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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

JANE ROES 1-4,

Plaintiffs,

v.

DÉJÀ VU SERVICES, INC., ET AL.

Defendants.

Case No. 37-2018-00028044-CU-OE-CTL

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE

Date: Nov. 30, 2018
Time: 1:30 p.m.
Department: C-72

Assigned for all purposes to:
Hon. Timothy Taylor

Complaint filed: May 31, 2018

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I. INTRODUCTION

Objectors Elana Pera, Penny Nunez, Sarah Murphy, Poohrawn Mehraban, Nicole Hughes, Angelynn Hermes, and Gypsy Vidal hereby seek leave to intervene in this action in order to safeguard their rights and the rights of the putative class of dancers who have been pursuing claims for the past two years in pending actions in the federal district court in the Northern District of California, *Hughes, et al. v. S.A.W. Entertainment, LTD., et al.*, No. 16-3371 (N.D. Cal.), and *Pera v. S.A.W. Entertainment, LTD*, 17-138 (N.D. Cal.).

Objectors are entitled to intervene either as of right or at the Court's discretion because their interests (and those of the putative class of dancers who they have sought to represent over the past two years) are not adequately represented by the plaintiffs in this case and their attorneys. Specifically, the plaintiffs in this case have entered into a proposed settlement that purports to extinguish the class claims as well as the PAGA claims that the *Hughes* / *Pera* Plaintiffs have pursued for the past two years, providing what is likely less than 2% of the actual value of these class claims (and close to nothing for the PAGA claims) and failing to take into account the strength of these employee misclassification claims given the California Supreme Court's decision in *Dynamex Operations W., Inc. v. Superior Court*, (2018) 4 Cal. 5th 903 ("*Dynamex*"). As set forth in the accompanying Objection and Opposition to Plaintiffs' Motion for Preliminary Approval, there is no justification for such an abysmally low class and PAGA settlement, which is only a fraction of what has been recovered in similar cases in this industry throughout the country, through settlements, judgments, and arbitration awards.

Unlike counsel for the Plaintiffs in this case (which was filed only several months ago), the undersigned counsel has significant experience actually litigating cases on behalf of exotic dancers across the country, having recently obtained what is likely the first decision under California law holding dancers to be employees of the clubs at which they perform as a matter of law under the California Supreme Court's *Dynamex* test. *See Johnson v. VCG-IS, LLC*, (Super. Ct. Cal. Aug, 31, 2018) Case No. 30-2015-00802813, Ntc of Ruling on Motion for Summ. J. (Ex. 2 to Liss-Riordan Decl.); *see also* Liss-Riordan Decl. at ¶ 11.

This case was clearly filed simply for settlement purposes, which is not surprising because Plaintiffs' counsel here have recently entered into a similar class action settlement in the Eastern District of Michigan that provided more cash in attorney's fees than to dancers, secured less than 2% of the dancers' potential recovery and was mostly comprised of reversionary coupons that the class members could use towards future fees paid to the clubs to continue their work. *See Does 1-2 v. Deja Vu Services, Inc.*, No. 16-10877 (E.D. Mich.). The district court's approval of that settlement is currently on appeal. *See Doe v. Déjà Vu*, No. 17-1801 (6th Cir.). Plaintiffs' counsel here filed this action without any intention of actually litigating the merits of the valuable wage claims asserted, but instead only to obtain a prompt judicial settlement that would wipe away the claims of thousands of dancers for pennies on the dollar. In contrast, the proposed Intervenors and their counsel filed their cases approximately two years ago and have heavily litigated issues related to conditional certification, arbitration, amendments to the complaint, and other matters. The current status of the *Hughes* and *Pera* actions is that, while the plaintiffs have had their claims compelled to arbitration (in an order that they may ultimately appeal, given that the defendant had waived arbitration and the court in that case had previously held the arbitration agreements to be unconscionable, see *Roe v. SFBSC Mgmt., LLC*, 2015 WL 930683, at *5 (N.D. Cal. Mar. 2, 2015)), several named Plaintiffs continue to pursue PAGA claims against the defendant clubs on behalf of the State and all aggrieved employees in court. Also, the *Hughes* Plaintiffs have moved to amend to add Diana Tejada (who joined the case more than one year ago as an opt-in FLSA plaintiff) as a lead plaintiff and class representative to pursue California Labor Code Claims on behalf of a Rule 23 class (for at least the time period post-dating the *Roe* settlement, from April 2017 to the present),[1] as well as FLSA claims on behalf of a proposed collective on behalf of the many dancers who did not release their FLSA

