court also is not modifying any prior
2 Orders this Court has issued in this case, and such Orders shall continue to apply
3 to these proceedings.

4 **IT IS THEREFORE HEREBY ORDERED** that Proposed Objectors and
5 Proposed Intervenor Rhonda Roe and Denise Doe's Motion for Protective Order
6 and to Allow Objectors and Intervenor to Proceed Pseudonymously is DENIED as
7 MOOT. There was no ripe matter before the Court; and thus, there is no basis for
8 a Protective Order.
9

10 **IT IS SO ORDERED**

11 DATED this 4th day of November, 2021.

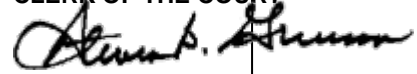
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13 
14 _____
HONORABLE JOANNA S. KISHNER
DISTRICT COURT JUDGE, DEPT. XXXI
15
16
17

18 **CERTIFICATE OF SERVICE**

19 I hereby certify that on or about the date filed, a copy of this Order was
20 served via Electronic Service to all counsel/registered parties, pursuant to the
21 Nevada Electronic Filing Rules, and/or served via in one or more of the following
matters: fax, U.S. mail, or a copy of this Order was placed in the attorney's file
located at the Regional Justice Center:

22 **ALL REGISTERED COUNSEL and/or PARTIES IN PROPER PERSON**

23 
24 _____
TRACY L. CORDOBA-WHEELER
25 Judicial Executive Assistant
26
27
28



1 **NEO**
2 **JEFFERY A. BENDAVID, ESQ.**
3 Nevada Bar No. 6220
4 **STEPHANIE J. SMITH, ESQ.**
5 Nevada Bar No. 11280
6 **BENDAVID LAW**
7 7301 Peak Drive Suite 150
8 Las Vegas, Nevada 89128
9 (702) 385-6114
10 *Attorneys for Defendant/Counterclaimant*
11 *Russell Road Food & Beverage, LLC*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

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

17 Plaintiffs,

18 vs.

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

23 Defendants.

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

**NOTICE OF ENTRY OF ORDER
OF FINDINGS OF FACT AND
CONCLUSIONS OF LAW
DENYING PROPOSED
INTERVENORS' MOTION TO
INTERVENE TO HEAR AND
UPHOLD OBJECTIONS TO
PROPOSED CLASS ACTION
SETTLEMENT AND REINSTATE
APPEAL ON AN ORDER
SHORTENING TIME**

25
26 Please take notice that a **FINDINGS OF FACT AND CONCLUSIONS OF**
27 **LAW DENYING PROPOSED INTERVENORS' MOTION TO INTERVENE**
28 **TO HEAR AND UPHOLD OBJECTIONS TO PROPOSED CLASS ACTION**

BendavidLaw

702.385.6114
7301 Peak Drive, Suite 150
Las Vegas, Nevada 89128

1 **SETTLEMENT AND REINSTATE APPEAL ON AN ORDER SHORTENING**
2 **TIME** was entered in the above-entitled case by the Honorable Joanna S. Kishner on
3 the 3rd day of November, 2021.

4 DATED this 5th day of November, 2021.

6 **BENDAVID LAW**

7 /s/ Jeffery A. Bendavid, Esq.

8 **JEFFERY A. BENDAVID, ESQ.**

9 State Bar No. 6220

10 **STEPHANIE J. SMITH, ESQ.**

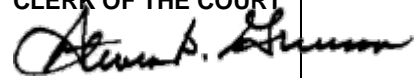
11 State Bar No. 11280

12 7301 Peak Dr., Suite 150

13 Las Vegas, NV 89128

14 *Attorneys for Defendant/Counterclaimant*

15 *Russell Road Food & Beverage, LLC*



FFCL

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

RUSSELL ROAD FOOD AND
BEVERAGE, LLC, a Nevada limited
Liability company (d/b/a CRAZY HORSE
III GENTLEMEN'S CLUB, I-X, ROE
EMPLOYER, I-X)

Defendants.

AND RELATED COUNTERCLAIMS

Case No.: A-14-709372-C

Dept. No.: XXXI

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW
DENYING PROPOSED
INTERVENORS' MOTION TO
INTERVENE TO HEAR AND
UPHOLD OBJECTIONS TO
PROPOSED CLASS ACTION
SETTLEMENT AND REINSTATE
APPEAL ON AN ORDER
SHORTENING TIME**

Proposed Intervenor's Motion to Intervene to Hear and Uphold Objections to
Proposed Class Action Settlement and Reinstate Appeal on an Order Shortening
Time, with LEON GREENBERG, ESQ. of LEON GREENBERG PROFESSIONAL
CORPORATION, appearing on behalf of Proposed Intervenor's/Objectioners proceeding
pseudonymously; KIMBALL JONES, ESQ. of Bighorn Law, and MICHAEL J.
RUSING, ESQ. of RUSING LOPEZ & LIZARDI appearing on behalf of Plaintiffs and
the class; and JEFFERY A. BENDAVID, ESQ. and STEPHANIE J. SMITH, ESQ. of

1 BENDAVID LAW appearing for Defendant, RUSSELL ROAD FOOD AND
2 BEVERAGE LLC d/b/a CRAZY HORSE GENTLEMEN'S CLUB ("Defendant" and/or
3 "Crazy Horse III"); having come on for hearing on shortened time on September 23,
4 2021, at 9:00 a.m. in Department 31 of the above-titled Court, with the Honorable
5 Judge Joanna Kishner presiding.

6
7 **PROCEDURAL HISTORY**

8 The underlying Complaint in the above-captioned matter was filed on
9 November 4, 2014. After multiple years of litigation, on or about July 11, 2017,
10 Defendant prevailed in striking the Plaintiffs' Motion for Class Certification, and the
11 Court granted a Motion to Dismiss on Plaintiffs' operative Complaint pursuant to
12 NRCP 12(b)(1) and NRCP 12(h)(3). Subsequent thereto, Defendant also prevailed in
13 obtaining summary judgment against the remaining named Plaintiff. The Findings of
14 Fact and Conclusions of Law were entered on October 12, 2017.

15
16 On October 17, 2017, Plaintiffs filed a Notice of Appeal. The Appeal was
17 subsequently fully briefed on December 21, 2018. The Appeal was thereafter
18 scheduled for oral argument by the Nevada Supreme Court. During the pendency of
19 that scheduling, Plaintiffs and Defendant reached an agreement for a proposed class
20 action settlement after significant negotiations, on or about October 16, 2019.
21 Plaintiffs and Defendant filed a Joint Motion to Dismiss the Appeal on February 27,
22 2020. On February 28, 2020, the Nevada Supreme Court filed an Order Dismissing
23 the Appeal and Remanding to the District Court for the purposes of approving the
24 parties proposed class settlement and that Appeal being subject to potential
25 reinstatement by motion in the event that final approval was not granted. On June
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1 25, 2020, Plaintiffs and Defendant submitted a Joint Motion to Conditionally Certify
2 Class, Preliminarily Approve Class Settlement and Directing Notice to Class
3 Members. The Court granted this Motion on August 6, 2020, as well as a Motion to
4 conditionally set aside rulings on dispositive motions in order for the District Court to
5 have full jurisdiction over administration of the settlement.
6

7 Plaintiffs and Defendant engaged in the process of notifying the conditionally
8 certified class, and the first Notice Mailing occurred on November 6, 2020. The
9 Notice process was extended through into 2021. In order to effectuate the Notice
10 Mailing to additional class members who did not have any address on record with
11 Defendant, the Parties subsequently agreed for the settlement administrator to
12 perform a “skip trace” of individuals who were not sent Notice in the November 6,
13 2020, Notice Mailing, and to remove the previously agreed upon term that reversion
14 would occur of the settlement proceeds, with the net settlement funds to be
15 distributed pro rata amongst valid claimants. Plaintiffs and Defendant submitted this
16 Stipulation and Order for the Court’s approval on April 29, 2021, which the Court
17 granted; and the Court continued the hearing regarding Final Approval of the Class
18 Settlement to September 30, 2021. Due to the Court’s granting of the settlement
19 modification, a continued Notice Mailing occurred on June 23, 2021, to 2,573
20 conditional class members who were not sent the initial Notice Mailing. The deadline
21 by which to object to the continued Notice Mailing was specified in that Mailing as 60
22 days after its Mailing, or August 23, 2021.
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24

