UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JANE DOES 1-2, individually and on behalf of all others similarly situated,

Plaintiffs,

Case No. 1:16-cv-10877
Hon. STEPHEN J. MURPHY, III

v.

DÉJÀ VU SERVICES, INC., f/k/a DÉJÀ VU SERVICES, INC., DV SAGINAW, LLC, d/b/a DÉJÀ VU SHOWGIRLS, HARRY MOHNEY, and THE DÉJÀ VU AFFILIATED NIGHTCLUBS IDENTIFIED ON EXHIBIT "A" ATTACHED HERETO, jointly and severally,

Defendants.

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# SECOND AMENDED COLLECTIVE AND CLASS ACTION COMPLAINT

## I. INTRODUCTION

1. This is a class action brought by Plaintiffs Jane Does 1-2 (hereinafter collectively referred to as "Plaintiffs") against Defendants Déjà Vu Services, Inc., f/k/a Déjà Vu Services, Inc., DV Saginaw, LLC, d/b/a Déjà Vu Showgirls, Harry Mohney, and the Déjà Vu Affiliated Nightclubs identified on ***Exhibit A*** attached hereto (hereinafter collectively referred to as "Defendants"). The Class which the Plaintiffs seek to represent is composed of employees who, during the relevant time period, worked as exotic dancers at Déjà Vu Affiliated Nightclubs nationwide.

Plaintiffs contend that all class members were denied their fundamental rights under applicable state wage and hour laws, causing financial loss and injury. Specifically, Plaintiffs complain that Defendants misclassified Plaintiffs and all other members of the Class as independent contractors, as opposed to employees, at all times in which they worked as dancers at Defendants' adult nightclubs located throughout the United States. Plaintiffs contend that Defendants failed to pay Plaintiffs and all other members of the Class the minimum wages and other benefits to which they were entitled under applicable federal and state laws. Additionally, Defendants engaged in unlawful tip-sharing by requiring dancers in the Class to share gratuities given to them by patrons with Defendants and their employees, such as doormen and DJs. Plaintiffs, therefore, bring this class action seeking damages, back pay, restitution, liquidated damages, injunctive and declaratory relief, civil penalties, prejudgment interest, reasonable attorneys' fees and costs, and any and all other relief the Court deems just, reasonable and equitable in the circumstances.

## II. JURISDICTION & VENUE

2. This Second Amended Complaint alleges causes of action under the federal Fair Labor Standards Act, 29 U.S.C. §201, *et seq*. ("FLSA"). Accordingly, this Court has jurisdiction pursuant to 28 U.S.C. §1331.

3. The Court also has diversity jurisdiction pursuant to 28 U.S.C. §1332 and pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §1332(d)

("CAFA"). Diversity of citizenship between the parties exists and the amount-in-controversy requirements under the above-referenced provisions are met.

4. A substantial part of the events and conduct giving rise to the claims in this action occurred in this Judicial District. Defendant Déjà Vu Services, Inc. and DV Saginaw, LLC reside in this district and operate numerous nightclubs in this District which employed Class members. Defendant Mohney resides in California, Nevada and/or other foreign states. Déjà Vu Services, Inc. and Mohney also maintain significant business offices in California and Nevada where much of the alleged unlawful policy decisions and conduct occurred, and emanated to other states from, affecting Class members nationwide. As a result, venue is proper in this jurisdiction pursuant to 28 U.S.C. §1391.

## III. PARTIES & STANDING

5. Plaintiff Jane Doe 1 ("Doe 1") is a resident of Bay City, Bay County, Michigan. At relevant times, Doe 1 was an employee of Defendants, as defined in 29 U.S.C. §201 *et seq*. and the Michigan Workforce Opportunity Wage Act, MCL § 408.411 *et seq*., working as an exotic dancer at the Déjà vu Affiliated Nightclub in Saginaw, Michigan. Doe 1 worked at this Nightclub on various dates during the class period starting in approximately October 2009 and is a member of the Class. Like other Class members, during the periods Doe 1 worked at the Déjà Vu Affiliated Nightclub, Doe 1 was: (1) misclassified as an independent contractor and

as a result, was not paid any wages (or provided other benefits and rights) which she was entitled to as an employee; (2) required to share tip income with Defendants and their employees as described more fully below.

6. Plaintiff Jane Doe 2 ("Doe 2") is a resident of the State of Nevada. At relevant times, Plaintiff was an employee of Defendants as defined in 29 U.S.C. §201, *et seq.*, and the Nevada minimum wage laws, N.R.S. 608.050, *et seq.*, working as an exotic dancer at two Déjà Vu Affiliated Nightclubs in Las Vegas, Nevada. Doe 2 worked at these nightclubs on various dates between 2012 and 2015 and is a member of the Class. Like other Class Members, during the periods Doe 2 worked at the Déjà Vu Affiliated Nightclubs, Doe 2 was: (1) misclassified as an independent contractor and as a result, was not paid any wages (and provided other benefits and rights) which she was entitled to as an employee; (2) required to share tip income with Defendants and their employees as described more fully below.

7. Pursuant to the principles set forth in *Doe v Bodwin*, 119 Mich. App. 264, 326 N.W.2d 473 (Mich. App. 1982), Does 1-2 file this action under fictitious names and seek to proceed anonymously because: (a) they wis*h to pr*eserve their rights to privacy; (b) there is a significant social stigma attached to the Does' occupations as exotic dancers; (c) there is an inherent amount of risk associated with Does' profession and they fear disclosure of their legal names and addresses may subject them to risk of injury by current and former patrons; and (d) in addition to

the fear of retaliation by the Defendants, they would be hesitant to maintain this action enforcing fundamental employment rights if their names were to be forever associated with the Defendants.

> It is customary in Defendants' business for employee-dancers, like Plaintiffs, to use pseudonyms and stage names for both security and privacy purposes. The use of these names allays any reasonable fear that proceeding anonymously would offend the "customary and constitutionally-embedded presumption of openness in judicial proceedings." *N.W. Enterprises, Inc. v. City of Houston*, 352 F.3d 162 (5th Cir. 2003).

8. There is no prejudice to Defendants if Does 1-2 file this action under fictitious names and proceed anonymously. In the ordinary course of business, Defendants themselves identify the exotic dancers they employ through stage names and employee codes.

9. Defendants know the identities of Does 1-2. The identities of Does 1-2 were disclosed to Defendants privately in order to allow them to assess and defend their claims. As a result, there are no due process concerns if Does 1-2 proceed anonymously.

10. The Defendants are business entities and/or individuals that jointly employ and control the work of members of the Class that work or have worked at Déjà Vu Affiliated Nightclubs throughout the United States.

11. The Déjà Vu Affiliated Nightclubs listed on ***Exhibit A***, which are businesses that currently are, or that at any time during the Class Period were, either:

A) parties to an agreement or contract with Services whereby they receive(d) either consulting or management services, or licensing rights, from Déjà Vu Services, Inc.; B) parties to an agreement or contract with Global Licensing, Inc., whereby they receive(d) licensing rights from Global; C) owned, either wholly or in part, and directly or indirectly, by either Mohney or Jason Cash Mohney; or D) tenants of Mohney or Jason Mohney, either directly or indirectly.