[1] The settlement in *Roe v. SFBSC*, No. 14-3616 (N.D. Cal.) proposed to settle the claims of 4,500 dancers in San Francisco over a seven-year statutory period for only $1 million in cash paid to dancers, with nearly an equal amount paid to class counsel. The release period in Roe ended in April 2017.

claims in that settlement. That motion to amend remains pending (and is scheduled for hearing in federal court on November 15, 2018).

Despite the fact that the *Hughes* and *Pera* cases have been pending in federal court for more than two years, Plaintiffs in this more-recently filed matter have now come before the Court claiming to have settled all of the claims asserted in those cases, without having engaged in any litigation whatsoever. Specifically, the proposed settlement would purport to resolve Ms. Hughes' PAGA claims, which are still pending in the Northern District of California. The proposed settlement purports to settle the California Labor Code claims of all *Hughes* plaintiffs and opt-ins that they have been pursuing for the past two years, as well as the state law claims of all members of the proposed Rule 23 class in *Hughes* (for which another plaintiff, Diana Tejada, has been offered as a substitute class representative who did not agree to arbitration), and they purport to settle the FLSA claims for any class member who cash a check to participate in this settlement, despite the *Hughes* Plaintiffs having already moved for conditional certification of an FLSA collective that would include these same individuals who did not release their claims by participating in the *Roe* settlement (as 82% of the class members in that case did not participate and thus still have live FLSA claims).

More remarkably, Plaintiffs here purport to resolve the *Hughes* / *Pera* Plaintiffs' entire case and the claims of every dancer in the state of California (comprising Defendants' entire workforce of 5,800 individuals who have worked at twenty-five clubs) for what they acknowledge to be is less than 5% of the value of the class claims (but what Objectors estimate to be less than 2% of the value of the class claims). This settlement would also wipe away the valuable representative PAGA claims, which cannot be compelled to individual arbitration and which the *Hughes* / *Pera* Plaintiffs or the Plaintiffs here could have pursued in court.[2] As

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[2] *See* Iskanian v. CLS Transportation Los Angeles, LLC, (2014) 59 Cal. 4th 348, 327 P.3d 129; *Sakkab v. Luxottica Retail N. Am., Inc.* (9th Cir. 2015) 803 F.3d 425 (holding that PAGA claims are a type of qui tam action that cannot be compelled to individual arbitration by private agreement).

discussed in Proposed Intervenors' concurrently filed objection, the *Johnson v. VCG-IS* case from Orange County (a PAGA-only case against a single club) demonstrates the significant value of these PAGA claims. There, the Court has granted Plaintiffs' motion for summary judgment on liability, and a trial has now been set to determine PAGA penalties. The penalties in that case will likely be *in the millions of dollars* even just calculating *PAGA penalties alone* for dancers who have worked at just *one club*. Other than the previous instances when these defendants obtained outrageously discounted settlements (including twice with these same plaintiffs' counsel), this settlement is an extreme outlier amidst the body of caselaw that has developed in which exotic dancers have succeeded on their claims that they were misclassified as independent contractors and achieved substantial judgments and settlements. *See* "Objection and Opposition to Motion for Preliminary Approval and Class Certification," filed herewith. Indeed, dancers who have obtained arbitration awards and judgment in wage cases against clubs have often obtained tens of thousands of dollars, and class action settlements on behalf of dancers often provide at least $1,000,0000 for claims by dancers from ***a single club***, with participating class members often receiving tens of thousands of dollars, or thousands of dollars, each. Nevertheless, Plaintiffs' counsel here are a repeat player with this same group of defendants, and have previously entered into sweeping Rule 23 settlements that provided (assuming full participation) only $36 per dancer, *see Doe 1-2 v. Déjà vu Services, Inc.*, No. 16-10877 (E.D. Mich.)*; Doe v. Cin-Lan, Inc.*, No. 08-12719 (E.D. Mich.). Given these Plaintiffs' counsel's failure to protect class members' interests in these previous cases – as well as what they are trying to accomplish yet again through the proposed settlement in this case -- there can be no doubt that they are unfit to represent the class of dancers in this action.