25 On September 3, 2021, a document entitled “Motion to Intervene to Hear and
26 Uphold Objections To Proposed Class Action Settlement And Reinstate Appeal on
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1 Order Shortening Time” was filed by Leon Greenberg. On the face of the document
2 in the upper left corner as required by the EDCR, it did not state on whose behalf the
3 Motion was filed. Further, nowhere on the first page nor throughout the 16-page
4 Motion, did it assert on behalf of whom, specifically, the Motion was filed on behalf of.
5 Instead, the first paragraph set forth, “The proposed intervenors, who are members of
6 the conditionally certified class of plaintiffs specified in this Court’s Order of August
7 12, 2020 in this case, hereby move this Court for an order:...” The pleading was
8 approximately 303 pages, including hundreds of pages of exhibits, but said exhibits
9 were not numbered nor was there a separate appendix and index as required by
10 EDCR 2.27.
11

12 Further, while the Motion was styled as a Motion to Intervene, there was no
13 proposed Complaint in Intervention attached as required by NRCP 24(c).
14 Additionally, attached towards the end of the document were two purported, redacted
15 Declarations of a Rhonda Roe and a Denise Doe but no request, pursuant to
16 Supreme Court Rule 3, had been sought or granted to file redacted documents, nor
17 had there been any Court ruling allowing the filing of anonymous pleadings or those
18 using pseudonymous names¹. The Declarations were very similar other than the
19 years each individual asserted she worked for Defendant, and one of the two
20 Declarations set forth that the individual had already filed a class claim but wished to
21 withdraw that claim.
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26 ¹ Indeed, when individual Plaintiffs had several years earlier sought to use pseudonymous names,
27 there was no good cause shown; and thus, the Court had denied the request of those individual
28 Defendants, and said Order was part of the Record of the case.

1 Previously, on August 31, 2021, Mr. Greenberg had filed a document titled
2 "Notice of Filing Written Objections To Proposed Class Action Settlement And Intent
3 to Appear At Hearing" which was approximately 301 pages, including hundreds of
4 pages of exhibits; but said exhibits were not numbered, nor was there a separate
5 appendix and index as required by EDCR 2.27. That pleading also had attached
6 towards the end of the document the two purported redacted Declarations of a
7 Rhonda Roe and a Denise Doe. Similarly, there had been no request pursuant to
8 Supreme Court Rule 3 sought, nor had permission been granted to file redacted
9 documents. As noted above, there had not been any Court ruling allowing the filing
10 of anonymous pleadings or those using pseudonymous names². Between August
11 31, 2021, and the hearing on that Notice of Objections, there were Joinders filed to
12 that Notice; but on the face of those Joinders, they did not set forth that they were
13 attempting to join the Motion to Intervene. Further, some of the "Jinders" were filed
14 after the Motion to Intervene was heard.

17 At the time of the hearing on September 23, 2021, the only Motion before the
18 Court was the Motion to Intervene as that Motion had been requested on Order
19 Shortening Time, whereas the other "Notice" had been set in ordinary course as there
20 was no request to hear that on shortened time. After a full review of the relevant
21 pleadings, and after allowing oral argument by not only Mr. Greenberg - but also
22 counsel for both Plaintiffs and Defendant, the Court finds as follows:
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24
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26 _____
27 ² The Parties informed the Court that although pseudonymous names in their names in their public
28 filings Mr. Greenberg provided their true names to the counsel for the parties. He did not, however,
provide their names to the Court.

1 **FINDINGS OF FACT**

2 1. Proposed Intervenor/objectors are already a part of the conditionally
3 approved class of individuals that was certified for settlement purposes.

4 2. The Proposed Intervenors' Motion to Intervene did not have a pleading
5 attached to it that sets forth a claim or defense for which intervention is sought.
6

7 3. Proposed Intervenors do not provide a state or federal statute which
8 gives them a right to unconditionally intervene.

9 4. Proposed Intervenors have interests or claims directly aligned with
10 current Plaintiffs within the action.

11 5. Proposed Intervenors do not have rights which are not being
12 represented by current Plaintiffs.
13

14 6. The Proposed Intervenors' Motion to Intervene was heard on an Order
15 Shortening Time at the Request of counsel for the Proposed Intervenors.

16 7. This instant action had been filed in 2014, and was a widely-known
17 matter due to the breadth and scope of the action. Proposed Intervenors did not file
18 their Motion to Intervene until September 3, 2021, and only attached two Declarations
19 to said Motion.
20

21 8. Proposed Intervenors alleged claims and defenses are shared with the
22 current Plaintiffs and share with the main action, all of the same common questions of
23 law or fact.

24 9. Proposed Intervenors did not present facts or evidence to the Court
25 regarding how their claims and defenses do not share common questions of law or
26 fact with the current Plaintiffs, and Proposed Intervenors did not present any facts or
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1 evidence, aside from assumptions and speculation, that show the Proposed
2 Intervenor's claims and defenses do not have full protection of their interests with
3 respect to such claims and defenses being protected.

4 10. There is no party within the litigation that is a government officer or
5 agency.

6 11. Since the case has been litigated since 2014, there has been significant
7 notice generally regarding the case to individuals who had potential claims.

8 12. Proposed Intervenor's are attempting to intervene at a stage in the
9 matter that would give them extra benefits, versus other class members, if allowed to
10 intervene to the prejudice of other potential class members, and allowing their
11 intervention would similarly cause unreasonable delay.

12 13. The declarations presented were pro forma declarations with a
13 pseudonym at the top, and do not present individualized aspects for any of the
14 individuals, including the fact no names are provided.

15
16
17 **CONCLUSIONS OF LAW**

18 14. Nevada Rule of Civil Procedure 24(c) plainly provides that a Motion to
19 Intervene must state the grounds for intervention and be accompanied by a pleading
20 that sets out the claim or defense for which intervention is sought. Based on the fact
21 that Proposed Intervenor's did not attach any pleading that sets out the claim or
22 defense for which intervention was sought, then pursuant to NRCP 24(c) their Motion
23 to Intervene must be denied.

24 15. NRCP 24(a) and (b), provides that intervention either must or may be
25 granted on a timely Motion to Intervene; however, the Court finds that Proposed
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1 Intervenor's Motion to Intervene was filed seven years after the commencement of
2 the litigation, in November of 2014, and after the Court's preliminary approval of the
3 class action settlement, and less than a month before the Court's scheduled hearing
4 on final approval. Therefore, the Motion to Intervene was untimely under NRCP 24.

5
6 16. The Court concludes that due to Proposed Intervenor's failure to cite
7 any state or legal statute that requires their intervention in this matter, Proposed
8 Intervenor cannot be granted intervention, pursuant to NRCP 24(a)(1), which
9 requires a party to have an unconditional right to intervene under a state or federal
10 statute.

11
12 17. Although the Proposed Intervenor is a member of the presently
13 certified class, they are not so situated that disposing of the action will impede their
14 ability to protect their interests, and have not presented any facts or evidence that
15 demonstrates that the existing Plaintiffs do not adequately represent their interests.