12. The senior management of all Déjà Vu Affiliated Nightclubs throughout the country is delegated to Déjà Vu Services, Inc., Harry Mohney and/or their agents. In turn, the employment policies affecting class members at the Déjà Vu Affiliated Nightclubs nationwide are dictated, determined, controlled and perpetuated in material part by Déjà Vu Services, Inc. and Mohney. As such, Déjà Vu Services, Inc. and Mohney are joint employers of all dancers under applicable federal and state wage and hour laws, including the FLSA.

13. Defendant Déjà Vu Services, Inc. (hereinafter "Déjà Vu Services" or "DVS") is a Michigan Corporation maintaining offices in North Hollywood, California, San Diego, California and Lansing, Michigan. The registered office for Déjà Vu Services is 8252 E. Lansing Road, Durand, Michigan, 48429. Déjà Vu Services also maintains corporate offices in North Hollywood and San Diego, California. From those offices Déjà Vu Services manages, operates and/or controls the business operations and employment and wage policies at the numerous Déjà Vu

Affiliated Nightclubs doing business under the "Déjà Vu" "Déjà Vu Showgirls," "Déjà Vu Dream Girls," "Déjà Vu Centerfolds," and/or other "Déjà Vu" trade names nationwide, including the Déjà Vu Affiliated Nightclubs where Plaintiffs and all Class members worked.

14. Harry Mohney ("Mohney") is an individual residing in California, Nevada and/or other foreign addresses. Upon information and belief, Mohney owns, manages and/or controls Déjà Vu Services and each of the Déjà Vu Affiliated Nightclubs, directly or indirectly. Mohney together with DVS perpetuates the employment policies affecting Class members that are challenged in this lawsuit. Mohney maintains offices in California where he conducts this work and makes these decisions which affect Class members nationwide. Mohney manages, operates and/or controls the business operations and employment policies at the numerous nightclubs doing business under the "Déjà Vu" "Déjà Vu Showgirls," "Déjà Vu DreamGirls," "Déjà Vu Centerfolds," and/or other "Déjà Vu" trade names nationwide including the Déjà Vu Affiliated Nightclubs where Plaintiffs and all Class members worked.

15. Déjà Vu Services and Mohney are joint employers of all Class members and as such are jointly and severally liable for any violations of the wage and hour laws set forth below. Plaintiffs seek to certify a class of all exotic dancers who worked at all Déjà Vu Affiliated Nightclubs nationwide that were directly or

indirectly, owned, operated, controlled and/or managed by Déjà Vu Services, and/or Mohney. Déjà Vu Services and Mohney manage, operate and control the significant business operations in each Déjà Vu Affiliated Nightclub, and dictate the common employment policies applicable to each nightclub, including but not limited to the decisions: (1) to classify dancers as independent contractors, as opposed to employees, and; (2) to require that dancers share their tips. Those policies, which affected and harmed Class members nationwide, were established and implemented, in significant and material part, at Déjà Vu Services's and Mohney's offices and places of business in California.

16. DVS, its officers and consultants, including Mohney, have been involved in the decisions to classify exotic dancers working at the Déjà Vu Affiliated Nightclubs as independent contractors, as opposed to employees and to perpetuate and maintain that classification system. As part of those discussions, DVS, its officers and consultants, including Mohney, have discussed compliance with the labor codes with relation to the dancer classification issue and made the decision to try to have dancers "elect" to be independent contractors and waive their statutory rights under the wage and hour laws.

17. Each Déjà Vu Affiliated Nightclub has a common structure where it is held by a nominal corporation but substantial senior management, financial, legal and other critical operational functions are delegated to affiliated companies which

all come under the common control of DVS, its officers and consultants, including Mohney; all or significant senior management functions of each nightclub corporation are delegated to Déjà Vu Services, a company indirectly owned by Mohney. Other key business functions are delegated to and performed by other affiliated companies controlled by Mohney.

18. DVS currently makes its services available to each of the Déjà Vu Affiliated Nightclubs and also licenses various "Déjà Vu" trademarks to the clubs. DVS establishes policies which confirm that it controls the workplace at all of the Déjà Vu Affiliated Nightclubs, including that pertaining to the work and classification of exotic dancers in the Class. Upon information and belief, Déjà Vu Services performs the same business functions with respect to all Déjà Vu Affiliated Nightclubs, including management and consultation functions regarding the employment classification of dancers and tip sharing practices.

19. Mohney, directly or indirectly, holds a significant ownership share in all or certain Déjà Vu Affiliated Nightclubs. DVS, its officers and consultants, including Mohney, make decisions regarding the Déjà vu Affiliated Nightclubs (including employment policies) from their offices in California. Specifically, a senior DVS consultant lives in California and, in conjunction with others, implements, directs, and creates DVS policies on behalf of the Déjà vu Affiliated Nightclubs.

20. DVS employs a number of "consultants" including Mohney. These individuals make decisions regarding DVS and the Déjà vu Affiliated Nightclubs (including employment policies) from their offices in California.

21. Certain DVS officers and "consultants" also manage the Déjà Vu Affiliated Nightclubs. For instance, one DVS consultant – who resides and works in California – is also the President of a holding company that maintains ownership interests in numerous Déjà vu Affiliated Nightclubs. Other managers of Déjà Vu Affiliated Nightclubs report to, are controlled by, and answer to, DVS's officers and consultants. Through this, *inter alia*, DVS and Mohney control the operations of the Déjà Vu Affiliated Nightclubs and the people who work there, including dancers in the class.

22. Upon information and belief, at all relevant times, Mohney has played a significant role in managing, directing and controlling the day-to-day business operations of Déjà Vu Services, all of the Déjà Vu Affiliated Nightclubs, and Modern Bookkeeping.

23. Upon information and belief, at all relevant times Mohney was employed by Déjà Vu Services, and conducting his work, supervision, and direction of the Déjà Vu Affiliated Nightclubs' operations from his offices in California, Nevada, and/or Michigan.

24. Upon information and belief, Mohney, Déjà Vu Services and the Déjà Vu Affiliated Nightclubs employ "consulting" agreements to allow Mohney and Déjà Vu Services to control, operate, direct, and manage the business affairs of the Déjà Vu Affiliated Nightclubs, including those which affect dancer classification and tip sharing policies.

25. At all relevant times, Mohney has been the *de facto* chief corporate officer of Déjà Vu Services and the Déjà Vu Affiliated Nightclubs; has had a significant ownership interest in Déjà Vu Services and the Déjà Vu Affiliated Nightclubs; and has had operational control over significant aspects of the business functions of Déjà Vu Services and the Déjà Vu Affiliated Nightclubs, including those related to the employment classification of dancers; the determination of dancers' wages (or more accurately, the lack thereof); and tip-sharing requirements applicable to dancers working at the nightclubs. Mohney played a significant role in creating and maintaining the business model where dancers working at the Déjà Vu Affiliated Nightclubs were to be classified as independent contractors and required to share their tips. As such, Mohney is jointly and severally liable to Plaintiffs and the Class, along with the other Defendants, for damages stemming from Déjà Vu Services and the other Déjà Vu Affiliated Nightclubs' failure to comply with applicable wage and hour laws.

