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9 Attorneys for Defendants Déjà Vu Services, Inc.,
10 Harry Mohney, Grapevine Entertainment, Inc. d/b/a
11 Déjà Vu Showgirls; Nite Life East, LLC d/b/a Little
12 Darlings; SP Star Enterprise, Inc. d/b/a Déjà Vu;
13 Coldwater, LLC d/b/a Deja Vu Showgirls; 3610
14 Barnett Ave., LLC d/b/a Adult Superstore; Jolar
15 Cinema of San Diego, Ltd. d/b/a Jolar Cinema
16 Showgirls; Showgirls of San Diego, Inc. d/b/a Deja
17 Vu Showgirls; Bijou – Century, LLC d/b/a New
18 Century Theatre; BT California, LLC d/b/a The
19 Penthouse Club & Steakhouse; Chowderhouse, Inc.,
20 d/b/a Hungry I; Deja Vu – San Francisco, LLC d/b/a
21 Centerfolds; Deja Vu Showgirls of San Francisco,
22 LLC d/b/a Little Darlings of San Francisco; Gold
23 Club – S.F., LLC d/b/a Gold Club; S.A.W.
24 Entertainment, Ltd., d/b/a Hustler San Francisco and
25 the Condor Club; San Francisco Garden of Eden,
26 LLC d/b/a Garden of Eden; San Francisco Roaring
27 20's, LLC d/b/a Roaring 20's; and Stockton
28 Enterprises, LLC d/b/a Deja Vu Showgirls

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **COUNTY OF SAN DIEGO**

18 Jane Roes, et al.,

Case No. 37-2018-28044-CU-OE-CTL

19 Plaintiff,

**DECLARATION OF DONALD KRONTZ IN
SUPPORT OF RESPONSE TO OPPOSITION TO
MOTION TO MOTION FOR PRELIMINARY
APPROVAL**

20 v.

21 Deja Vu Services, Inc., et al.,

Assigned to: Hon. Timothy Taylor
22 Dept: C-72

23 Defendant.

24 Hearing date: November 30, 2018
25 Hearing time: 1:30 pm
26
27
28

1 I, Donald Krantz, declare as follows:

2 1. I am the Vice President of Deja Vu Services, Inc., previously known as Deja Vu
3 Consulting Inc. ("Services"). I make this declaration upon personal knowledge and am competent to
4 testify to the matters stated herein if asked to do so.

5 2. I am familiar with the operations of Services, and with many of the businesses that are
6 affiliated with Services; particularly those that operate in California. In this declaration, I will refer to
7 the businesses affiliated with Services in one fashion or another as the "Deja Vu Group." I have been
8 associated with these businesses for decades. In addition, I will refer to the establishments in the Deja
9 Vu Group that permit the presentation of exotic dance entertainment on their premises as the "Clubs,"
10 even though some are actually bookstores that include the presentation of live exotic dance
11 entertainment.

12 3. The Clubs use a variety of computer Point of Sale systems to record data and
13 information related to the exotic dance entertainers (the "Entertainers") who perform on their premises.
14 One such system is known as "EMS," which I have used since approximately 2001.

15 4. Through inputting by Club personnel and the operation of the system, EMS records,
16 among other things, the Entertainer's name, her address, the last four digits of her Social Security
17 Number, an ID number specific and unique to her (which is not reused), the total number of hours that
18 she performed on a given day (including the "start" and "stop" times); and the amount of money she
19 earns in mandatory entertainment fees charged for her personal entertainment performances
20 ("Entertainment Fees").

21 5. The Defendants here establish mandatory fees that are imposed on customers for the
22 purchase of personal dances and entertainment sessions ("Dance Fees"). These Dance Fees are set by
23 the Clubs in consultation with the Entertainers, and the amount of the mandatory fees are posted in
24 various places in the Clubs. Those Dance Fees are not to be paid to the Entertainers directly.
25 Customers are requested to pay Dance Fees directly into designated collection boxes, or into
26 mechanical "bill acceptor" devices (not unlike a soft drink vending machine, where dollar bills can be
27 inserted directly into a slot for collection), or to Club employees (not to Entertainers).

28 6. Tips, on the other hand, are paid by customers to Entertainers directly. They are not

1 placed in the collection boxes or in the bill acceptors, or paid to Club employees. The Dance Fees are
2 segregated to avoid co-mingling them with these tips and, unlike employees of the Defendants,
3 Entertainers do not report their tip income to Defendants.