For these reasons, and as discussed in more detail below, Proposed Intervenors Mehraban, Locke, and Murphy seek leave to intervene in this case to ensure that the interests of the dancers on whose behalf they have been litigating for the past two years are adequately protected. Should this requested intervention be granted, Intervenors would request that the proposed

settlement in this case not be approved and that this case be stayed pending the continued litigation of their previously filed cases in federal court, the *Hughes* and *Pera* actions.

II. RELEVANT FACTS

Elana Pera, Penny Nunez, Sarah Murphy, Poohrawn Mehraban, Nicole Hughes, Angelynn Hermes, and Gypsy Vidal worked at several of the Defendant clubs in San Francisco, and Ms. Mehraban and Ms. Murphy have been actively pursuing wage claims against these clubs along with a group of other dancers for the past two years. *See Hughes, et al. v. S.A.W. Entertainment, LTD., et al.*, No. 16-3371 (N.D. Cal.); *Pera v. S.A.W. Entertainment, LTD*, 17-138 (N.D. Cal.).

In *Hughes*, originally filed in 2016, dancers asserted claims under the California Labor Code and Ms. Hughes and others assert collective action claims under the Fair Labor Standards Act, as well as claims under the California Private Attorney General's Act. These claims are predicated on the theory that dancers at the clubs have been misclassified as independent contractors. *Id*. Ms. Hughes currently asserts claims under PAGA, as her other claims were compelled to individual arbitration[3]; however, there is a pending motion to add another dancer, Diana Tejada, as a named Plaintiff to assert FLSA claims and state law wage claims on behalf of a proposed collective and class, as she did not agree to Defendants' arbitration agreement. The undersigned counsel also represents dancers, including Ms. Murphy, who have asserted similar class and collective action claims and PAGA claims directly against another San Francisco club, Condor Gentlemen's Club. *See Pera v. S.A.W. Entertainment, LTD*, 17-138 (N.D. Cal.). All told, there are more than ten plaintiffs and opt-in plaintiffs actively pursuing claims in the Northern District of California, and the proposed settlement here purports to put an end to all of this litigation.

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[3] Ms. Hughes may appeal that order compelling arbitration at the proper time. Defendant in that case had expressly waived arbitration, and the Court in that case had previously held the arbitration agreement to be unconscionable. Nevertheless, the Court rejected these arguments and compelled arbitration.

The *Hughes* and *Pera* cases have a long history. Upon filing in 2016, the *Hughes* plaintiffs moved for conditional certification, and that motion was fully brief nearly two years ago. Just as the motion was about to be heard, a proposed class settlement was announced in a related wage action brought against a "consulting company," but not against the clubs directly. *See Roe v SFBSC*, No. 14-3616 (N.D. Cal.).[4] Plaintiffs' counsel in the *Roe* case entered into a proposed settlement that purported to extinguish all claims asserted in *Hughes* and *Pera* by expanding the scope of its class release to cover the entities that directly operated the clubs. That settlement was approved over the objections of several dancers who were pursuing their claims in *Hughes* and *Pera* (represented by the undersigned counsel). Objectors appealed that settlement approval decision, which is scheduled for argument at the Ninth Circuit on November 16, 2018. *See Roe v. SFBSC*, No. 17-17079 (9th Cir.). However, regardless of the outcome of the *Roe* appeal, even if that settlement approval were to be affirmed, thousands of dancers in California who have worked at Déjà Vu clubs in California since the release period in the *SFBSC* case still have viable and valuable wage claims of that post-date that fall outside of the class period of that case. The *Hughes* and *Pera* Plaintiffs are continuing to pursue these claims. The