26. At all relevant times, DVS and Mohney jointly employed all exotic dancers working in the Déjà Vu Affiliated Nightclubs, managed, directed and controlled the operations in each Déjà Vu Affiliated Nightclub, and dictated the common employment policies applicable in each nightclub, including but not limited to the decisions: (1) to misclassify dancers as independent contractors, as opposed to employees; (2) to require that dancers share their tips with Defendants; (3) to require that dancers further share their tips with Defendants' managers, doormen, floor walkers, DJs and other employees who do not usually receive tips, by paying "tip-outs;" (4) to not pay any dancers any wages; (5) to demand improper and unlawful payments from class members; (6) to adopt and implement employment policies which violate the FLSA and/or other wage and hour laws; (7) to threaten retaliation against any dancer attempting to assert her statutory rights to be recognized as an employee. DVS and Mohney created the common business model employed at each Déjà Vu Affiliated Nightclub regarding dancer classification and tip-sharing and require that the practices continue.

27. All named Defendants agreed and conspired among themselves, along with any third party owners of certain of the Déjà Vu Affiliated Nightclubs throughout the country to unlawfully: (1) misclassify dancers as independent contractors, as opposed to employees; (2) require that dancers share their tips with Defendants; (3) require that dancers further share their tips with Defendants'

managers, doormen, floor walkers, DJs and other employees who do not usually receive tips, by paying "tip-outs;" (4) not pay any dancers any wages; (5) demand improper and unlawful payments from Class members; (6) adopt and implement employment policies which violate the FLSA and other wage and hour laws; (7) threaten retaliation against any dancer attempting to assert her statutory rights to be recognized as an employee. The unlawful agreements and conspiracies between Defendants and third parties in the enterprise were entered into as part of a strategy to maximize revenues and profits and to violate Class members' statutory rights.

28. Defendants knew or should have known that the business model employed was unlawful as applicable laws confirm that all money given to dancers by patrons was defined as a gratuity and the sole property of the dancer. Despite this, Defendants continued to willfully engage in the acts described below misclassifying dancers and sharing tip income in violation of their legal duties.

29. At all relevant times, Defendants owned and operated a nightclub business engaged in interstate commerce and which utilized goods moving in interstate commerce. For example, goods sold at the Déjà Vu Affiliated Nightclubs moved in interstate commerce. DVS and Mohney own, manage, and control the business operations at numerous nightclubs in several states doing business under the "Déjà Vu" tradename. On information and belief, during the relevant time period, the annual gross revenues of each Defendant exceeded $500,000 per year.

30. By reason of the foregoing, Defendants, along with the Déjà Vu Affiliated Nightclubs, were at all relevant times enterprises engaged in commerce as defined in 29 U.S.C. §203(r) and §203(s). Defendants and the Déjà Vu Affiliated Nightclubs constitute an "enterprise" within the meaning of 29 U.S.C. §203(r)(1), because they perform related activities through common control for a common business purpose. At relevant times, Plaintiffs and the Class were employed by Defendants, enterprises engaged in commerce within the meaning of 29 U.S.C. §206(a) and §207(a).

## IV. GENERAL ALLEGATIONS APPLICABLE TO ALL COUNTS

31. The FLSA applied to Plaintiffs and the Class at all times in which they worked at the Déjà Vu Affiliated Nightclubs.

32. No exceptions to the application of the FLSA or state wage and hour laws apply to Plaintiffs and the Class. For example, no Class member has ever been a professional or artist exempt from the provisions of those statutes. The exotic dancing performed by Class members while working at the Déjà Vu Affiliated Nightclubs does not require invention, imagination, or talent in a recognized field of artistic endeavor, and Class members have never been compensated by Defendants on a set salary, wage, or fee basis. Rather, Class members' sole source of income while working at the Déjà Vu Affiliated Nightclubs were tips given to them by patrons.

33. At relevant times, Plaintiffs and each member of the Class, defined below, were employees of Defendants under the FLSA and applicable state wage and hour laws.

34. At relevant times, Defendants were the employers of Plaintiffs and each member of the Class, defined below, under the FLSA and other applicable law. Defendants suffered or permitted Class members to work. Defendants, directly or indirectly, employed and exercised significant control over the Class members' wages, hours, and working conditions.

35. At all relevant times, all Defendants were the joint employers of Plaintiffs and members of the Class under the FLSA and/or other applicable law. Plaintiffs' and Class members' employment for one Defendant is not completely disassociated from their employment by the other Defendant. DVS, Mohney, and the Déjà Vu Affiliated Nightclubs do not act entirely independent of each other and are not completely dissociated with respect to the employment of Plaintiffs and the Class. DVS and Mohney maintain significant control over Plaintiffs and other Class members while working at the Déjà Vu Affiliated Nightclubs. DVS and Mohney play significant roles in establishing, maintaining and directing the working and employment policies that are to be applied to Class members while working at the Déjà Vu Affiliated Nightclubs. DVS and Mohney benefit financially from the work Class members perform while working at the Déjà Vu Affiliated Nightclubs.

Additionally, other joint employers like DV Saginaw, LLC (and any other nominal operators / partners in the other Déjà Vu Affiliated Nightclubs) act directly or indirectly in the interest of DVS and Mohney in relation to any supervision they provided Plaintiffs and the other dancers in the Class. As joint employers of Plaintiffs and members of the Class, however, DVS and Mohney are responsible both individually and jointly for compliance with all of the applicable provisions of the FLSA and other applicable wage and hour laws. 29 C.F.R. § 791.2(a) and (b).

36. During the relevant time period, the employment terms, conditions, and policies that applied to Plaintiffs were the same as those applied to the other Class members who worked as exotic dancers at all Déjà Vu Affiliated Nightclubs in all material respects.

37. Throughout the relevant time period, Defendants' policies and procedures regarding the classification of all exotic dancers (including Plaintiffs) at the Déjà Vu Affiliated Nightclubs and treatment of dance tips were the same.

38. As a matter of common business policy, Defendants systematically misclassified Plaintiffs and all Class members as independent contractors, as opposed to employees. Defendants' classification of Plaintiffs as independent contractors was not due to any unique factor related to their employment or relationship with Defendants. Rather, as a matter of common business policy, Defendants routinely misclassified all exotic dancers as independent contractors as

opposed to employees. As a result of this uniform misclassification, Plaintiffs and the members of the Class were not paid the minimum wages required, were deprived of other statutory rights and benefits, and therefore, suffered harm, injury and incurred financial loss.

39. Plaintiffs and members of the Class incurred financial loss, injury, and damage as a result of Defendants' common practices misclassifying them as independent contractors and failing to pay them minimum wages in addition to the tips that they were given by patrons. Plaintiffs' injuries and financial loss were caused by Defendants' application of those common policies in the same manner as they were applied to absent Class members.

40. During the relevant time period, no Class member received any wages or other compensation from Defendants. Members of the Class generated their income solely through the tips received from patrons when they performed exotic table, chair, couch, lap and/or VIP room dances (collectively referred to herein as "dance tips").

41. All monies Class members like Plaintiffs received from patrons when they performed exotic dances were tips, not wages or service fees. Tips belong to the person they are given to. Dance tips were given by patrons directly to dancers in the Class and therefore, belong to dancers in the Class, not Defendants.

42. The full amount dancers in the Class are given by patrons in relation to exotic dances they perform are not taken into Defendants' gross receipts, with a portion then paid out to the dancers. Neither Defendants nor any of their affiliated companies issue W-2 forms, 1099 forms or any other documents to Class members indicating any amounts being paid from their gross receipts to Class members as wages.

43. Plaintiffs and members of the Class are tipped employees as they are engaged in an occupation in which they customarily and regularly receive more than $30 a month in tips. No tip credits offsetting any minimum wages due, however, are permitted. Therefore, as employees of Defendants, Class members are entitled to: (a) receive the full minimum wages due, without any tip credit, reduction or other offset; and (b) to retain the full amount of any dance tips and monies given to them by patrons when they perform exotic dances.