4 7. Prior to conversion of the Entertainers to employees, the process would be that at the
5 end of a performance date, all Dance Fees paid by customers were collected from the collection boxes,
6 the bill acceptors, or from Club employees, by Club employees (not by Entertainers); counted; recorded
7 by the EMS system; taken into gross receipts for the Clubs; and the Entertainer was then paid in cash
8 by the Club a percentage of those revenues specified in the dancer contracts (her “allocations” of those
9 revenues). The amount of revenues paid by these Clubs to the Entertainers were then reported from the
10 Clubs to their bookkeeping service, which includes Modern Bookkeeping, Inc., located in Durand,
11 Michigan (“Modern”) or Consolidated Bookkeeping, located in Seattle, Washington for San Francisco
12 Clubs (“Consolidated”). Modern and Consolidated then remitted to the Entertainers when legally
13 required (if the total amount exceeds \$600.00 per year), as the bookkeeping service for these Clubs,
14 IRS Forms 1099-MISC following the close of the tax year in amounts equivalent to the total of the
15 Dance Fee allocations paid by the Clubs to the specific Entertainers.

16 8. The Clubs made a point of issuing, on a daily basis, a “receipt” which sets out each of
17 the Labor Code 226(a) requirements. While it did not include information on an “hourly” rate, it does
18 include information on the “piece rate.” An example of such receipt is attached as Exhibit 1 hereto.

19 9. Before Entertainers performed in the Clubs, they selected whether they desire to do so as
20 an Independent Professional Entertainer (“IPE”) or as an employee. They did this either by way of a
21 formal Offer of Employment or through a Business Status Selection by Entertainer document. See
22 Exhibits 2 and 3. Those who selected to perform as IPE’s then, before they were permitted to perform,
23 entered into a contract with the Club. An example of such contract is attached as Exhibit 4 hereto.

24 10. Entertainers were not required to, nor did they, pay any type of “house fee” or “rent”
25 during any of the possible class periods here.

26 11. Entertainers need not tip, and are specifically discouraged from tipping, Club
27 employees. At the time of contracting, Entertainers are required to review and sign an acknowledgment
28 that they are not required or encouraged to tip any staff; the acknowledgement containing a “hotline”

1 number for the Entertainer to call if she experiences any pressure to tip Club employees.

2 12. Before conversion to employment status, Entertainers could and did take breaks anytime
3 they wanted, for however long they wanted. The Clubs did not restrict rest breaks or meal periods. The
4 Clubs did not control when the Entertainers performed and when they didn't. The Entertainers chose
5 for who, when and how they performed or not performed at all.

6 13. I prepared reports of the Roe Plaintiffs performance dates, hours and payments from the
7 EMS system. Those reports reveal that they rarely worked more than 8 hours a day. On the rare
8 occasion they did, they typically earned well over the minimum overtime rate. For example, Roe 4
9 "GR" worked .05 hours of overtime on February 17, 2017; however, she earned the equivalent of
10 \$66.88 per hour on that day. This same Plaintiff worked a total of 110 days during the class period,
11 with only 5 occasions where she worked over 8 hours. On each of those dates, she earned far in excess
12 of what she would have earned had she been paid as an employee at the minimum wage and overtime
13 rates. Typically, the Entertainers do not stick around at the Clubs if they are not making money. They
14 leave when the money is slow. The only days where an Entertainer will remain at the Clubs for over 8
15 hours is when they are making good money, and when that happens they are earning well over what
16 they would have earned based on a minimum wage rate and any potential overtime.

17 14. The Defendants here would not have converted the Entertainers to employees if they
18 were not required to by this settlement. Entertainers have expressed their unwillingness to give control
19 to the Defendants – they want to work on their own schedules, have control over who they take their
20 clothes off for, and they want to work for multiple businesses so they can work wherever the money is
21 good any given night. In the short time that Defendants have converted, there has been an approximate
22 17% loss of Entertainers to the non-San Francisco Clubs.

23 I declare under penalty of perjury under the laws of the State of California that the foregoing is
24 true and correct.