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[4] When the undersigned counsel filed the *Hughes* action, she was not aware that a previously filed case against a "consulting company," SFBSC, also purported to be on behalf of a class of dancers that overlapped with the *Hughes* and *Pera* Plaintiffs' classes, which brought claims directly against corporate entities that operated the clubs at which they worked (and that were not defendants in the *SFBSC* matter). Once she learned that the *Hughes* case overlapped with the previous *Roe* case, the undersigned counsel stepped back while the case was mediated (after being invited by Plaintiffs' counsel to participate in mediation, but then disinvited by Defendants' counsel) – only to realize the reason that Defendants' counsel had disinvited her to the mediation: because they well knew she would never have agreed to such a paltry settlement for such a massive class on such well established and successful claims.

Here, as well, Defendants specifically reached out to mediate with Plaintiffs' counsel in this case, not the undersigned counsel (despite the fact that the undersigned counsel had previously filed two cases, which this case very consciously and purposely "filed over"). It was not until after Defendants had reached this settlement with Plaintiffs in this case that the parties *then* invited the undersigned counsel to attend a mediation – which was clearly futile, as the parties here had already reached this proposed settlement. It is clear that the parties invited the undersigned counsel to mediation – only after they had reached this settlement – simply in order to try to present to this Court that the undersigned counsel had been invited to settlement discussions. Those discussions, *after this agreement had already been reached*, were a sham.

Déjà Vu clubs, however, are now attempting to wipe out those remaining claims through this settlement.

At the time that settlement approval was pending in *Roe* that would wipe out the claims of more than 4,500 dancers at eleven nightclubs, the remaining Déjà Vu clubs across the country – 64 clubs total (including fourteen more clubs in California, but excluding the clubs covered by the *Roe* settlement) – sought approval of a second settlement that provided a total of just $1 million in cash to dancers for a full release of all employment claims of 28,000 dancers who had worked at 64 clubs in *Does 1-2 v. Deja Vu Services, Inc.*, No. 16-10877 (E.D. Mich.). The Plaintiffs' counsel in *Doe*, the attorneys at the Sommers Swartz and Pitt Mcgee Palmer & Rivers law firms, who represent the plaintiffs here in this case. The *Doe* settlement was approved by the district court in 2017, and objectors (including several represented by the undersigned counsel) appealed to the Sixth Circuit, where argument was held on October 17, 2018.

Meanwhile in April, the California Supreme Court issued its landmark decision in *Dynamex Operations W., Inc. v. Superior Court*, (2018) 4 Cal. 5th 903. In *Dynamex*, the Court expressly adopted the Massachusetts "ABC" test - widely recognized to be the most stringent test in the country -- for determining employment status. Under this test, in order to justify classification of workers as "independent contractors," an alleged employer must establish the following three factors: "(A) the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; and (B) that the worker performs work that is outside the usual course of the hiring entity's business; and (C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed." *Id.* at 957-58. If the employer is not able to establish *all three* prongs of the test, the worker is an employee. *Id.* One California Superior Court has already applied this test to hold that dancers were employees as a matter of law, as there is no conceivable way that an exotic dance club could demonstrate that the work of performing exotic dances is work performed outside the club's usual course of business. *See Johnson v. VCG-IS, LLC*, (Super. Ct. Cal. Aug, 31, 2018) Case No.