16
17 18. The Nevada Supreme Court clearly found that to be entitled to
18 intervention as a matter of right, the applicant's interest must not be adequately
19 represented by the existing parties to the suit. *Am. Home Assur. Co. v. Eighth*
20 *Judicial Dist. Court*, 122 Nev. 1229, 1237 (2006). This burden is not met where the
21 applicant fails to show that the current party "has a different objective, adverse to its
22 interest, or that the [party] may not adequately represent their shared interest." *Id.* at
23 1129. In determining adequacy of representation by existing parties, courts consider:
24 (1) whether the interest of a present party is such that it will undoubtedly make all the
25 intervenor's arguments; (2) whether the present party is capable and willing to make
26 such arguments; and (3) whether the would-be intervenor would offer any necessary
27

1 elements to the proceedings that other parties would neglect. *Southwest Ctr. For*
2 *Biological Diversity v. Berg*, 268 F.3d 810, 817-18 (2001) (citing *Northwest Forest*
3 *Resource Council ("NFRC") v. Glickman*, 82 F.3d 825, 836 (9th Cir. 1996); *California*
4 *v. Tahoe Reg'l Planning Agency*, 792 F.2d 775, 778 (9th Cir. 1986)).

5
6 19. Courts have found that when movants, such as Proposed Intervenor
7 and named Plaintiffs have the same interests and objective, as an existing party,
8 adequacy of representation is presumed. *Arakaki v. Cayetano*, 324 F.3d 1078, 1086
9 (9th Cir. 2003). Proposed Intervenor did not provide any facts or evidence that
10 demonstrated they did not have adequate representation with the present named
11 Plaintiffs.

12
13 20. The Court concludes that in addition to failing to provide a proposed
14 Complaint in Intervention, based on the totality of the litigation and settlement, that
15 the Proposed Intervenor did not meet their burden of showing that the current
16 parties have a different objective adverse to them or that the party does not
17 adequately represent them, based on the information presented to the Court by
18 Proposed Intervenor.

19
20 21. The Court concludes that it has been provided no facts or evidence that
21 show the present party is not capable and willing to make arguments on behalf of the
22 whole class, which includes Proposed Intervenor who are already part of the class,
23 and such arguments have been made before the Court.

24
25 22. The Court concludes that based on the declarations of Proposed
26 Intervenor, they failed to show that they offer any other necessary elements to the
27 proceedings that other parties would otherwise neglect, pursuant to *Southwest Ctr.*
28

1 *For Biological Diversity v. Berg*, 268 F.3d 810, 817-18 (2001).

2 23. Based on the foregoing, the Court concludes that since it was movant's
3 burden to show that they did not have adequate representation, they failed to meet
4 such a burden with their pro forma declarations, and failed to provide the Court any
5 facts or evidence to show that they offer any other necessary elements to the
6 proceedings or otherwise rebut adequate representation of current Plaintiffs.
7

8 24. Proposed Intervenors did not cite any state or federal statute that grants
9 them a conditional right to intervene, and based upon the findings of this Court they
10 are already class members for purposes of this matter; and, therefore, the Court finds
11 it is not appropriate to permit them to intervene pursuant to NRCP 24(b)(1)(A).
12

13 25. The Court does not find any basis on which to grant a permissive
14 intervention as any such interests are adequately protected and represented by
15 existing class Plaintiffs and the existing class which includes Proposed Intervenors.
16 The Proposed Intervenors failed to establish that their interests were not adequately
17 protected. Instead, one of the Declarations even specifically stated that the Declarant
18 had made a claim for payment as a class member.
19

20 26. The Court further concludes, based on its analysis, that neither NRCP
21 23 or NRCP 24 provide a basis for Proposed Intervenors to be granted intervention;
22 and, therefore, finds that Denial of Intervention is proper.

23 27. NRCP 24(b)(2) provides that the Court may permit intervention on a
24 timely Motion to permit a state or federal governmental office or agency to intervene;
25 however, this section is inapplicable as there are no government officers or agencies
26 at issue.
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1 28. Based on the Findings of Fact, the Court found that existing named
2 Plaintiffs do adequately represent the interests, claims and defenses of the Proposed
3 Intervenor, as they are all members of the same certified class, as they were all
4 dancers who performed at Russell Road Food & Beverage, LLC's gentlemen's club
5 within the authorized class time period for at least 2 hours, and claim they were not
6 paid any wages.
7

8 29. Further, the intervention of Proposed Intervenor would cause
9 significant delay and prejudice for the other class members who were mailed notice
10 or who opted-in, including the named Plaintiffs, Class Representative Jacqueline
11 Franklin, and Defendant, Russell Road Food & Beverage LLC who have been
12 litigating, appealing, or engaging in the settlement process cumulatively since 2014.
13 Therefore, based on this Court's Findings the Proposed Intervenor are not entitled to
14 permissively intervene as it will cause undue delay and prejudice to the existing
15 parties when analyzed under NRCP 24(b)(3).
16

17 30. Based upon the Court's Findings of Fact, and analysis of those facts,
18 the Court denies the Proposed Intervenor Motion to Intervene without prejudice.
19

20 **ORDER**

21 **IT IS, THEREFORE, HEREBY ORDERED** that Proposed
22 Intervenor/Objector's Motion to Intervene is DENIED without prejudice.

23 DATED this 3rd day of November, 2021.

24 
25 _____
26 **HONORABLE JOANNA S. KISHNER**
27 **DISTRICT COURT JUDGE, DEPT. XXXI**
28

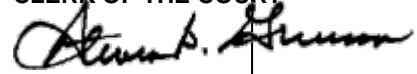
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CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was served via Electronic Service to all counsel/registered parties, pursuant to the Nevada Electronic Filing Rules, and/or served via in one or more of the following manners: fax, U.S. mail, or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

ALL REGISTERED COUNSEL and/or PARTIES IN PROPER PERSON

/s/ Tracy L. Cordoba
TRACY L. CORDOBA-WHEELER
Judicial Executive Assistant



NEO
JEFFERY A. BENDAVID, ESQ.
Nevada Bar No. 6220
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Attorneys for Defendant/Counterclaimant
Russell Road Food & Beverage, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

RUSSELL ROAD FOOD AND
BEVERAGE, LLC, a Nevada limited
Liability company (d/b/a CRAZY HORSE
III GENTLEMEN'S CLUB DOE CLUB);
DOE CLUB OWNER, I-X, ROE
EMPLOYER, I-X,

Defendants.

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

**NOTICE OF ENTRY OF ORDER
OF FINDINGS OF FACT AND
CONCLUSIONS OF LAW
DENYING AND OVERRULING
OBJECTIONS**

AND

**GRANTING FINAL APPROVAL
OF CLASS ACTION
SETTLEMENT**

Please take notice that a **FINDINGS OF FACT AND CONCLUSIONS
DENYING AND OVERRULING OBJECTIONS AND GRANTING FINAL**

BendavidLaw

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7301 Peak Drive, Suite 150
Las Vegas, Nevada 89128

1 **APPROVAL OF CLASS ACTION SETTLEMENT** was entered in the above-
2 entitled case by the Honorable Joanna S. Kishner on the 24th day of November, 2021.
3 A copy of the Findings of Fact and Conclusions of law is attached hereto as Exhibit A.
4

5 DATED this 1st day of December, 2021.

6 **BENDAVID LAW**

7 /s/ Jeffery A. Bendavid, Esq.

8 **JEFFERY A. BENDAVID, ESQ.**

9 State Bar No. 6220

10 **STEPHANIE J. SMITH, ESQ.**

11 State Bar No. 11280

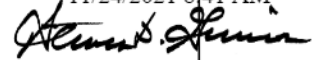
12 7301 Peak Dr., Suite 150

13 Las Vegas, NV 89128

14 *Attorneys for Defendant/Counterclaimant*

15 *Russell Road Food & Beverage, LLC*
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Exhibit “A”


CLERK OF THE COURT

FFCL
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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,
vs.