44. Defendants' misclassification of Plaintiffs and other Class members as independent contractors was designed to deny Class members their fundamental rights as employees to receive minimum wages, to demand and retain portions of tips given to Class members by patrons, and done to enhance Defendants' profits at the expense of the Class.

45. Defendants' misclassification of exotic dancers like Plaintiffs was willful. Defendants knew or should have known that Plaintiffs and the other dancers

performing the same job functions were improperly misclassified as independent contractors

46. Employment is defined with "striking breadth" in the wage and hour laws. *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 325-26, 112 S.Ct. 1344, 1349-50 (1992). The determining factor as to whether dancers like Plaintiffs are employees or independent contractors under FLSA is not the dancer's election, subjective intent or any contract. *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 727 (1947). Rather, the test for determining whether an individual is an "employee" under the FLSA is the economic reality test. Under the economic reality test, employee status turns on whether the individual is, as a matter of economic reality, in business for herself and truly independent, or rather is economically dependent upon finding employment in others.

47. Any contract which attempts to have workers in the Class waive, limit or abridge their statutory rights to be treated as an employee under FLSA or other applicable wage and hour laws is void, unenforceable, unconscionable and contrary to public policy. Workers in the Class cannot validly "elect" to be treated as employees or independent contractors under threat of adverse treatment. Nor can workers in the Class agree to be paid less than the minimum wage.

48. Despite this, Defendants unfairly, unlawfully, fraudulently and unconscionably attempt to coerce dancers in the Class to waive their statutory rights

and elect to be treated as independent contractors. Defendants threaten to penalize and discriminate against dancers in the Class if they assert their statutory rights such as through termination and the confiscation of all dance tips, among other adverse conditions and retaliations. Any such retaliation based on the assertion of statutory rights under the wage and hour laws is unlawful. 29 U.S.C. §215(a)(3). Further, it is unlawful for an employer to even threaten to discharge, demote, terminate or discriminate in the terms and conditions of employment because an employee has made a bona fide complaint against an employer for a violation of wage and hour laws. This protection encompasses the exercise of statutory rights on the employees own behalf and on behalf of others. Any actual or threatened retaliation against an employee for the assertion of wage and hour law claims violates the state's fundamental public policy to protect the payment of wages and employee's rights.

49. Under the applicable test, courts utilize several factors to determine economic dependence and employment status. They are: (i) the degree of control exercised by the alleged employer; (ii) the relative investments of the alleged employer and employee; (iii) the degree to which the employee's opportunity for profit and loss is determined by the employer; (iv) the skill and initiative required in performing the job; (v) the permanency of the relationship; and (vi) the degree to which the alleged employee's tasks are integral to the employer's business.

50. The totality of circumstances surrounding the employment relationship between Defendants and the dancers in the Class working at the Déjà Vu Affiliated Nightclubs establishes economic dependence by the dancers on Defendants and employee status. Here, as a matter of economic reality, Plaintiffs and all other Class members are not in business for themselves and truly independent, but rather are economically dependent upon finding employment in others, namely Defendants. The dancers are not engaged in occupations or businesses distinct from that of Defendants. Rather, their work is the basis for Defendants' business. Defendants obtain the patrons who desire exotic dance entertainment and provide the workers who conduct the exotic dance services on behalf of Defendants. Defendants retain pervasive control over the nightclub operation as a whole, and the dancers' duties are an integral part of the operation.

***A. Degree Of Control – Plaintiffs And The Other Dancers Exercise No Control Over Their "Own" Or Their Employers' Business.***

51. Plaintiffs and the other members of the Class do not exert control over a meaningful part of the nightclub business and do not stand as separate economic entities from Defendants. Defendants exercise control over all aspects of the working relationship with Plaintiffs and the other dancers in the nightclubs.

52. Class members' economic status is inextricably linked to those conditions over which Defendants have complete control. Plaintiffs and the other dancers are completely dependent on the Déjà Vu Affiliated Nightclubs for their

earnings. The club controls all of the advertising and promotion without which dancers like Plaintiffs could not survive economically. Moreover, Defendants create and control the atmosphere and surroundings at the Déjà Vu Affiliated Nightclubs, the existence of which dictates the flow of patrons into the club. The dancers have no control over the customer volume or the atmosphere at each of the nightclubs.

53. Defendants employ guidelines and rules dictating the way in which dancers like Plaintiffs must conduct themselves while working at the Déjà Vu Affiliated Nightclubs. Defendants dictate: the hours of operation; length of shifts dancers must work; the show times during which a dancer may perform; minimum dance tips; determine the sequence in which a dancer may perform on stage during her stage rotation; the format and themes of dancers' performances (including their costuming and appearances); theme nights; conduct while at work (i.e., that they be on the floor as much as possible when not on stage and mingle with patrons in a manner which supports Defendants' general business plan); tip sharing; paying "tip-outs" to employees who do not normally receive tips from patrons; requirements that dancer help sell drinks or "Déjà Vu" branded novelties to patrons; and all other terms and conditions of employment.

54. Defendants require Plaintiffs and the other dancers in the Class to schedule work shifts. Defendants require that each shift worked by a dancer be of a minimum number of hours. Further, Defendants require dancers like Plaintiffs to

clock-in and clock-out (or otherwise check in or report) at the beginning and end of each shift. If late or absent for a shift, a dancer is subject to fine, penalty, or reprimand by Defendants. Once a shift starts a dancer, like Plaintiffs, are required to complete the shift and cannot leave early without penalty or reprimand.

55. Defendants impose other rules on dancers such as those restricting smoking breaks, the length of breaks, and how many dancers can take such breaks at a time.

56. While working at the Déjà Vu Affiliated Nightclubs dancers like Plaintiffs perform exotic table, chair, couch, lap and/or VIP room dances for patrons offering them "dance tips." Defendants, not the dancers, set the minimum tip amount that dancers must collect from patrons when performing exotic dances. Defendants announce the minimum tip amounts to patrons in the nightclub wishing to view dances.

57. Defendants dictate the manner and procedure in which dance tips are collected from patrons and tracked. Each time a dancer performs an exotic dance for a patron and receives a dance tip, the dancer is required to immediately account to Defendants for their time and any dance tip given to them by the patron. Additionally, Defendants employ other employees called "checkers," doormen and/or floor walkers to watch dancers work, count private dances they perform, and record the amount of any dance tips received. At the end of a work shift, dancers

like Plaintiffs are required to clock out and account to Defendants for all dances performed for the patrons of the nightclub. Then, in addition to any base "rent" payment, the dancer is required pay a portion of each dance tip given to them by patrons over to Defendants as "rent." The rent payment typically exceeds 30% of each dance tip. Alternatively, in clubs where rent not collected on a per-dance basis, the base "rent," the dancer must pay the nightclub at the end of a shift is higher and ultimately funded through tip-sharing.

58. The entire sum a dancer receives from a patron in relation to a dance is not given to Defendants (and/or the nightclubs) and taken into their gross receipts. Rather, the dancers keep their share of the payment under the tip-sharing policy and only pay over to Defendants and the nightclub the portion they demand as "rent" (e.g., $7 from each $20 dance tip received). As a result, there is no pay out by Defendants to the dancer of any wages. Defendants (and/or the nightclubs) issue no 1099 forms, W-2 forms, or other documents to any dancers showing any sums being paid to dancers as wages.