25
26 Dated: November 20, 2018

27
28

DONALD KRONTZ

EXHIBIT 1

Cash Out Receipt

Deja Vu Showgirls North Hollywood
7350 Coldwater Canyon Ave
North Hollywood, Ca 91605

Business Day:

Starts: Friday, July 20, 2018 10:00 AM
Ends: Saturday, July 21, 2018 10:00 AM

SSN: [REDACTED] SysID: [REDACTED]

Dance Credits:	Dancer Split	Station
7/20/18 11:06 PM	12.00	e18, ChNor
7/20/18 11:12 PM	12.00	e18, ChNor
7/20/18 11:16 PM	12.00	e18, ChNor
7/21/18 12:16 A	90.00	fm03, VIP
7/21/18 12:49 A	90.00	fm03, VIP
7/21/18 1:10 AM	12.00	fm03, VIP
7/21/18 1:10 AM	3.00	fm03, VIP
7/21/18 1:23 AM	12.00	fm03, VIP
7/21/18 2:14 AM	90.00	fm08, VIP
7/21/18 3:12 AM	12.00	e18, ChNor
7/21/18 3:16 AM	12.00	e18, ChNor
7/21/18 3:19 AM	12.00	e18, ChNor
7/21/18 3:22 AM	3.00	e18, ChNor
7/21/18 3:22 AM	3.00	e18, ChNor
7/21/18 3:25 AM	12.00	e18, ChNor
7/21/18 3:39 AM	12.00	e18, ChNor
7/21/18 3:43 AM	12.00	e18, ChNor
7/21/18 3:48 AM	12.00	e18, ChNor
7/21/18 3:52 AM	12.00	e18, ChNor
7/21/18 3:55 AM	12.00	e18, ChNor
7/21/18 3:58 AM	12.00	e18, ChNor
7/21/18 4:02 AM	12.00	e18, ChNor
7/21/18 4:05 AM	12.00	e18, ChNor
7/21/18 4:11 AM	90.00	fm05, VIP
7/21/18 4:43 AM	12.00	e08, ChNor
7/21/18 4:49 AM	12.00	e18, ChNor
7/21/18 4:53 AM	12.00	e18, ChNor
Total	609.00	

Credits:

Cash Out Summary:

Dance Credits	609.00
Total:	609.00

Contract
Pay Out

609.00

Manager: [REDACTED]

Dancer: [REDACTED]

Gross Contract fees paid:	609.00
Total hours logged in to system:	6.21
CA Minimum wage 2018	
Reg \$11.00	OT \$16.50 DT \$22.00

Saturday, July 21, 2018 07:17:00 AM

Cash Out Receipt

Deja Vu Showgirls North Hollywood
7350 Coldwater Canyon Ave.
North Hollywood, Ca 91605
Business Day:

Starts: Friday, July 20, 2018 10:00 AM
Ends: Saturday, July 21, 2018 10:00 AM



SSN: [REDACTED] SysID: [REDACTED]

Contract earnings

Year-To-Date: 46,098.00

Printed on: Saturday, July 21, 2018 12:48:31 PM

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EXHIBIT 2

NOTICE TO ENTERTAINERS OFFER OF EMPLOYEE STATUS STATEMENT OF IMPACT OF CHOICE OF CONTRACTOR STATUS

Entertainers have historically performed at this club as independent contractors who control if, when, where, how and for whom they perform. However, **if you wish to become an "EMPLOYEE-ENTERTAINER" of this club, you may apply to do so.** The employee-entertainer arrangement is very different than a club-contractor arrangement. Please review this guideline which contains information concerning dancers as employees instead of independent contractors:

Statement of Impact of choice between employee and contractor status. Read this to understand your rights about being an employee or contractor. First, the club has important controls over *employees* which it does not have over *independent contractors*, including regarding scheduling, customers, costumes, music, dance sales, stage performances, and job assignments, among other things. On the other hand, an *employee* is entitled to important federal and state benefits and regulations to which a *contractor* is not entitled. This includes, among other things, workers' compensation, unemployment insurance, state leave and disability protections, minimum wage and overtime protections, meal and break periods, and more. Also, as an employee, the Club would take tax deductions from your payroll check and would be obligated to pay payroll taxes, including for social security, on your behalf. The Club would not be obligated to do this if you chose to be a *contractor*. To review employee rights, or to seek advice, visit the government web sites for the State of California (www.DLSE.gov) and for the federal government (www.DOL.gov).