RUSSELL ROAD FOOD AND
BEVERAGE, LLC, a Nevada limited
Liability company (d/b/a CRAZY
HORSE III GENTLEMEN'S CLUB, I-
X, ROE EMPLOYER, I-X)

Defendants.

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

**[PROPOSED] FINDINGS OF
FACT AND CONCLUSIONS
DENYING AND
OVERRULING OBJECTIONS**

AND

**GRANTING FINAL
APPROVAL OF CLASS
ACTION SETTLEMENT**

**AND RELATED
COUNTERCLAIMS**

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1 Joint Motion for Final Approval of Class Action Settlement, with KIMBALL
2 JONES, ESQ. of MORRIS//ANDERSON, and MICHAEL J. RUSING, ESQ. of
3 RUSING LOPEZ & LIZARDI appearing on behalf of Plaintiffs, and the class, and
4 JEFFERY A. BENDAVID, ESQ. and STEPHANIE J. SMITH, ESQ. of BENDAVID
5 LAW appearing for Defendant, RUSSELL ROAD FOOD AND BEVERAGE LLC
6 d/b/a CRAZY HORSE GENTLEMEN'S CLUB ("Defendant" and/or "Crazy Horse
7 III") and Objections or Notice of Objections filed by various pseudonymously
8 identified objectors, with LEON GREENBERG, ESQ. of LEON GREENBERG
9 PROFESSIONAL CORPORATION, appearing on behalf of Objectors proceeding
10 pseudonymously having come on for hearing September 30, 2021 at 9:30 a.m. in
11 Department 31 of the above-titled Court, with the Honorable Judge Joanna Kishner
12 presiding.

13 PROCEDURAL HISTORY

14
15 The underlying Complaint in the above-captioned matter was filed on
16 November 4, 2014, after multiple years of litigation, on or about July 11, 2017,
17 Defendant prevailed in striking the Plaintiffs' renewed motion for class action
18 certification, the Court having previously denied without prejudice Plaintiffs' motion
19 for class action certification and the Court granted a Motion to Dismiss on Plaintiffs'
20 operative complaint pursuant to NRCP 12(b)(1) and NRCP 12(h)(3). Subsequent
21 thereto, Defendant also prevailed in obtaining summary judgment against the
22 remaining named Plaintiff. The findings of fact and conclusions of law were entered
23 on October 12, 2017. On October 17, 2017, Plaintiffs filed a notice of appeal. The
24 appeal was subsequently fully briefed on December 21, 2018, with the Plaintiffs
25 seeking to reverse the district court's orders granting summary judgment, dismissing
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1 the complaint, and denying class action certification. The appeal was thereafter
2 scheduled for oral argument by the Nevada Supreme Court, during the pendency of
3 that scheduling, Plaintiffs and Defendant reached an agreement for a proposed class
4 action settlement after significant negotiations, on or about October 16, 2019.
5 Plaintiffs and Defendant filed a Joint Motion to Dismiss the Appeal on February 27,
6 2020. On February 28, 2020, the Nevada Supreme Court filed an Order Dismissing
7 the Appeal and Remanding to the District Court to conduct appropriate proceedings to
8 alter, amend or vacate its order or judgment for the parties to fulfill the terms of their
9 settlement agreement. Such Order further provided that in the event the district court
10 declined to grant the relief sought by the parties, Plaintiffs could seek to reinstate the
11 appeal by motion, in the event that the district court denied relief. On June 25, 2020,
12 Plaintiffs and Defendant submitted a Joint Motion to Conditionally Certify Class,
13 Preliminarily Approve Class Settlement and Directing Notice to Class Members. The
14 Court granted the Motion to Preliminarily Approve Class Settlement on August 6,
15 2020, as well as a motion to conditionally set aside rulings on dispositive motions and
16 the denial of class certification in order for the District Court to have full jurisdiction
17 over administration of the settlement.
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20

21 Plaintiffs and Defendant engaged in the process of notifying the conditionally
22 certified class, and the first notice mailing occurred on November 6, 2020, with a
23 deadline to object of January 5, 2021 (60 days after notice mailing). The notice process
24 extended through into 2021. In order to effectuate the notice mailing to additional class
25 members who did not have any address on record with Defendant, the Parties,
26 subsequently agreed for the settlement administrator to perform a “skip trace” of
27 individuals who were not sent notice in the November 6, 2020 notice mailing, and to
28

1 remove the previously agreed upon term that reversion would occur of the settlement
2 proceeds, with the net settlement funds to be distributed pro rata amongst valid
3 claimants. Plaintiffs and Defendant submitted this stipulation and order for the court's
4 approval on April 29, 2021, which the Court granted. The Court continued the hearing
5 regarding Final Approval of the Class Settlement to September 30, 2021. Due to the
6 Court's grant of the settlement modification, a continued notice mailing occurred on
7 June 23, 2021, to 2,573 conditional class members who were not sent the initial notice
8 mailing. The deadline by which to object to the proposed class action settlement was
9 identified in the continued notice mailing as 60 days after its mailing, or August 23,
10 2021.
11

12
13 On August 31, 2021, objectors who used pseudonymous names in their public
14 filings through their counsel filed a Notice of Filing of Written Objections to Proposed
15 Class Action Settlement and Intent to Appear at Hearing. Such counsel also presented
16 to the Court on August 31, 2021, with a copy served on counsel for all of the parties
17 on that date, a Motion to Intervene on Order Shortening Time that also incorporated
18 those Objections. On September 2, 2021, counsel for Objectors and Proposed
19 Intervenor filed a Motion for Protective Order regarding the use of pseudonymous
20 names by the Objectors. The Court signed an Order Shortening Time on such Motion
21 to Intervene on September 3, 2021. Those objectors were identified by their true names
22 to the counsel for the parties on September 13, 2021, upon their agreement to keep that
23 information confidential pursuant to a proposed stipulation and order submitted to the
24 Court on that date. The Court, for reasons stated in the record of a status conference
25 it held to address that proposed stipulation and order on September 17, 2021, declined
26 to "so order" that stipulation, such reasoning is adopted herein by reference.
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1 Subsequent documents, titled joinders to objections were filed on, September 2nd,
2 September 9th, September 14th, September 22nd, September 23rd and September 27th
3 2021, all under pseudonyms with their names being subsequently provided to counsel
4 for Plaintiffs and Defendant upon their request thereafter, the final objecting individual
5 was not identified to counsel until September 30, 2021.
6

7 On September 23, 2021, the Court heard Proposed Intervenor/Objectors'
8 Motion to Intervene on shortened time, and denied the Motion to Intervene. The
9 Motion for Final Approval of Class Action Settlement, purported "Objections" to the
10 class action settlement, and Plaintiffs' Motion for Attorneys' Fees and Costs all came
11 before the Court on September 30, 2021.
12

13 **FINDINGS OF FACT REGARDING OBJECTIONS**

14 1. Objectors filed their notices of objection or joinders to such notices after the
15 deadline for filing objections, and none of the Objectors appeared in person at the
16 hearing for final settlement approval.
17

18 2. The notices of objection¹ suffered from numerous procedural defects.

19 3. The objections were not filed by the January 5, 2021 deadline specified in the
20 first notice mailing or the August 23, 2021 deadline specified in the second notice
21 mailing, with the first "notice of objection" being filed on August 31, 2021, and the
22 last joinder thereto being filed on or about September 27, 2021, and are untimely. The
23 Court was advised that four Objectors allege they never received either mailed notice
24 and does not find such circumstances sufficient to modify its finding that all of the
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¹ For sake of clarity the various "notice of objections" and joinders thereto may also be referred to as "objections" within these findings.

1 objections were untimely. Two of the Objectors also admitted that they received
2 notice, and mailed opt-in forms.

3 4. Objectors' purported objections filed on August 31, 2021, were 301 pages
4 long and included exhibits that did not comply with EDCR 2.27 as they did not have
5 consecutively numbered pages and were not submitted in a separate appendix with a
6 table of contents.