59. Defendants establish the share or percentage which each dancer is required to pay it for each type of dance they receive dance tips for during the work shift. In addition, per-dance amounts or "tip-outs" must be paid by dancers (e.g. approx. $1 for each dance) to the nightclub manager, dance checkers, disk-jockey, bouncers/door staff and/or other employees as part of Defendants' tip-sharing

policy. Dancers are also required to help sell goods (such as t-shirts, videos or hats) bearing the Déjà Vu logo to patrons as part of their job duties performing table dances. As part of these "special" dances, goods are sold as a package with a table dance. The foregoing establishes that Defendants control and set the terms and conditions of all dancers' work. This is the hallmark of economic dependence and control.

***B. Skill and Initiative of a Person in Business for Themselves***

60. Plaintiffs, like all other dancers, do not exercise the skill and initiative of a person in business for themselves.

61. Plaintiffs, like all other dancers, are not required to have any specialized or unusual skills to work at the Déjà Vu Affiliated Nightclubs. Prior dance experience is not required to perform at the Déjà Vu Affiliated Nightclubs. Dancers are not required to attain a certain level of skill in order to work at the Déjà Vu Affiliated Nightclubs. There are no dance seminars, no specialized training, no instruction booklets, and no choreography provided or required in order to work at any of the Déjà Vu Affiliated Nightclubs. The dance skills utilized are commensurate with those exercised by ordinary people who choose to dance at a disco or at a wedding.

62. Plaintiffs, like all other dancers, do not have the opportunity to exercise the business skills and initiative necessary to elevate their status to that of

independent contractors. Dancers, like Plaintiffs, own no enterprise. Dancers, like Plaintiffs, exercise no business management skills. Dancers maintain no separate business structures or facilities. Dancers exercise no control over customer volume or atmosphere at the Déjà Vu Affiliated Nightclubs. Dancers do not actively participate in any effort to increase the nightclub's client base, enhance goodwill, or establish contracting possibilities. The scope of a dancer's initiative is restricted to decisions involving what clothes to wear (within Defendants' guidelines) or how provocatively to dance which is consistent with the status of an employee opposed to an independent contractor.

63. Plaintiffs, like all other dancers, are not permitted to hire or subcontract other qualified individuals to provide additional dances to patrons, and increase their revenues, as an independent contractor in business for themselves would.

***C. Relative Investment***

64. Plaintiffs' relative investment is minor when compared to the investment made by Defendants.

65. Plaintiffs, like all other dancers, make no capital investment in the facilities, advertising, maintenance, sound system and lights, food, beverage and other inventory, or staffing of the Déjà Vu Affiliated Nightclubs. All investment and risk capital is provided by Defendants. Dancers' investments are limited to expenditures on costumes and make-up which they may choose to wear while

working, and their own labor. But for Defendants' provision of the lavish nightclub work environment the dancers would earn nothing.

***D. Opportunity for Profit and Loss***

66. Defendants, not dancers like Plaintiffs, manage all aspects of the business operation including attracting investors, establishing the hours of operation, setting the atmosphere, coordinating advertising, hiring and controlling the staff (managers, waitresses, bartenders, bouncers/doormen, etc.). Defendants, not the dancers, take the true business risks for the Déjà Vu Affiliated Nightclubs. Defendants, not the dancers, are responsible for providing the capital necessary to open, operate and expand the nightclub business.

67. Dancers like Plaintiffs do not control the key determinants of profit and loss of a successful enterprise. Specifically, Plaintiffs are not responsible for any aspect of the enterprises' on-going business risk. For example, Defendants, not the dancers, are responsible for all financing, the acquisition and/or lease of the physical facilities and equipment, inventory, the payment of wages (for managers, bartenders, doormen, and waitresses), and obtaining all appropriate business' insurance and licenses. Defendants, not the dancers, establish the minimum dance tip amounts that should be collected from patrons when dancing. Even with respect to any "rent" payments, the dancers do not truly pay the Club's "rent" for the exclusive use of space. Rather, the term "rent" is a misnomer or subterfuge for tip-sharing as in

reality, Defendants simply demand a set portion (approx. 35%) of each dance tip given to a dancer.

68. The extent of the risk that dancers like Plaintiffs are confronted with is the loss of any "base rent" fee due to Defendants when the employee clocks out after each shift. Defendants, not the dancers, shoulder the risk of loss. The dance tips the dancers receive are not a return for risk on capital investment. They are a gratitude for services rendered. From this perspective, it is clear that a dancer's "return on investment" (i.e. dance tips) is no different than that of a waiter who serves food during a customer's meal at a restaurant.

***E. Permanency***

69. Certain dancers in the Class have worked at the Déjà Vu Affiliated Nightclubs for significant periods of time.

***F. Integral Part of Employer's Business***

70. Dancers like Plaintiffs are essential to the success of the Déjà Vu Affiliated Nightclubs. The continued success of the Déjà Vu Affiliated Nightclubs depends to an appreciable degree upon the provision of exotic dances by dancers for patrons. In fact, the primary reason the nightclubs exist is to showcase the dancers' physical attributes for patrons. The primary "product" or "good" Defendants are in business to sell patrons that come to their nightclubs are lap dances performed by

the exotic dancers in the Class that Defendants recruit to work in their clubs and instruct to work in a specific way.

71. Many of the Déjà Vu Affiliated Nightclubs do not serve alcohol and therefore, are not truly in direct competition with other enterprises in the nightclub, tavern, or bar business. Absent the provision of exotic dances by dancers for patrons, a nightclub serving only non-alcoholic beverages would have difficulty remaining in business. Moreover, Defendants are able to charge admission prices and a much higher price for their drinks (e.g., $10 for soft drinks) than establishments without exotic dancers because the dancers are the main attraction of the Déjà Vu Affiliated Nightclubs. Moreover, dancers in the Class must help sell Defendants' drink products to patrons. As a result, the dancers are an integral part of the Déjà Vu Affiliated Nightclubs' business.

72. The foregoing demonstrates that dancers in the Class like Plaintiffs are economically dependent on Defendants and subject to significant control by Defendants. Therefore, Plaintiffs were misclassified as independent contractors and should have been paid minimum wages at all times they worked at any Déjà Vu Affiliated Nightclub and otherwise been afforded all rights and benefits of an employee under federal and state wage and hour laws.

## V. DEFENDANTS' INTENT

73. All actions and agreements by Defendants described herein were willful, intentional, and not the result of mistake or inadvertence.

74. Defendants were aware that the FLSA and state wage and hour laws applied to their operation of the Déjà Vu Affiliated Nightclubs at all relevant times and that under the economic realities test applicable to determining employment status under those laws the dancers were misclassified as independent contractors. Defendants and their affiliated companies, were aware of and/or the subject of previous litigation and enforcement actions relating to wage and hour law violations where the misclassification of exotic dancers as independent contractors was challenged. In the vast majority of those prior cases, exotic dancers working under conditions similar to those employed at the Déjà Vu Affiliated Nightclubs were determined to be employees under the wage and hour laws, not independent contractors. *See e.g., Harrell*, 992 F Supp 1343 (M.D. Fla. 1997). Further Defendants were aware, and on actual or constructive notice, that applicable law rendered all dance tips given to class members by patrons when working in the Déjà Vu Affiliated Nightclubs the dancer/Class member's sole property, rendering Defendants' tip-share, rent, and tip-out polices unlawful. Despite being on notice of their violations, Defendants intentionally chose to continue to misclassify dancers like Plaintiffs, withhold payment of minimum wages and require dancers to share

their tips with Defendants and their employees, to them in effort to enhance their profits. Such conduct and agreements were intentional, unlawful, fraudulent, deceptive, unfair and contrary to public policy.