With that background in mind, review the guideline below which describes the basic arrangement if you chose to become an "employee-entertainer":

- (1) The job classification of employee-entertainer is to sell and perform private dance services;
- (2) You may, as needed, be required to fill in for other job positions including waitress, bartender, door person or other positions in the club;
- (3) As an employee-dancer, you will be provided an employee hire package;
- (4) As an employee, you will be placed on the Club's payroll and any current dancer contract will be terminated;
- (5) You will receive all employee benefits required by law;
- (6) You will be paid the applicable minimum wage for every hour you work at the club, and a premium as required by law for any overtime hours;
- (7) Federal and state tax withholdings will be made from all wages, tips and any bonuses you are paid;
- (8) The Club will collect and own 100% of all dance fees from patrons and pay you as provided in paragraph (5-6) above;
- (9) You will be expected to sell \$200.00 per shift in dance sales (quota) and a failure to do so could result in termination;
- (10) You will be paid by check on a bi-weekly basis, with all required tax withholdings;
- (11) You will be required to report to the club all tips you receive, as required by federal tip reporting rules;
- (12) You will be required to perform in promotions, on stage, and fill in for other dancers or employees ;
- (13) The Club will assign your schedule of days and hours of work;
- (14) You will be required to arrive at work consistent with your scheduled time and to clock in and out, including for all meals;
- (15) The club will issue you one logo costume per month, at its own expense, which will be your required uniform;
- (16) You will be an "at will" employee, which means like all other club employees, you can be terminated with or without cause;
- (17) Nude and semi-nude entertainment is performed at this club; you must affirm a willingness to perform nude or semi-nude entertainment, you must affirm that you are not offended by being or viewing others who are nude or semi-nude; that you fully understand that you will be performing nude or semi-nude and that you fully understand that you may be exposed to sexual comment.

THIS GUIDELINE DESCRIBING THE EMPLOYEE ENTERTAINER ARRANGEMENT IS NOT AN EMPLOYMENT CONTRACT. IT IS A MERE GUIDELINE AND IS SUBJECT TO CHANGE. MANAGEMENT RESERVES ALL ITS RIGHTS TO DIRECT AND CONTROL EMPLOYEES AS PERMITTED BY LAW.

PLEASE NOTIFY THE MANAGER IMMEDIATELY IF YOU WOULD LIKE TO APPLY TO BECOME AN "EMPLOYEE ENTERTAINER". IF YOU DO NOT WISH TO BECOME AN "EMPLOYEE" YOU MAY CHOOSE TO PERFORM AT THE CLUB PURSUANT TO CONTRACT.

IMPORTANT NOTE: THE CLUB'S MANAGERS HAVE NO OPINION ON THIS MATTER, AND THEY WILL NOT ENCOURAGE OR DISCOURAGE YOUR DECISION. IT IS YOUR FREE CHOICE. YOU MAY WISH TO CONSULT YOUR ATTORNEY OR ACCOUNTANT PRIOR TO MAKING YOUR DECISION. YOU MAY ALSO SEEK ADVICE FROM THE STATE OF CALIFORNIA (SEE WEB SITES LISTED ABOVE).

STATE BELOW WHETHER YOU WISH TO BE AN EMPLOYEE OR CONTRACT ENTERTAINER – CHOOSE ONE OR THE OTHER.

I have read this Notice and understand that I may apply to perform as an employee. Please provide me with the employee Application Forms.

I CHOOSE EMPLOYEE STATUS:

Entertainer's Signature

02/03/2018

Date

ROE #4

Entertainer's Printed Name

I have read this Notice and DECLINE employee status.

I CHOOSE CONTRACT STATUS:

Entertainer's Signature

02/03/2018

Date

ERIC BONILLA

Manager's Printed Name

Showgirls of San Diego, Inc.

Club Name

1.9.2017

EXHIBIT 3

BUSINESS STATUS SELECTION BY ENTERTAINER AND OFFER OF EMPLOYMENT

As a result of our review of your application, interview, and audition, the Club would like to offer you the opportunity to perform here. There are different business arrangements under which you can perform, and we want **YOU** to make the decision as to the way that **YOU** want to perform at this Club. You can do so either as: 1) an INDEPENDENT PROFESSIONAL ENTERTAINER; or 2) an EMPLOYEE.

We have listed below some of the general distinctions between performing here as an Independent Professional Entertainer or as an Employee. This document is not intended to provide legal or tax advice, and is merely a summary of general information.