7 5. Objectors' purported objections contain declarations that have an assigned
8 name, which was blacked out, and redacted without the Court's permission.

9 6. The Court previously notified the parties and after the filing of Objectors'
10 motion on September 2, 2021 for a protective order, that there were issues with respect
11 to the redacted/pseudonyms on declarations submitted to the Court, and no correction
12 or other filing apart from the submissions made to the Court in connection with that
13 motion for a protective order was made to address or respond to the Court's concerns
14 regarding the redacted/pseudonyms.

15 7. Further, the declarations submitted to the Court which purportedly constituted
16 part of or the entirety of the objections or contained the objections did not have
17 personal facts and information contained within, and do not state that they are made
18 upon personal knowledge.

19 8. The declarations submitted by the Objectors contain boilerplate language,
20 were prepared by counsel, contain no statement that they are made on personal
21 knowledge, contain no statement authorizing counsel for Objectors to present
22 objections for such persons, and the Court finds they do not comply with the Court's
23 Order respecting the presentation of objections to the settlement which provides an
24 objector can appear "with or without counsel".

1 9. The declarations submitted by Objectors make legal conclusions for which
2 there is no basis in fact within the actual record of the case and are speculative. The
3 Court finds the objections to be deficient procedurally but to the extent they purport
4 to raise issues regarding the fairness of the proposed settlement, and the appropriate
5 legal analysis, the Court will properly examine the fairness of the settlement and
6 conduct the proper legal analysis of the same regardless. The Court will not consider
7 speculation of counsel as presented within the objections regarding what would occur
8 if the Supreme Court were to consider a reinstated appeal in this case or if further
9 proceedings were taken in this case.
10

11 10. Several of the purported “Joinders” to the August 31st filing of Notice of
12 Objection were filed after seven (7) days from the original filing, or were otherwise
13 filed after the “Motion to Intervene” which also contained the same objections that
14 were filed on August 31st.
15

16 11. The Court found that both the declarations and the pleadings submitted by the
17 Objectors contain portions that are speculation, and assumptions that are not supported
18 by the facts or the record of this matter, and accordingly lack foundation and the Court
19 would not consider those portions of such declarations.
20

21 12. The Objectors did not present any evidence to the Court that indicates any
22 previous ruling would be overturned, since the summary judgment decision that was
23 appealed applied to only a single individual, and class action certification was denied
24 and sought a second time and denied again with such second motion stricken, the
25 Court finding there would be no basis for the denial of class action certification to be
26 modified.
27
28

1 13. The Court finds that the procedural positions of the parties, and the facts
2 presented in *Jane Doe Dancer I et al. v. La Fuente*, 137 Nev. Adv. Op. 3, filed
3 February 25, 2021, were significantly different from the facts and appealed decisions
4 rendered in the above-captioned matter and that the Court's rulings on class action
5 certification in this case would not be altered by the *La Fuente* decision.
6

7 14. The Court finds that the overall gross settlement amount of \$675,000.00 was
8 fair and reasonable at the time that it granted preliminary approval and also presently,
9 that its fairness and reasonableness is supported by the factual record, and the positions
10 of the Parties, and none of the information presented to the Court would create any
11 reasonable basis for the Court to reach a contrary conclusion
12

13 15. The Court approved the initial notice and the mailing notice, both in the form
14 and timing to notify potential class members.

15 16. At least two of the purported Objectors admitted to having actually received
16 notice with those two individuals having opted-in as claimants.
17

18 17. The Court did not receive any admissible evidence illustrating that the
19 preliminary approval, or the notice process was unfair or unreasonable.

20 18. The Court had already granted preliminary approval, and the Plaintiffs and
21 Defendants has already agreed to a modification that would result in more funds being
22 available to claimants which the Court also already approved.
23

24 **CONCLUSIONS OF LAW**

25 19. Based on the foregoing findings of fact, the Court concludes that each and
26 every purported objection was untimely as it was submitted after the August 23, 2021
27 date to file any objections, and counsel further admits that none of the purported
28

1 objections were filed by the date, and therefore the Court will overrule or deny those
2 objections based on the fact that they were untimely.

3 20. The initial document filed by Objectors on August 31, 2021 and on September
4 2, 2021, did not comply with the Court's orders regarding objections, and the Court
5 could did not find substantial compliance from the face of the document.
6

7 21. The initial document filed by Objectors was improperly titled as a Notice and
8 not a motion or otherwise indicating it was an actual objection, however, to the extent
9 that the Court construes it as such it is otherwise not compliant with EDCR 2.27, since
10 based on the findings of fact, it failed to properly provide an appendix or table of
11 contents or number those exhibits consecutively in the lower right hand corner.
12 Therefore, the Court finds that this document is procedurally improper.
13

14 22. The declarations filed by Objectors in conjunction with or in support of the
15 purported objections did not comply with Supreme Court Rule 3, as they contained
16 improper redactions, or pseudonyms which were not approved by Court. The
17 Objectors failed to try to rectify this violation after it was pointed out by the Court and
18 the Court finds the filing of a Motion for a Protective Order on September 2, 2021, did
19 not appropriately attempt to address this issue and therefore the Court finds an
20 additional basis as to why it cannot consider these purported declarations in support
21 of objections or asserting objections.
22

23 23. The Court also found that, the declarations submitted by the Objectors made
24 assertions that were not based on personal knowledge, and were essentially boilerplate
25 copies contained unsupported speculation and made unsubstantiated legal conclusions
26 prepared by counsel so the Court cannot properly afford these any evidentiary basis.
27
28

1 24. Further the Court finds that the declarations submitted by Objectors do not
2 authorize counsel to appear on their behalf to assert their objections, and Objectors'
3 respective failure to appear with counsel or on their own is against the Court's previous
4 orders that objectors should appear with counsel or on their own at the time for hearing
5 to assert objections, and accordingly this provides another basis to deny the objections
6

7 25. The Court further finds that pursuant to EDCR 2.20, which provides that any
8 nonmoving party may file a written joinder within 7 days after service of a motion,
9 any such joinders (aside from the other impropriety of their filing) filed more than 7
10 days after the August 31, 2021, document by Objectors, must not be considered as
11 they are also untimely as well as procedurally improper.
12

13 26. The Court concludes that it has sufficient information and argument before it
14 to perform an appropriate analysis as to whether the settlement merits final approval,
15 pursuant to *United States v. Oregon*, 913 F.2d 576, 582 (9th Cir. 1990), citing and
16 quoting *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977).
17

18 27. The Court concludes also that its evaluation although necessary, 'must stop
19 short of the detailed and thorough' investigation of a trial." *Id.*, quoting and citing
20 *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 462 (2^d Cir. 1974). "The reviewing
21 court should not determine contested issues of fact that underlie the dispute." *Id.*,
22 citing *Officers for Justice v. Civil Service Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982).
23 Accordingly, the Court will not do a full analysis of each contested issue as it is not
24 appropriate to do so in analyzing the final fairness and reasonableness of the class
25 action settlement.
26

27 28. The Court finds that despite the procedural and substantive defects in the
28 objections, it is appropriate for the Court to consider certain due process issues raised

1 by the Objectors regarding the procedure of the class action administration, and
2 fairness, which the Court would have already considered in performing its analysis of
3 whether to grant final approval of the class action settlement.

4 29. Courts in the Ninth Circuit consider the following eight factors to assess
5 whether final approval of a class settlement is warranted: (1) the strength of plaintiffs'
6 case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) risk
7 of maintaining class action status through trial; (4) amount offered in settlement; (5)
8 extent of discovery completed and state of the proceedings; (6) experience and views
9 of counsel; (7) whether there is a governmental participant; and (8) reaction of class
10 members to the proposed settlement. *Churchill Village v. Gen. Elec.*, 361 F.3d 566,
11 575 (9th Cir. 2004).