## VI. INJURY AND DAMAGE

75. Plaintiffs and all Class members suffered injury, were harmed, incurred damage, and financial loss as a result of Defendants' conduct complained of herein. Among other things, Plaintiffs and the Class were entitled to minimum wages and to retain all of the dance tips and other tips they were given by patrons. By failing to pay Plaintiffs and the Class minimum wages and interfering with their right to retain all of the dance tips and other tips they were given by patrons, Defendants injured Plaintiffs and the members of the Class and caused them financial loss, harm, injury, and damage. Defendants' conduct causing those injuries was committed in California and emanated to and affected Class members nationwide.

## VII. CLASS ALLEGATIONS

76. Plaintiffs bring this action individually and as a class action pursuant to Rule of Civil Procedure 23 as to Counts 2 and 3. Count 1 is brought pursuant to 29 U.S.C. § 216(b), the requirements of which are satisfied.

77. As described below, all requirements of 29 U.S.C. §216(b) are satisfied as to Counts 1 to maintain a representative action. Similarly, all requirements of

Federal Rule of Civil Procedure 23 are satisfied as to Counts 2 and 3 to maintain a class action.

78. The Class to be certified against Defendants is defined as follows:

> All current and former dancers who performed at a Deja Vu Affiliated Nightclub at any time four years prior to the date the Complaint was originally filed (March 10, 2016) continuing through the present (or the applicable statute of limitations, whichever is longer), in any state and were employed, jointly or otherwise, by any Defendant, but were designated as an independent contractor and therefore, not paid a minimum wage.

(referred to herein as the "Class").

79. The individuals in the Class are so numerous that joinder of all members is impracticable. The Class exceeds 40,000 people. The number of individuals who worked as exotic dancers at each of the Déjà Vu Affiliated Nightclubs during the relevant time period but who were not paid a minimum wage exceeds 500 people.

80. There are questions of law and fact common to the Class that predominate over any questions solely affecting individual members, including, but not limited to:

a. whether Defendants violated the FLSA other applicable wage and hour laws by classifying all exotic dancers at the Déjà Vu Affiliated Nightclubs as "independent contractors," as opposed to employees, and not paying them any minimum wages;

b. whether the monies given to dancers by patrons when they perform table dances are gratuities;

c. whose owns the monies given to dancers when they perform exotic dances;

d. whether Defendants unlawfully required Class members to share their tips with Defendants and Defendants' employees;

e. whether Defendants are joint employers of the dancers in the Class;

f. whether Defendants and certain third parties agreed and conspired to deny Class members their rights under the wage and hour laws;

g. whether Defendants failed to keep required employment records;

h. whether Defendants engaged in unlawful acts by classifying all exotic dancers at the Déjà Vu Affiliated Nightclubs as "independent contractors" as opposed to employees, not paying them any minimum wages, sharing their tips, and threatening to terminate them and impose penalties and other discrimination if they ever tried to exercise their statutory rights; and

i. the amount of damages, restitution, and/or other available relief (including all applicable civil penalties, liquidated damages and equitable relief) to which Plaintiffs and the Class are entitled.

81. Plaintiffs' claims are typical of those of the Class. Plaintiffs, like other members of the Class, were misclassified as independent contractors and denied their rights to wages and to keep all of their gratuities under the wage and hour laws. The misclassification of Plaintiffs resulted from the implementation of a common business practice which affected all Class members in a similar way. Plaintiffs challenge Defendants' business practices under legal theories common to all Class members.

82. Plaintiffs and the undersigned counsel are adequate representatives of the Class. Plaintiffs are members of the Class. Given Plaintiffs' injury and loss, Plaintiffs have the incentive and are committed to the prosecution of this action for the benefit of the Class. Plaintiffs have no interests that are antagonistic to those of the Class or that would cause them to act adversely to the best interests of the Class. Plaintiffs have retained counsel experienced in class action litigation, including wage and hour disputes.

83. This action is maintainable as a class action because the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants.

84. This action is maintainable as a class action because questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class and because a class action is superior to other methods for the fair and efficient adjudication of this action.

**FIRST CAUSE OF ACTION**
**VIOLATION OF THE FLSA**
**(Failure to Pay Statutory Minimum Wages)**
**(Against all Defendants)**

85. Plaintiffs hereby incorporate all of the preceding paragraphs by reference as if fully set forth herein, unless inconsistent.

86. At relevant times, all Defendants jointly employed Plaintiffs and all Class members within the meaning of the FLSA.

87. 29 U.S.C. § 206 requires that Defendants pay all employees minimum wages for all hours worked. 29 U.S.C. § 206(a) provides in pertinent part:

> Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:
>
> (1) except as otherwise provided in this section, not less than--
>
> (A) $5.85 an hour, beginning on the 60th day after May 25, 2007;
> (B) $6.55 an hour, beginning 12 months after that 60th day; and
> (C) $7.25 an hour, beginning 24 months after that 60th day;

88. 29 U.S.C. § 207(a) provides in pertinent part:

> ... no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate of not less than one and one-half times the regular rate at which he is employed.

89. Like other dancers working at the Déjà Vu Affiliated Nightclubs, Defendants failed to pay Plaintiffs the minimum wages set forth in 29 U.S.C. §§ 206-207, or any wages whatsoever. In fact, Defendants required that dancers like Plaintiffs actually pay them in order to work.

90. Defendants failed to pay dancers like Plaintiffs a minimum wage throughout the relevant time period because Defendants misclassified them as independent contractors.

91. The amounts paid to exotic dancers, like Plaintiffs, by patrons in relation to dances performed were tips, not wages. Those monies were not the property of Defendants. The entire amount collected from patrons in relation to dances performed by exotic dancers was not made part of any of Defendants' gross receipts at any point.

92. As a result, the amounts paid to dancers like Plaintiffs by patrons in relation to exotic dances were tips, not wages or service fees, and no part of those amounts can be used to offset Defendants' obligation to pay dancers, like Plaintiff, minimum wages due. *See e.g., Hart v. Rick's Cabaret Int'l, Inc.*, 967 F. Supp. 2d 901, 934 (S.D.N.Y. 2013) (granting summary judgment to exotic dancers on the issue of whether dance fees offset a nightclub's wage obligations under the FLSA).

93. Further, no tip credit applies to reduce or offset any minimum wages due. The FLSA only permits an employer to allocate an employee's tips to satisfy a portion of the statutory minimum wage requirement provided that the following conditions are satisfied: (1) the employer must inform the tipped employees of the provisions of § 3(m) of the FLSA, 29 U.S.C. § 203(m); and (2) tipped employees

must retain *all the tips* received except those tips included in a tipping pool among employees who customarily receive tips. 29 U.S.C. § 203(m).

94. Neither of these conditions was satisfied. Defendants did not inform dancers like Plaintiffs of the provisions of § 3(m) of the FLSA, 29 U.S.C. § 203(m); and Plaintiffs did not retain all the tips received except those tips included in a tipping pool among employees who customarily receive tips. 29 U.S.C. § 203(m). Defendants never notified any dancers that their dance tips were being used to reduce the minimum wages otherwise due under FLSA's tip-credit provisions and that they were still due the reduced minimum wage for tipped employees. Rather, Defendants maintained that no dancers were ever due any minimum wages due to their classification as independent contractors and, in turn, were paid none.