WE DO NOT, HOWEVER, WANT YOU TO MAKE ANY RASH OR UNINFORMED DECISIONS CONCERNING THE MATTERS SET OUT IN THIS DOCUMENT. YOU ARE ENCOURAGED TO CONSULT WITH ANY PERSONS OF YOUR CHOICE, INCLUDING ATTORNEYS, ACCOUNTANTS AND/OR TAX PROFESSIONALS, PRIOR TO MAKING THIS SELECTION. IN ADDITION, IF YOU WOULD LIKE TO SEE A COPY OF THE CONTRACT THAT THE CLUB USES FOR INDEPENDENT PROFESSIONAL ENTERTAINERS (CALLED A "DANCER PERFORMANCE LEASE") PRIOR TO MAKING YOUR DECISION, PLEASE JUST ASK AND WE WILL BE HAPPY TO PROVIDE YOU WITH A COPY TO REVIEW. FEEL FREE TO TAKE THESE DOCUMENTS HOME AND REVIEW THEM AT YOUR LEISURE BEFORE MAKING YOUR CHOICE.

After reviewing this information, we would like you to select the circumstances under which you want to perform at this Club. The Club management expresses **no opinion** on this matter, and we will be happy to have you perform here under **either** structure. This is **your choice** to make.

The Club will rely upon the selection you have made at the end of this document, and will offer you the opportunity to enter into the business arrangement that **YOU** selected.

Here are the general differences of the two distinct arrangements under which you can perform at this Club:

INDEPENDENT PROFESSIONAL ENTERTAINER STATUS

VS.

EMPLOYEE STATUS

1. As an Independent Professional Entertainer, you will enter into a written contract with the Club which will be for a certain period of time; which will specify in writing the rights, duties and obligations of both you and the Club; and which cannot be changed except upon the mutual agreement of both you and Club management. The Club will not be able to terminate your contract during the specified period except upon the limited reasons identified in the contract.

2. As an Independent Professional Entertainer, all of your earnings will come directly from your customers. **YOU WILL NOT RECEIVE ANY PAY FROM THE CLUB, EITHER BY WAY OF AN HOURLY WAGE OR A SALARY.** You will charge your customers for your personal entertainment performances ("Entertainment Fees"); the money that you receive from them, either by way of the Entertainment Fees (discussed in number 4 below) or tips (discussed in number 3 immediately below), will be your money that you will be able to take home at the end of the day. You will, however, be required to pay certain fees to the Club for having the right to perform here. You can review a copy of the contract that the Club uses in order to see the current amount of those fees. If there are any differences between this document and the Dancer Performer Lease, the terms of the Dancer Performer Lease control.

3. As an Independent Professional Entertainer, all tips that you earn (gratuities paid by customers ***over and above*** the posted Entertainment Fees, as well as stage tips) are yours to keep. You will not be required to share your tips with, or "tip out" to, anyone.

1. As an Employee, you will not have a contract with the Club. Rather, your employment will be "at will," meaning that your employment can be terminated by the Club or by you at any time, without cause and without prior notice. The Club will have the right to change the terms of your employment at its discretion at any time.

2. As an Employee, you will be paid every other Friday on an hourly basis at a rate equal to the current applicable tip-credited minimum wage. Under such an employment relationship, you would be paid, in accordance with Section 203(m) of the Fair Labor Standards Act and applicable state law, the legally permitted "tip-credited" wage (currently \$2.13 per hour). The Club would then increase your wages by taking the allowable tip-credit (currently \$5.12 per hour), which cannot exceed the amount of tips actually received by you. If, in a workweek, you did not earn at least the full minimum wage through wages and retained tips (currently \$7.25 per hour), the Club would pay you the difference so that you would earn the full minimum wage for each hour worked. These "tip credit" provisions would not apply unless you were informed of them.

3. As an Employee, you will be required to pay 15% of your tips (gratuities paid by customers ***over and above*** the posted Entertainment Fees, as well as stage tips) into a "tip pool" that would be distributed to non-dancer regularly tipped employees.

4. As an Independent Professional Entertainer, the Entertainment Fees you charge your customers belong to you, and are yours to keep, subject only to certain lease fees that you will be required to pay for having the right to use parts of the Club for your independent business activities.

5. As an Independent Professional Entertainer, you will be responsible for taking care of and paying all taxes and other withholdings due on your income.