30-2015-00802813, Ntc of Ruling on Motion for Summ. J. (Ex. 2 to Liss-Riordan Decl.) Applying this same test, dancers have routinely been found to be "employees" as a matter of law in Massachusetts, whose test was explicitly adopted by the California Supreme Court in *Dynamex*.[5] Given the holding in *Dynamex*, it was all but assured that, should the *Hughes* and *Pera* plaintiffs and dancers here proceed with their wage claims and their PAGA claims, as in *Johnson*, they would be found to be employees.

In light of *Dynamex*, the Déjà Vu clubs in California obviously knew that they faced substantial liability in the *Hughes* and *Pera* cases, and across California at more than twenty clubs. They also knew that there was a substantial period of time that post-dated the *Roe* and *Doe* releases for which thousands of dancers had substantial and live claims that would be litigated under the *Dynamex* ABC test, either through the *Hughes* and *Pera* cases or through individual arbitrations or other proceedings. Because it was abundantly clear to Déjà Vu that the undersigned counsel and the plaintiffs in *Hughes* and *Pera* would not agree to the same type of grossly undervalued settlement that it had obtained in *Roe* and *Doe* to resolve these valuable wage claims, the clubs turned to the plaintiffs' counsel who had agreed to the abysmally low settlement in the Eastern District of Michigan (the *Doe* settlement which provided $1 million in cash to dancers *at 64 clubs*) – law firms that do not even practice in California – to coordinate a *third* grossly undervalued settlement to put the final nail in the coffin of the claims of California dancers. Plaintiffs' counsel from *Doe* then filed this case listing dozens of defendants – *many of which have no relationship whatsoever to the four named plaintiffs* - without any intention that

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[5] *See Cusick v. The 15 Lagrange Street Corp. d/b/a The Glass Slipper*, (Mass. Super. Aug. 8, 2013) Suffolk Civ. A. No. 10-4127; *Cruz v. Dartmouth Clubs, Inc. d/b/a King's Inn ("King's Inn")*, (Mass. Super. Aug. 16, 2012) Bristol Civ. A. No. 10-1042; *Sandoval v. M.J.F. Bowery Corp.*, (Mass. Super. July 22, 2011) 2011 WL 5517331, at *5; *Cruz v. Manlo Enterprises, Inc. d/b/a/ Mario's Showplace*, (Mass. Super. June 9, 2011) Worcester Civ. A. 10-1931; *Monteiro v. PJD Entertainment of Worcester, Inc.*, (Mass. Super. Ct. Nov. 23, 2011) 29 Mass. L. Rptr. 203; *Chaves v. King Arthur's Lounge*, (Mass. Super. July 30, 2009) 2009 WL 3188948. *See also D'Antuono v. C&G of Groton, et al.*, (Dec. 3, 2012) AAA No. 11-460-02069-11 (exotic dancers held to be employees under Connecticut ABC test, as well as under FLSA).

this case would actually be litigated, for the sole purposes of effectuating a prompt judicial settlement for pennies on the dollar and allow Déjà Vu to avoid having to litigate these claims against the undersigned counsel by extinguishing the class and representative claims of the *Hughes* and *Pera* Plaintiffs and thousands of other California dancers once and for all.

The proposed settlement here is not intended to benefit the dancers and is neither fair, reasonable, nor adequate. The total settlement amount is $1,500,000. Of that amount, $500,000 is for attorneys' fees, $20,000 is allocated for PAGA claims, $20,000 for incentive awards to the four named Plaintiffs, and additional amounts for unquantified administrative costs. Pls' Mot. at 10. Thus, less than $1 million (approximately $900,000) would be paid to 5,800 exotic dancers who have worked at *twenty-five* strip clubs. Assuming all dancers cash their settlement checks, the average settlement share would be $155 per dancer. The parties have revealed that the average dancer worked 56 workdays, and therefore dancers would receive approximately three dollars per each shift that they worked if all checks are cashed. Pls' Mot. at 22. If the settlement is approved, the Parties propose that all dancers who do not opt out in response to the Parties' notice mailing will receive a check representing their settlement share. Pls' Mot. at 2. The release includes many claims beyond those for unpaid wages, and the Plaintiffs make no attempt to value these claims. Pls' Agr. at p. 33. Any dancer who cashes her check will also be subject to a release of her claims under the federal Fair Labor Standards Act.