95. Further, Defendants' requirement that dancers like Plaintiffs share their tips and: (i) pay Defendants a portion of all dance tips as "rent"; and (ii) also pay a percentage of their tips as "tip-outs" to other employees who do not customarily receive tips, such as managers, checkers, DJs and bouncers/doormen/floor walkers, was not part of a valid tip-sharing arrangement.

96. Based on the foregoing, Plaintiffs are entitled to the full statutory minimum wages set forth in 29 U.S.C. §§206 and 207 for all periods in which they worked at the Déjà Vu Affiliated Nightclubs, along with all applicable penalties, liquidated damages, and other relief.

97. Defendants' conduct in misclassifying dancers like Plaintiffs as independent contractors was intentional and willful and done to avoid paying minimum wages and the other benefits that they were legally entitled to.

98. The FLSA provides that a private civil action may be brought for the payment of federal minimum wages and for an equal amount in liquidated damages in any court of competent jurisdiction by an employee pursuant to 29 U.S.C. §216(b) ("Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages."). Moreover, Plaintiffs may recover attorneys' fees and costs incurred in enforcing her rights pursuant to 29 U.S.C. §216(b).

99. 12 U.S.C. § 211(c) provides in pertinent part:

(c) Records

> Every employer subject to any provision of this chapter or of any order issued under this chapter shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this chapter or the regulations or orders thereunder.

100. 29 C.F.R.§ 516.2 and 29 C.F.R. § 825.500 further require that every employer shall maintain and preserve payroll or other records containing, without

limitation, the total hours worked by each employee each workday and total hours worked by each employee each workweek.

101. 29 U.S.C. §215(a)(5) provides in pertinent part:

> [I]t shall be unlawful for any person — (5) to violate any of the provisions of section 211(c) of this title…

102. To the extent Defendants failed to maintain all records required by the aforementioned statutes and regulations, and failed to furnish Plaintiffs comprehensive statements showing the hours that they worked during the relevant time period, it also violated the aforementioned laws causing Plaintiffs damage.

103. When the employer fails to keep accurate records of the hours worked by its employees, the rule in *Anderson v. Mt. Clemens Pottery Co.,* 328 U.S. 680, 687-688 66 S.Ct. 1187 (1946) is controlling. That rule states:

> ...where the employer's records are inaccurate or inadequate ... an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence. If the employer fails to produce such evidence, the court may then award damages to the employee, even though the result be only approximate.

104. The Supreme Court set forth this test to avoid placing a premium on an employer's failure to keep proper records in conformity with its statutory duty, thereby allowing the employer to reap the benefits of the employees' labors without

proper compensation as required by the FLSA. Where damages are awarded pursuant to this test, "[t]he employer cannot be heard to complain that the damages lack the exactness and precision of measurement that would be possible had he kept records in accordance with ... the Act." *Id.*

105. Based on the foregoing, Plaintiffs seek unpaid minimum wages at the required legal rate for all working hours during the relevant time period, back pay, restitution, damages, reimbursement of any base rent and tip-sharing, liquidated damages, prejudgment interest calculated at the highest legal rate, attorneys' fees and costs, and all other costs, penalties, and other relief allowed by law.

**SECOND CAUSE OF ACTION**
**VIOLATION OF STATE WAGE AND HOUR LAWS**
**(Failure to Pay Statutory Minimum Wages and Unlawful Tip Sharing)**
**(Against All Defendants On Behalf of the Class)**

106. Plaintiffs hereby incorporate all of the preceding paragraphs by reference as if fully set forth herein.

107. At all relevant times, in addition to the FLSA, Plaintiffs and the Class were Defendants' employees within the meaning of applicable state wage and hour laws mandating the payment of minimum wages including: the Michigan Workforce Opportunity Wage Act, MCL §408.411, *et seq.*; the California Labor Code § 350 *et seq.*, the California Private Attorneys General Act, Cal. Lab. Code § 2699; the Minnesota Fair Labor Standard Act, Minn. Stat. §177.23 *et seq.*; the Colorado Wage Claim Act, Colo. Rev. Stat. §§ 8-6-101, *et seq.*; the Florida minimum wage laws,

Fla. Stat. § 448.110, *et seq.*; the Illinois Minimum Wage Law, 820 ILCS 105/1 *et seq.*; the Indiana Minimum Wage Law, Ind. Code § 22-2-2-1, *et seq.*; the Kentucky Wage Hour Act, Ky. Rev. Stat. § 337.010, *et seq.*; the Maryland Wage and Hour Law, Md. Code, Labor and Employment, §§ 3-401, *et seq.*; the Nevada minimum wage laws, N.R.S. 608.050, *et seq.*; the New York Labor Law § 650, *et seq.*; the New York Labor Law § 190, *et seq.*; the Ohio minimum wage laws, Ohio. Rev. Code. §§ 4111.01, *et seq.*; the Oregon minimum wage laws, ORS § 651.010, *et seq.*; and the Washington Minimum Wage Act, Rev. Code Wash. 49.48.010, *et seq.* (herein collectively referred to as "state wage and hour laws").

108. At all relevant times, all Defendants were the employers of Plaintiffs and all members of the Class within the meaning of the applicable state wage and hour laws.

109. Defendants DVS and Mohney were joint employers of Plaintiffs and the Class, along with any other nominal owners of the Déjà Vu Affiliated Nightclubs where the dancers in the Class worked.

110. Defendants failed to pay Plaintiffs and the members of the Class required minimum wages for the time they spent working at the Déjà Vu Affiliated Nightclubs. Defendants paid no dancer in the Class any wages at any time. Instead, Defendants unlawfully charged dancers in the class money to work by taking a portion of their tips; charging "rent," "house fees" or "stage fees;" requiring dancers

to help sell beverages and other goods to patrons; and/or collecting fines and penalties, among other things.

111. Defendants were required to pay all employees minimum wages under the state wage and hour laws, in addition to the FLSA.

112. In applicable circumstances, employers like Defendants must pay premium or overtime rates when employees work beyond specific daily or weekly limits.

113. Any amount paid directly by a patron to a dancer is a gratuity or tip belonging solely and entirely to her. All amounts paid to class members by patrons in relation to dances, goods sold and other work performed while working at the Déjà Vu Affiliated Nightclubs were tips and gratuities, not wages or service fees; belong solely to the class member; and cannot be used to offset Defendants' obligation to pay them minimum wages.

114. Defendants' conduct requiring class members to share their tips and pay "rent" constituted unlawful tip sharing, which injured Class members.

115. Defendants failed to pay Plaintiffs, or any other member of the Class, any minimum hourly wages for their labor during the relevant time period. Rather, Defendants systematically misclassified all dancers in the Class as independent contractors, as opposed to employees, so as to attempt to avoid paying Class

members any wages and other benefits due employees. All unpaid wages must now be paid to the Class, along with other relief appropriate under the circumstances.

116. To the extent Defendants failed to maintain complete records regarding each Class member's employment, including hours worked and any deductions from wages, Defendants violated applicable state wage and hour laws.

117. By reason of the foregoing, Defendants violated state wage and hour laws, in addition to the FLSA. As a result, members of the Class were injured, damaged, harmed and incurred financial loss.