14 30. A court should approve a class settlement under Rule 23(e) if it "is
15 fundamentally fair, adequate and reasonable." *Torrisi v. Tucson Elec. Power Co.*, 8
16 F.3d 1370, 1375 (9th Cir. 1993) (internal quotation marks omitted); accord *In re Mego*
17 *Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000) (citation omitted). Although
18 this is a citation that references the Federal Rules, NRCP 23 is analogous for the
19 purposes of analyzing whether the settlement is fair, adequate, and reasonable and
20 appropriate for final approval.

22 31. The Nevada Supreme Court specifically remanded the above-captioned case
23 to the "district court to conduct appropriate proceedings, if any, to alter, amend or
24 vacate its order or judgment as necessary for the parties to fulfill the terms of their
25 settlement agreement". *Supreme Court order of dismissal of appeal and remand, dated*
26 *February 28, 2020*. Accordingly, the Court finds that based on this order, it is
27 appropriate to incorporate all of the Court's prior orders with regards to notice, the
28

1 motion(s) to certify class, the vacating of various orders, and the extension of various
2 times.

3 32. Although class settlement requires the Court to exercise independent scrutiny
4 of the settlement in connection with granting settlement approval, the Court, must also
5 give “proper deference to the private consensual decision of the parties.” *Hanlon v.*
6 *Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). Under that “proper deference
7 standard” the Court’s examination of the terms of a class settlement “...must be limited
8 to the extent necessary to reach a reasoned judgment that the agreement is not the
9 product of fraud or overreaching by, or collusion between, the negotiating parties, and
10 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”
11 *Id.*, citing *Officers for Justice*, 688 F.2d at 625.), which will also be considered by the
12 Court herein.

15 33. The Court in analyzing the fairness, reasonableness, and adequacy of the
16 settlement, reviews the procedural posture of the case at the time of resolution was that
17 class certification had been denied, and the fact that the Court had previously found
18 that the potential class members were not necessarily similarly situated to the named
19 plaintiffs based on the facts and evidence presented to it. Further, the Court finds that
20 the second motion for class certification was denied due to how it was presented to the
21 Court, and the failure to address its previous deficiencies or present additional
22 evidence, and neither of these denials were on the basis of NRS 608.

25 34. Accordingly, the Court does not find that any subsequent rulings would be
26 likely to have a material effect on the Court's prior decisions with respect to class
27 certification.

1 35. Further, the Court finds that holdings within *Jane Doe Dancer I et al. v. La*
2 *Fuente*, directs district courts to conduct an appropriate analysis on the individualized
3 facts of matters before them involving wage and hour allegations and dancers,
4 accordingly, the Court finds that it already performed such an analysis of the
5 individualized facts in this matter, as they related to the only remaining individual
6 plaintiff at the time of summary judgment, Jacqueline Franklin insofar as this Court
7 must consider the relative positions of the Parties as well as the likelihood of sustaining
8 a future class certification. Otherwise the Court cannot speculate as to any other
9 possible outcome that may be reached by the Supreme Court.
10

11 36. The Court also concludes that the Supreme Court's order dismissing the
12 appeal and remanding it back to the District Court, did not include any findings or
13 instruction which would permit either party to introduce new arguments, only that it
14 "could reinstate the appeal" via a motion, pursuant to the order's plain language.
15

16 37. Based on the individual remaining plaintiff, the lack of class certification, and
17 the different factual aspects underlying the *La Fuente* decision, the Court views that
18 the positions of the Plaintiffs and Defendant when engaging in settlement negotiations,
19 obtaining preliminary approval, and now seeking final approval have not been altered
20 by any subsequent rulings, including *La Fuente*, based on the Court's analysis of the
21 parties' positions, and the facts and record of this matter.
22

23 38. The Court concludes that sending out the two mailings, and performing skip
24 traces and the processes done by Simpluris as presented within the declaration from
25 Simpluris representative, Cassandra Polites, evidences that class members had fair and
26 adequate notice.
27
28

1 39. The Court finds, based on the representations made orally on the record to the
2 Court by Plaintiffs' counsel at the September 30, 2021 hearing, that there is no
3 discrepancy in respect to the number of class members and the number of class
4 members to whom notice was mailed by Simpluris. Accordingly, based on the
5 elimination of this claimed discrepancy by objectors involving 262 class members, the
6 Court finds that approximately 89.1 percent of the proposed class, and not 86.1% of
7 the proposed class as indicated by Objectors, received or at least presumptively
8 received (if a packet was not returned) notice further indicating that the process was
9 fair and appropriate, including some of the purported Objectors.
10

11 40. The Court also reviews the gross settlement amount of \$675,000.00, which it
12 already preliminarily approved, is also fair and adequate given the positions of the
13 parties, and also due to the fact that unlike in the preliminary approval, the full amount,
14 minus fees and costs as delineated within the settlement agreement and pursuant to
15 this Court's orders, will be available to pay claimants, with any amounts being
16 returned to Defendant only after a claimant has been sent a check and had the
17 opportunity to cash it.
18

19 41. There was no legal authority before the Court to suggest that the possibility
20 of a higher settlement or recovery, must be a relevant factor in determining whether to
21 grant final approval. The Court concludes that Objectors' counsel assertions that such
22 a larger recovery was probable or should be considered under the relevant
23 circumstances is speculation and is not persuasive authority weighing against final
24 approval of the settlement.
25

26 42. Further, when determining whether to grant final approval to a class action
27 settlement, courts review such settlements in light of strong judicial and public policies
28

1 favoring compromise. *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 280 (S.D.N.Y.
2 1999). A class action suit, with the accompanying litigation time, cost, and
3 uncertainty, particularly lends itself to settlement. *See Air Line Stewards &*
4 *Stewardesses Ass'n v. Trans World Airlines, Inc.*, 630 F.2d 1164, 1166-67 (7th Cir.
5 1980) ("Federal courts look with great favor upon the voluntary resolution of litigation
6 through settlement. . .this rule has particular force regarding class action lawsuits.")

8 43. The Court also concludes that weighing all factors such as judicial and public
9 policies and the accompanying time, cost and uncertainty of this matter, the positions
10 of the Parties, and the possibility that a class action may not be obtained, that this
11 settlement amount is fair and reasonable, when it looks to the totality of all of the
12 circumstances, positions of the parties, and history of the case leading up to the
13 settlement, as well as the uncertainty of the Plaintiffs prevailing in the future should
14 the appeal be reinstated. Indeed, the Court recognizes that there is the possibility of no
15 recovery by individual plaintiffs and additional attorneys' fees and costs.
16

17 44. The Court concludes even after considering the court approved settlement of
18 federal minimum wage claims by certain dancers in a collective action against
19 defendant in *Desio v. Russell Road Food and Beverage LLC*, United States District
20 Court of Nevada, 15-CV-1440, discussed in Objectors' reply filing with a later errata
21 filed containing such order, that such Court approved settlement cannot properly be
22 weighed as evidence as to the fairness of this settlement, because it fails to address any
23 factors or the underlying facts of that case and positions of the parties therein in any
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1 fashion that should or does meaningfully impact the Court's analysis of the proposed
2 settlement in this case.².