6. As an Independent Professional Entertainer, you keep track of your own income. You do not report your tip income to the Club (although the Club will be tracking the Entertainment Fees that you earn). You can take tax deductions for travel, advertising, makeup, costumes, props, tanning, health clubs, cosmetic surgery, etc., as allowed by law.

7. As an Independent Professional Entertainer, you may perform wherever you choose, and may perform at other clubs while you are under contract with this Club.

8. As an Independent Professional Entertainer, you will determine the days and times you perform at the Club consistent with the entertainment sessions for which you have contracted. In addition, you can perform as many hours per day as you desire, although you will receive no "overtime" pay from the Club.

9. As an Independent Professional Entertainer, whether you take any breaks, when you take your breaks, and the number and duration of any breaks, is totally up to you. The only restriction on your breaks is that you should not, obviously, take a break during your stage performances.

10. As an Independent Professional Entertainer, you can perform for whomever you choose, and can reject any customers you want.

11. As an Independent Professional Entertainer, you will never be required by the Club to give "free" dances to anyone.

12. As an Independent Professional Entertainer, you will never be required to engage in any Club promotions or advertising.

13. As an Independent Professional Entertainer, you will have the freedom to choose your own costumes, and you will be required to provide your own costumes. However, you will be expected to appear in costuming consistent with industry standards for professional entertainers performing in upscale, high-end, entertainment facilities.

14. As an Independent Professional Entertainer, you will determine your own appearance.

4. As an Employee, all of the Entertainment Fees you charge customers belong to the Club. You will have to turn them over to management before the end of your shift.

5. As an Employee, the Club will take out of your pay all taxes and other withholdings required by law.

6. As an Employee, you must, by law, report ALL of your tip income to the Club. You cannot deduct from your taxes the incidental expenses of your employment. In addition, the Club is required by law to pay to the IRS, out of the wages due to you, taxes owed on your tip income. If you make a substantial amount in tips, this could then result in you receiving a "zero" pay check. If you have any questions about this, consult an accountant.

7. As an Employee, you will be prohibited from performing at other establishments that are in competition with the Club.

8. As an Employee, Club management will select your schedule (both days and times), with input from you. The final decision of your work schedule, however, will be made by Club management based upon consideration of its business needs, such as the expected number of entertainers and guests, etc. The Club will generally not permit you to work any "overtime." However, at the discretion of management you may be required to work overtime, and you will be paid time and one-half for any excess hours that you work as required by law.

9. As an Employee, Club management will determine the time, number and duration of your breaks, consistent with state law.

10. As an Employee, you will be required to perform for all customers.

11. As an Employee, you may, at the direction of management, be required to give "free" dances to certain customers.

12. As an Employee, you may be required to participate in various Club promotions and advertising, both on and off the Club premises.

13. As an Employee, you will be required to wear the costumes selected by the Club. The Club will provide to you, free of charge, two costumes every two months and a pair of performance footwear every three months.

14. As an Employee, your appearance must comply with Club standards. Management will tell you how to wear your hair, and how your makeup should look.

15. As an Independent Professional Entertainer, you will not be given any training. You will be expected to come to the Club with the necessary skills to perform as a professional exotic dance entertainer. You may perform in any lawful manner of your own choosing and you will not have to meet any type of "performance standards" set by the Club.

16. As an Independent Professional Entertainer, if you are injured at the Club, you will not be covered by the Club's Workers' Compensation Insurance, but you can sue the Club, if it is at fault, and your only limits of recovery are those that may be imposed by state law.

17. As an Independent Professional Entertainer, you will not be entitled to unemployment compensation benefits either if your contract expires or the Club terminates it early for any of the reasons listed in the agreement.

18. As an Independent Professional Entertainer, the Club will not offer you any form of health insurance.

19. By selecting Independent Professional Entertainer status, you will be acknowledging that you understand that you are not entitled to benefits under the Fair Labor Standards Act (minimum wage and overtime laws, among other things), the National Labor Relations Act, the Equal Employment Opportunity Act, and other laws that protect employees.

15. As an Employee, you will be required to undergo dancer training, you must perform consistent with the standards set in that training, and you will be expected to meet certain dance quota minimums in order to be able to keep your job.

16. As an Employee, if you are hurt at work your sole recourse against the Club, under most circumstances, will be for "Worker's Compensation" benefits. You will not have to prove the Club was at fault, but you will be subject to the limits of that coverage.