118. None of the provisions of the state wage and hour laws can be contravened, set aside abrogated, or waived by Class members.

119. As a result of the foregoing conduct, Plaintiffs seeks on behalf of themselves and all members of the Class unpaid minimum wages at the required legal rate for all of their working hours during the relevant time period; all other damages; attorneys' fees and costs; restitution; liquidated damages; penalties; injunctive relief; interest calculated at the highest legal rate; and all other relief allowed by law, including applicable attorneys' fees and costs.

## THIRD CAUSE OF ACTION

### (VIOLATION OF BUS. & PROF. CODE §17200 *et seq.*)
### (Against Defendants On Behalf of the Class)

120. Plaintiffs incorporate the allegations of all the foregoing paragraphs by reference, as if fully set forth herein.

121. Plaintiffs brings this action individually, on behalf of the Class, and on behalf of the general public pursuant to §17200 *et seq*. of the California Business and Professions Code (the "Cal. Bus. & Prof. Code"), and the Unfair Competition Act (the "UCL").

122. California Business and Professions Code §17204 prohibits unfair competition, defined as "any unlawful, unfair or fraudulent business act or practice." On behalf of the Class, Plaintiffs seek compensation for the loss of their property and the personal financial impacts they have suffered as a result of Defendants' unfair business practices. Defendants' conduct, as described above, has been and continues to be deleterious to the Class and Plaintiffs are seeking to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure §1021.5.

123. The conduct of Defendants, as described above, constituted unlawful, unfair, unconscionable and/or fraudulent business acts or practices which injured the Class members and caused them loss of money.

124. The unlawful, unfair, unconscionable and/or fraudulent business acts or practices adopted by Defendants, which injured the Class members and caused them loss of money, were conducted by DVS and Mohney in material part in the state of California and emanated to their business operations in other states. Class members

nationwide, therefore, were harmed and injured as a result of DVS's and Mohney's conduct in California. As such, the UCL applies to the entire Class.

125. Defendants adopted unlawful business and employment policies, entered into agreements and conspired amongst themselves (and with certain third parties in the enterprise who own part of other Déjà Vu Affiliated Nightclubs) to engage in the above-described unlawful, unfair, unconscionable and/or fraudulent business acts and practices nationwide and that conduct harmed Class members and caused them injury and financial loss. As such, the UCL applies to all such transactions and dealings. All members of the Class have standing to assert UCL claims against DVS and Mohney.

126. By failing to pay its employees minimum wages in violation of FLSA and applicable state wage and hour laws, Defendants violated the UCL.

127. Violations of the FLSA are unlawful acts which are independently actionable under the UCL. *Wang v. Chinese Daily News* (9th Cir. 08-56740 9/27/10); *In re Wells Fargo Home Mortgage Litig.,* 527 F.Supp.2d 1053, 1066-69 (N.D. Cal. 2007). Such cases are certifiable as nationwide class actions under Fed.R.Civ.P. 23 where the unlawful, unfair, unconscionable and/or fraudulent business acts or practices, which injured the Class, were conducted by DVS and Mohney in material part in the state of California and emanated to their business operations in other states. *Id.*

128. Unpaid wages constitute restitution of property earned by the employee.

129. By requiring Class members to share their tips (e.g., dance tips) with Defendants and/or their employees (tip-outs) in violation of FLSA and/or any other state or federal law or regulation, as described above, Defendants engaged in unlawful, unfair, unconscionable and/or fraudulent business acts or practices in violation of the UCL.

130. By attempting to have Class members waive, abridge or limit their rights under the FLSA and/or other applicable wage and hour laws in order to work as exotic dancers at the Déjà Vu Affiliated Nightclubs, Defendants engaged in unlawful, unfair, unconscionable and/or fraudulent business acts or practices in violation of the UCL.

131. By threatening to retaliate against and penalize Class members for asserting their rights under the FLSA and/or other applicable wage and hour laws (such as by terminating them, confiscating their tips, and/or imposing other penalties and discrimination), Defendants engaged in unlawful, unfair, unconscionable and/or fraudulent business acts or practices in violation of the UCL.

132. By failing to maintain employment records under the FLSA and/or other applicable wage and hour laws, Defendants engaged in unlawful, unfair, unconscionable and/or fraudulent business acts or practices in violation of the UCL.

133. The acts complained of herein, and each of them, constitute unfair, unlawful, unconscionable and/or fraudulent business practices in violation of Cal. Bus. & Prof. Code §17200 *et seq*. Defendants' acts and practices described herein offend established public policies, including, but not limited to those set forth in the FLSA and/or other applicable wage and hour laws (including Cal. Labor Code §356), and involve business practices that are immoral, unethical, oppressive, and/or unscrupulous.

134. The unfair business practices set forth above have and continue to injure the Class and the general public and cause injury and the loss of money, as described further within. These violations have unjustly enriched the Defendants at the expense of the Class. As a result, Plaintiff, the Class and the general public are entitled to restitution and an injunction.

135. At all times, Cal. Lab. Code § 2699 or PAGA was applicable to the members of the Class. Specifically, § 2699 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") for certain violations of the California Labor Code. Likewise, civil penalties may also be recovered through a civil action brought by aggrieved employees, both individually or in a representative capacity.

136. Plaintiffs Jane Does 1-2 and the members of the Class are aggrieved employees for purposes of PAGA and seek to recover civil penalties, as well as other

remedies, for violations of Cal. Lab. Code § 350 *et seq.* The LWDA has received notice of these violations but Plaintiffs have not been advised that the LWDA intends to investigate. Plaintiffs Jane Does 1-2 and the members of the Class seek all of the appropriate civil penalties as set forth in §2699.

137. By reason of the foregoing, Plaintiffs and each member of the Class are entitled to recover from Defendants restitution, backpay, injunctive relief, declaratory relief, civil penalties, the cost of bringing this action (including reasonable attorneys' fees and costs), and any other relief allowed by law and deemed just and equitable in the circumstances.

## XIII. JURY DEMAND

Plaintiffs reserve their right to and hereby request a trial by jury.

## IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of the Class, prays for an order for relief as follows:

a. That all Defendants be found jointly and severally liable to Plaintiffs and the Class;

b. For a declaration that Defendants violated the rights of Plaintiffs and the Class under applicable law;

c. For nominal damages;

d. For compensatory and actual damages;

e. For restitution of all monies due Plaintiffs and the Class and disgorged profits from the unlawful business practices of Defendants;

f. For all backpay, unpaid wages, and a refund of all tips, "rent", tip-outs, fines and other amounts paid by Plaintiffs and members of the Class to Defendants and their employees;

g. For all statutory damages, liquidated damages, civil penalties, and/or other relief allowed by federal and state wage and hour statutes and regulations and/or other laws;

h. For accrued interest;

i. For an order certifying Count 1 as a collective action under 28 U.S.C. 216(b), and Counts 2 and 3 as a nationwide class action under Fed.R.Civ.P. 23;

j. For costs of suit and expenses incurred herein, including reasonable attorneys' fees allowed under any relevant provision of law or equity, including the FLSA;

k. For any and all other relief that the Court may deem just, proper and equitable in the circumstances.

Respectfully submitted,

Date: February 23, 2017

SOMMERS SCHWARTZ, P.C.

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**CERTFICATE OF SERVICE**

I certify that on February 23, 2017, I electronically filed the forgoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel of record on the ECF Service List.

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