3 45. Further, the Court here looks to the Supreme Court which chose to forego oral
4 argument and remands the matter back even on the eve of such oral argument
5 occurring, and with specific instructions to the Court regarding the effectuation of
6 settlement, and in accordance with relevant case law also looks at such an agreement
7 with deference to the parties' agreement.
8

9 46. The Court also concludes that there were no timely objections filed by any
10 individuals, and at least some individuals did effectively opt-out of being included in
11 the settlement.
12

13 47. Even with the extended notice period permitted by the Court there were no
14 timely objections until there was some publicity by current Objectors' counsel and
15 even those were filed untimely.
16

17 48. The Court has reviewed the fact that there is a bona fide dispute between the
18 parties regarding minimum wage, and the Court specifically concludes that because
19 prior to settlement there was no class certified, the individuals here, are getting benefits
20 out of the settlement of a class which they did not have previously and which they may
21 not achieve in the future. The Court concludes therefore this is an additional benefit to
22 those individuals who decided to file a claim. Indeed, the Court concludes that this
23 settlement "provides for relief now, not some wholly speculative payment of a
24 hypothetically larger amount years down the road." *Strougo v. Bassini*, 258 F. Supp.
25 2d 254, 260 (S.D.N.Y. 2003). Under these circumstances, it is proper for the Parties
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² Such case was also filed as a collective action which differs from a class action, pursuant to the Federal Rules of Civil Procedure.

1 “to take the bird in the hand instead of the prospective flock in the bush.” *Oppenlander*
2 *v. Standard Oil Co.*, 64 F.R.D. 597, 624 (D. Colo. 1974) (citation omitted).

3 49. The Court also concludes that because of the adequate notice, and the fact that
4 there was sufficient notice of sums that could be given, and the fact that individuals
5 had a clear claims procedure which people were able to follow, there is further
6 evidence of the fairness and adequacy of the procedure and amount.

7 50. The Court also concludes in analyzing the relevant factors in final approval,
8 there was no global determinations in this case as to anyone else, and even a “reversal”
9 with regards to the individual plaintiff on whom summary judgment was granted
10 against, such a reversal would not inure to anyone else.

11 51. The Court recognizes that also at the time of the Court’s previous rulings there
12 were also subject matter jurisdiction issues with certain individuals, which the Court
13 must also consider based on the law at the time of the decisions, which also weighs in
14 favor of final approval of the settlement.

15 52. In accordance with the relevant factors identified by the Ninth Circuit, the
16 Court also concludes based on the case history and docket, that there was significant
17 investigation, formal and informal discovery, and significant research conducted so that
18 the parties were able to reasonably evaluate the settlement.

19 53. Further, the Court concludes that the fact this case was heavily litigated,
20 commencing in 2014, and in active litigation throughout 2017 and 2018 until the
21 Court’s decisions were appealed also weighs heavily in favor of final approval, and the
22 fairness and reasonableness of the final settlement amount.

23 54. The Court concludes that the final approval will prevent individuals from the
24 process of having to go back and see if their individual claims could potentially even
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1 go to class certification, and such final approval will avoid substantial costs, delay and
2 risk that would be presented for further pursuit of litigation. This also weighs in favor
3 of the final approval of the class settlement.

4 55. Based on the information presented to the Court and arguments of counsel, the
5 proposed settlement has been reached as the result of intensive, serious and non-
6 collusive negotiations. There has been no evidence that there was any collusion in
7 negotiating this settlement, and in fact the opposite was presented to the Court in both
8 filings and argument of counsel for the Plaintiffs and Defendant.

9 56. The Court concludes that both Plaintiffs and Defendant were represented by
10 experienced counsel, and the respective counsel for the parties demonstrated that they
11 have the requisite background and experience in litigating and negotiating these types
12 of issues, including Rule 23, and employment related matters. The Court has analyzed
13 this factor throughout the proceedings, and in particular when it permitted class counsel
14 to proceed as such.

15 57. The Court also concludes that the scope of the release is appropriate and
16 afforded individuals the requisite opportunity to be excluded from the settlement, as
17 some individuals chose to do. The overwhelming majority of the class willingly
18 approved the offer and stayed in the class, and presented no timely objections evidences
19 objective positive commentary as to its fairness. *Hanlon*, 150 F.3d at 2017. Indeed, any
20 additional or other potential recovery would be years later for any individuals at great
21 risk.

22 58. The Court further concludes that there is no governmental participant which
23 also weights in favor of the settlement. *See Churchill Village v. General Electric*, 361
24 F.3d 566.

1 59. Further, to the extent that the Court was legally permitted to look at the
2 purported objections submitted to the Court, the Court concludes that upon its analysis
3 the objections are not individualized and ultimately are based on the individuals being
4 told that they could get more money. The potential that the Supreme Court may render
5 a ruling that impacts this specific case in their favor does not vitiate the fact that this
6 settlement as negotiated and reviewed by the Court is fair, reasonable and adequate.

7
8 60. In accordance with the Preliminary Approval Order, and the stipulation and
9 order which modified the settlement signed and entered by the Court on April 29, 2021,
10 the class members which are defined as being individuals who performed at Crazy
11 Horse III Gentlemen's Club between November 4, 2012 to October 16, 2019, and who
12 had at least one log-in for a minimum of at least two hours, as provided for by the
13 Settlement Agreement constitute a certified class for purposes of this settlement
14 approval and pursuant to Rule 23, with the exception of those who specifically and
15 timely requested to be excluded.
16

17
18 61. The Court concludes that none of its findings or conclusions modify or
19 otherwise overrule any of its previous orders in this matter, and to the extent that any
20 conclusions or findings which were made orally are not otherwise memorialized in
21 these conclusions they are incorporated herein.

22 **THE COURT FINDS** that payment from the Settlement of \$5,000.00 to
23 Jacqueline Franklin, as the representative plaintiff from the Settlement to compensate
24 her for her efforts on behalf of the Class, is fair and adequate and shall be made.

25
26 **THE COURT ALSO FINDS** that the administration costs of Simpluris, as
27 the settlement administrator, in the amount of \$30,000.00, are fair and reasonable and
28

shall be paid as provided for in the settlement agreement, with any additional fees to be paid by Defendant.

THE COURT FURTHER FINDS that by operation of the entry of this Final Approval Order, Plaintiffs and Class Members are permanently barred from prosecuting against Russell Road, and the Released Parties any of the released claims as specified in the Settlement Agreement, except for the following individuals who elected to, and did, file a timely request to be excluded from the Settlement:

First Name	Last Name
Chelsey	Mckenna
Anastasiya	Hancharyk
Brittney	Dudinski
Jenna E	Buckley
Samantha C	Spiridellis
Aisha	Arid
Amber	Shafer
Kelsy	Bingo
Erika	Donaldson
Stavroula	Papanikoj
Yaritza	Zalazar Silva
Natalie	Yang
Twana	Deshayes
Katelyn	Hebden
Samara	Brandon

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Elizabeth	Betancourt
Angela	Moore
Kyra	Gutierrez
Kameron	Ernestberg
Erica L	Chavez
Sherry	Smith

IT IS HEREBY ORDERED that the Objections or Notices of Objection to final approval of the class action settlement are DENIED and OVERRULED.

IT IS FURTHER ORDERED that the Court GRANTS the Motion for Final Approval of Class Action Settlement.

THE COURT ORDERS that upon completion of administration of the settlement, the Settlement Administrator will provide written certification of such completion to the Court and counsel for the Parties.