In their motion, Plaintiffs' counsel estimates that the total potential recovery if the case succeeded at trial was $32 million. Pls' Mot. at 22. They do not explain which released claims were included in this valuation. This amount appears to be off by as much as $70 million. Objectors' counsel has reviewed data provided by Plaintiffs and calculated that the total damages over the one-and-a-half-year period at issue in this case would be more than $102 million, before even considering any PAGA penalties. *See* Liss-Riordan Decl. at ¶ 29. Indeed, Plaintiffs' counsel do not provide *any estimate* of the value of the PAGA claims being released. Based on Plaintiffs' $32 million figure (which is actually more like *one-third* of the potential damages), they nevertheless estimate that the settlement provides "4 to 5% of the full verdict value of the

claims being released." Pls' Mot. at 22. In fact, it is less than 2% of the value of class members' claims for three central claims in the case (minimum wage, gratuities, and recovery of house fees dancers had to pay in order to work).

III. ARGUMENT

Intervention is governed by CCP § 387, and can be either mandatory (*i.e.*, as of right) under § 387(b), or permissive (*i.e.*, at the discretion of the court) under § 387(a). A nonparty has a right to intervene in a pending action under CCP § 387(b) "if the person seeking intervention claims an interest relating to the property or transaction which is the subject of the action and that person is so situated that the disposition of the action may as a practical matter impair or impede that person's ability to protect that interest, unless that person's interest is adequately represented by existing parties." A nonparty may intervene under § 387(a) where there is a statutory right to do so (not at issue here) or where a person has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both. CCP § 387(a).

"The purpose of allowing intervention is to promote fairness by involving all parties potentially affected by a judgment[,]" *Simpson Redwood Co. v. State of California* (1987) 196 Cal.App.3d 1192, 1199, and section 387 should be liberally construed in favor of intervention. *Lindelli v. Town of San Anselmo* (2006) 139 Cal.App.4th 1499, 1504–05. Additionally, because CCP § 387 was modeled after and is "virtually identical to" Rule 24 of the Federal Rules of Civil Procedure, California courts may look to federal court decisions in interpreting and applying the statute where there is otherwise no controlling California authority on point. *Ziani Homeowners Ass'n v. Brookfield Ziani LLC* (2015) 243 Cal.App.4th 274, 280-81.

There is additional importance to the right to intervene in light of the California Supreme Court's recent decision in *Hernandez v. Restoration Hardware, Inc.*, (2018) 4 Cal.5th 260 ("Hernandez"). In that case, the California Supreme Court held that unnamed class members can only become a party of record in a class action and have a right to appeal a settlement approval decision by either formally intervening prior to judgment or moving to vacate the judgment after

settlement approval is granted. *Id.* The proposed Intervenors/Objectors believe that after the Court has reviewed the terms of the proposed settlement and heard from Objectors regarding their objections to the settlement, that the Court will find that the settlement is neither fair, reasonable, nor adequate. However, they seek to intervene in order to assure they would have standing in order to challenge, if necessary on appeal, an approval of the settlement. Thus, Objectors seek to intervene not only to protect their rights and the rights of the unnamed class members who they have been seeking to represent for the past two years, but also to establish their right to appeal any settlement approval decision that may be granted over their objection.

In addition, Proposed Intervenors seek to intervene here so that, following the Court's denial of settlement approval here, they can request that the Court stay this action so that the earlier-filed cases that they filed can proceed in the Northern District of California, which is commonly the procedure that is followed by federal courts when a group of plaintiffs file a proposed class action attempting to coopt the claims of a previously filed case (as Plaintiffs are attempting to do here). *See, e.g.*, *Clardy v. Pinnacle Foods Grp., LLC*, (N.D. Cal. Jan. 5, 2017), 2017 WL 57310, at *1 (granting motion to stay because an "earlier-filed putative class action in Illinois involves the same Defendant, overlapping putative classes, and substantially similar issues…."); *Lovell v. United Airlines, Inc.*, (D. Haw. 2010) 728 F. Supp. 2d 1096, 1110 (staying second-filed class action proceeding pending resolution of first-filed class action).

A. Objectors Meet the Requirements for Mandatory Intervention

Mandatory intervention under § 387(b) is warranted when, *inter alia*, "[a] prospective intervener [] demonstrate[s] both adequate interest in the litigation's outcome and inadequate representation of its interest by either party." *Estate of Davis* (1990) 219 Cal.App.3d 663, 667. If the Court determines that the petitioner satisfies both requirements, it must permit intervention. *Id.*

1. Proposed Intervenors Have an Adequate Interest in the Outcome of this Litigation

The "adequate interest" test, in the context of a class member intervening in a proposed class action, is met simply when proposed intervenors are members of the affected proposed class. *Glass v. UBS Financial Services, Inc.* (N.D. Cal., Jan. 17, 2007) 2007 WL 474936, at *2, *aff'd* (9th Cir. 2009) 331 Fed. Appx. 452 (citing *In re Community Bank of Northern Virginia Mortgage Loan Litigation*, (3d Cir.2005) 418 F.3d 277, 314) (finding when unnamed class member seeks to intervene in class action, significant protectable interest factor "is satisfied by the very nature of class action litigation"); *see also Munoz v. PHH Corp.* (E.D. Cal., July 29, 2013) 2013 WL 3935054, at *12 (finding proposed intervenor had "significant protectable interests at issue" where the "Plaintiffs' FAC alleges claims that span a class period encompassing [her] claims."). Here, Proposed Intervenors are among the dancers who are included in the proposed *Roe* class action, and Plaintiffs' proposed settlement in this case attempts to extinguish their valuable wage claims and PAGA claims. Thus, they have the requisite interest to intervene in this matter.

2. The Proposed Class of Dancers for Whom the Proposed Intervenors Have Been Pursuing Claims for the Last Two Years Are Not Adequately Represented by the Plaintiffs in this Action

Courts consider three factors in assessing adequate representation in the context of a motion to intervene: 1) whether the interest of the present party is such that it will undoubtedly make all of an intervenor's arguments; 2) whether the present party is capable and willing to make such arguments; and 3) whether an intervenor would offer any necessary elements to the proceeding other parties would neglect. *Arakaki v. Cayetano* (9th Cir. 2003) 324 F.3d 1078, 1086. The burden to show inadequacy of representation is minimal, and "[a]n intervenor need only show that representation may be inadequate, not that it is inadequate." *Conservation Law Foundation of New England, Inc. v. Mosbacher* (1st Cir. 1992) 966 F.2d 39, 44 (citing *Trbovich v. United Mine Workers of America* (1972) 404 U.S. 528, 538 n.10); *see also Hardin v. Jackson* (D.D.C. 2009) 600 F.Supp.2d 13, 16 ("A showing that existing representation is inadequate is not onerous" and "Petitioners ordinarily should be allowed to intervene unless it is clear that the

[existing] party will provide adequate representation for the absentee") (internal quotation omitted).

Here, the Proposed Intervenors have met the "minimal" burden required to show inadequacy for purposes of mandatory intervention because it is clear that Plaintiffs' counsel in this matter have not adequately accounted for the interests of the *Hughes* and *Pera* Plaintiffs. Counsel for plaintiffs in this case has previously entered into insufficient, coupon-based settlements involving these same defendants that is subject of the appeal in *Doe v. Déjà Vu*, No 17-1801 (6th Cir.).