// // //

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// // //

Stephanie Smith

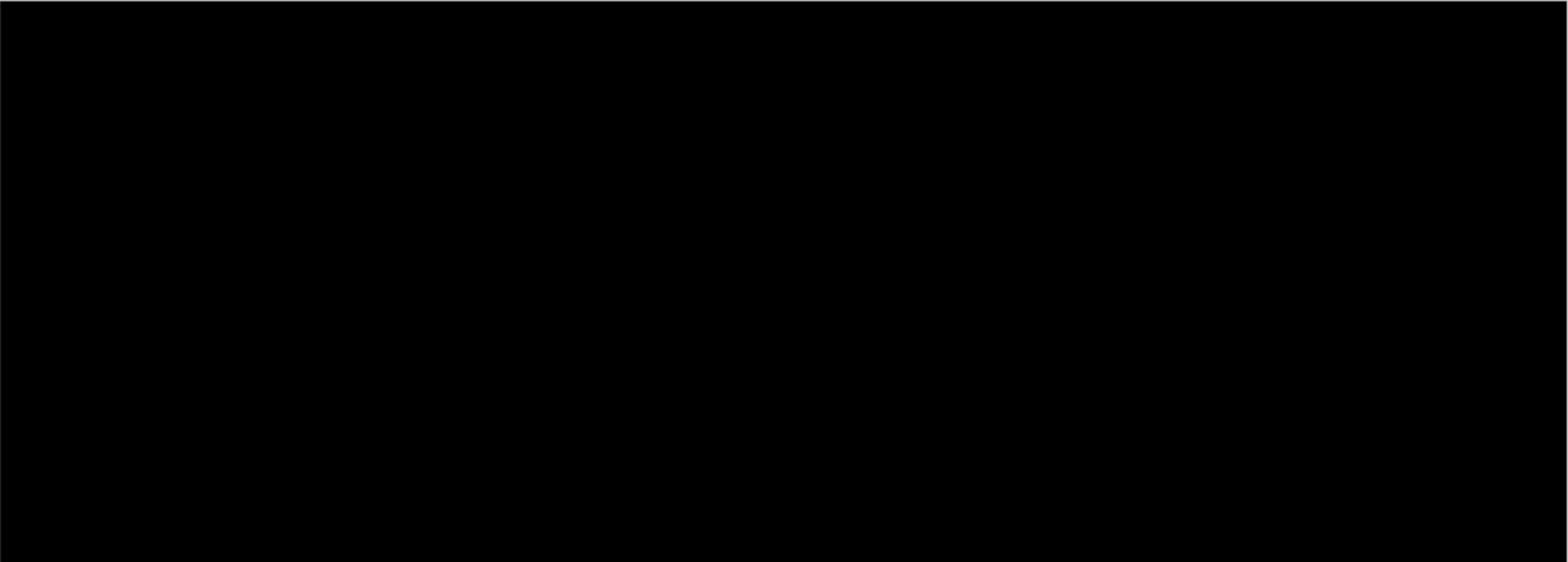
From: leongreenberg overtimelaw.com <leongreenberg@overtimelaw.com>
Sent: Friday, November 5, 2021 4:14 PM
To: Stephanie Smith; Kimball Jones, Esq.
Cc: Erick Finch; Ranni Gonzalez; Jeffery Bendavid; Leilani Gamboa; Mick Rusing; Jackie Franks
Subject: RE: Park et al v. Russell Road- stipulation and order - work up - concern

I grant my consent for you to place my /s/ on this as agreement to the form as you have drafted for this order and you can submit it accordingly. You considered my last remaining concern regarding that language in paragraph 7 not being congruent with the record and disagreed with changing that, I will not be submitting any varying form of Order as I do not believe that issue is sufficiently material to warrant that and give my consent to the form of Order you have prepared. Thank you.

Leon Greenberg
Attorney at Law
2965 South Jones Boulevard #E3
Las Vegas, NV 89146
(702) 383-6085
Member Nevada, California
New York, New Jersey and Pennsylvania Bars
Website: Overtimelaw.com
Leongreenberg@overtimelaw.com

From: Stephanie Smith <ssmith@bendavidfirm.com>
Sent: Friday, November 05, 2021 4:02 PM
To: leongreenberg overtimelaw.com <leongreenberg@overtimelaw.com>; Kimball Jones, Esq. <kimball@bighornlaw.com>
Cc: Erick Finch <erick@bighornlaw.com>; Ranni Gonzalez <ranni@overtimelaw.com>; Jeffery Bendavid <jbendavid@bendavidfirm.com>; Leilani Gamboa <LGamboa@bendavidfirm.com>; Mick Rusing <mrusing@rllaz.com>; Jackie Franks <jfranks@rllaz.com>
Subject: RE: Park et al v. Russell Road- stipulation and order - work up - concern

Kimball and Leon- can you please each provide a clean authorization email regarding your signature as to the attached. Thank you.



Stephanie Smith

From: Kimball Jones, Esq. <kimball@bighornlaw.com>
Sent: Sunday, November 7, 2021 3:05 PM
To: Stephanie Smith
Cc: dc31inbox@clarkcountycourts.us; Jeffery Bendavid; Mick Rusing; Erick Finch; leongreenberg overtimelaw.com; Ranni Gonzalez; Jackie Franks
Subject: Re: Case No. A-14-709372 - Park v. Russell Road - Proposed Findings of Fact and Conclusions of Law Denying Objections and Granting Final Settlement Approval

We approve. My e-signature may be added. We approved several almost identical prior versions - apologies for the late approval on this version.



Kimball Jones, Esq.
Partner | Attorney
Tel: (702) 333-1111
Fax: (702) 507-0092
Email: kimball@bighornlaw.com
Web: bighornlaw.com



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On Fri, Nov 5, 2021 at 5:19 PM Stephanie Smith <ssmith@bendavidfirm.com> wrote:

Department 31- Please be advised I was unable to obtain final signature authorization prior to this submission of the proposed FFCL from Plaintiffs' counsel, they are cc-ed on here so that they may respond directly to the Court. Attached please find the authorization of Mr. Greenberg who is also cc-ed on this email. Thank you.

Stephanie J. Smith, Esq.

BendavidLaw

7301 Peak Drive, Suite 150 | Las Vegas, Nevada 89128

Stephanie Smith

From: Mick Rusing <mrusing@rllaz.com>
Sent: Friday, November 5, 2021 9:39 PM
To: Stephanie Smith
Subject: Re: Park et al v. Russell Road- stipulation and order - work up - concern

Ok

Sent from my iPhone

On Nov 5, 2021, at 5:06 PM, Stephanie Smith <ssmith@bendavidfirm.com> wrote:

Mick and Kimball- Please provide your authorizations. We have to submit to the Court today.

From: Stephanie Smith
Sent: Friday, November 5, 2021 4:02 PM
To: leongreenberg overtimelaw.com <leongreenberg@overtimelaw.com>; Kimball Jones, Esq. <kimball@bighornlaw.com>
Cc: Erick Finch <erick@bighornlaw.com>; Ranni Gonzalez <ranni@overtimelaw.com>; Jeffery Bendavid <jbendavid@bendavidfirm.com>; Leilani Gamboa <LGamboa@bendavidfirm.com>; Mick Rusing <mrusing@rllaz.com>; Jackie Franks <jfranks@rllaz.com>
Subject: RE: Park et al v. Russell Road- stipulation and order - work up - concern

Kimball and Leon- can you please each provide a clean authorization email regarding your signature as to the attached. Thank you.

From: leongreenberg overtimelaw.com <leongreenberg@overtimelaw.com>
Sent: Friday, November 5, 2021 2:47 PM
To: Stephanie Smith <ssmith@bendavidfirm.com>; Kimball Jones, Esq. <kimball@bighornlaw.com>
Cc: Erick Finch <erick@bighornlaw.com>; Ranni Gonzalez <ranni@overtimelaw.com>; Jeffery Bendavid <jbendavid@bendavidfirm.com>; Leilani Gamboa <LGamboa@bendavidfirm.com>; Mick Rusing <mrusing@rllaz.com>; Jackie Franks <jfranks@rllaz.com>
Subject: RE: Park et al v. Russell Road- stipulation and order - work up - concern

I do think that small issue in paragraph 7 remains and it would be better to address it (if you think that paragraph should remain, I don't really see the point of it) by adopting the language I gave you. You don't do that in this last draft and if you decline to do as I suggested on that I am not going to withhold my /s/ or spend further time on this. So you can indicate my /s/ on this in the form as you last provided or if you seek to review/edit further you can get back to me. Thank you for your cooperation.

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 Ashleigh Park, Plaintiff(s)

CASE NO: A-14-709372-C

7 vs.

DEPT. NO. Department 31

8 Crazy Horse III Gentleman's
9 Club at The Playground,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the
court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

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