In addition, the fact that this action was apparently settled within weeks of being filed makes it extremely unlikely that the parties engaged in any meaningful discovery or consideration of merits issues. Thus, for example, in *Buchet v. ITT Consumer Fin. Corp.*, (D. Minn.) 845 F. Supp. 684, *amended* (D. Minn. 1994) 858 F. Supp. 944, the proposed intervenors argued that a proposed class action settlement "gives the class insufficient value, that the release is overbroad, and that the notice given to class members was deficient." The *Buchet* court concluded that "[t]his position clearly puts them at odds with class counsel, and, therefore, the Court finds that [they] have made the minimal showing necessary to support their motions to intervene [as of right]." *Id*. at 690. As in *Buchet*, here, Proposed Intervenors and the putative class they seek to represent will not have their interests adequately represented by the plaintiffs, and therefore, mandatory intervention is warranted.

B. Alternatively, Proposed Intervenors Meet the Requirements for Permissive Intervention

A court may permit a nonparty to intervene where (1) the proper procedures have been followed, (2) the nonparty has a direct and immediate interest in the action, (3) the intervention will not enlarge the issues in the litigation, and (4) the reasons for the intervention outweigh any opposition by the parties presently in the action. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 51.

Here, Proposed Intervenors have followed the proper procedures for seeking intervention

by promptly filing a motion in this Court. Likewise, they have demonstrated a direct and immediate interest in the action because under California law as under federal law, absent class members are bound by the doctrine of *res judicata* in a class action settlement and their claims and those of the class they have sought to represent for the past two years could be wiped out without adequate consideration or compensation. *See In re Cmty. Bank of N. Virginia* (3d Cir. 2005) 418 F.3d 277, 314 (holding that in the class action context, the direct and immediate interest prong is "satisfied by the very nature of Rule 23 representative litigation.").

Additionally, Proposed Intervenors do not seek to add any causes of action to this litigation. Indeed, they seek to intervene only to safeguard the rights of the classes that they have sought to represent who are entitled to full and complete information about this proposed settlement and whose views of the inadequacy of the settlement should be heard in this Court. Further, as noted above, should this request for intervention be granted, Intervenors would not seek to expand this case, but would instead request that the Court not approve the proposed settlement and then stay this action in order to allow Intervenors to proceed with their previously filed litigation in federal court. *See, e.g.*, *Clardy v. Pinnacle Foods Grp., LLC*, (N.D. Cal. Jan. 5, 2017), 2017 WL 57310, at *1 (granting motion to stay because an "earlier-filed putative class action in Illinois involves the same Defendant, overlapping putative classes, and substantially similar issues…."); *Lovell v. United Airlines, Inc.*, (D. Haw. 2010) 728 F. Supp. 2d 1096, 1110 (staying second-filed class action proceeding pending resolution of first-filed class action).

Lastly, Proposed Intervenors' reasons for intervention dramatically outweigh any anticipated opposition that either the Plaintiffs or Defendants might have for the reason described above: if this settlement is approved, the *Hughes* and *Pera* Plaintiffs and the class that they seek to represent could have their claims released for a much smaller sum compared to what they may recover if their cases go forward. For these reasons, Proposed Intervenors request that the Court grant their motion to intervene.

IV. CONCLUSION

For the reasons discussed above, Proposed Intervenors/Objectors urge the Court to permit

them to intervene in this matter. Proposed Intervenors have been litigating these claims for the past two years, they and their counsel have vociferously objected to these Defendants' past attempts to settle out valuable claims of thousands of exotic dancers for pennies on the dollar, when there is no justification for such severe discounting of the claims, and they should be given the opportunity to intervene in this matter in order to raise these same issues before this Court (and have standing if necessary to appeal an approval of the settlement). Further, the intervention should be permitted so that Intervenors can seek a stay of this action so as to allow them to continue with their previously filed litigation in federal court – which this case was filed, and now has been attempted to be settled – in order to prevent those cases from proceeding.

Dated: October 31, 2018

LICHTEN & LISS-RIORDAN, P.C.

By: _____
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Objectors