17. As an Employee, if you are fired or laid off, you may be entitled – if you have worked a sufficient period of time and satisfied other legal requirements – to unemployment compensation benefits. These benefits are for a fixed period of time and are set by law.

18. As an Employee, if the Club is at any time required to offer certain of its employees health insurance and you qualify, you may, but need not, accept such health insurance so long as you agree to pay the policy premiums up to a maximum of 8% of your total household income (wages *and* tips).

19. As an Employee, you will be entitled to certain legal protections under the Fair Labor Standards Act, the National Labor Relations Act, the Equal Employment Opportunity Act, and other laws that protect employees. If you have any questions about these protections, consult an attorney or obtain information from the internet. Certain information can be obtained from the websites at www.dol.gov/esa/whd/flsa and www.lawworks.net/laborlawinfo.asp, and/or by reviewing the employment law posters that are displayed in the Club (if you have any questions as to where they are located, please ask a manager and he or she will direct you to them). You may also be entitled, depending upon the amount of time you work, to other employee benefits. If you have any questions about this, ask a manager.

(THIS SPACE INTENTIONALLY LEFT BLANK)

AFTER HAVING REVIEWED THE ABOVE INFORMATION AND HAVING CONSIDERED THESE MATTERS:

_____ I desire to perform as an Independent Professional Entertainer.

In light of your selection to perform as an Independent Professional Entertainer, we want to be sure that you are aware of the significance of the choice you have made. Consequently, **DO NOT SIGN THIS DOCUMENT UNLESS YOU FULLY UNDERSTAND AND AGREE TO THE FOLLOWING STATEMENTS:**

By selecting to perform at this Club as an Independent Professional Entertainer, I acknowledge and represent that I have been afforded the opportunity to work at the Club as an employee-entertainer. However, after careful consideration I have willingly and intentionally chosen NOT to do so. In fact, I specifically REJECT the offer of employment extended to me by the Club, and I DECLINE and REFUSE the opportunity to enter into the type of employment arrangement discussed here. I desire, instead, to perform as an Independent Professional Entertainer under the terms set out in this document. I have made this choice of my own free will, and no one has forced, coerced, or threatened me to make this selection.

Accordingly, I hereby REJECT, DISAVOW, RENOUNCE AND REPUDIATE, any and all benefits that employee status may provide to me and any and all obligations that it may impose upon me.

I further understand and agree that the Club will rely on the statements, acknowledgements, representations, and the choice, that I have made in this document.

_____ I desire to work at the Club as an Employee Entertainer.

Entertainer's Signature

Entertainer's Name (Please Print)

_____/_____/_____
Date

EXHIBIT 4

2018-2019 CLUB/PERFORMER CONTRACT

Sign this Contract ONLY if you genuinely agree with its terms. Read it carefully, seek the advice of counsel or a person you trust. ALSO, BEFORE SIGNING, CONSIDER OWNER'S SEPARATE OFFER OF EMPLOYMENT.

OWNER, Showgirls of San Diego Inc, DBA: Déjà Vu Showgirls ("Owner") operates a business authorized under zoning and licensing laws to permit nude or semi-nude entertainment on its' premises, and

PERFORMER ("Performer") is in the business of and holds required licenses or permits to market her adult oriented entertainment, and requires a venue which lawfully permits such entertainment, and

THE PARTIES desire to establish the terms of a mutually beneficial business relationship including the Division of Gross Revenue from such entertainment.

THEREFORE, the Parties agree as follows:

I. **TERM.** This Contract begins on signing and ends February 28, 2019 or when terminated as provided herein.

II. **DEFINITIONS:**

- A. **Dance Fee Collection Methods.** Dance Fees are paid by patrons by depositing them into Bill Acceptor Machines, or in the absence of such Machine, Owner assigns an employee attendant to collect the fees from Patrons. The purpose of the Machines or employee attendant collection is to ensure that Dance Fees are kept separated from Performer's solely owned "tips."
- B. **"Personal Dances"** are non-stage dances performed individually and sold to a patron for a set Dance Fee.
- C. **"Dance Fees"** are the set price for Personal Dances. These fees are MANDATORY CHARGES as the price for a Personal Dance. They are NOT tips or gratuities.
- D. **"Gross Revenue"** is the total Dance Fees and other sales attributable to Performer. Gross Revenue does not include Tips or Gratuities.
- E. **"Tips"/"Gratuities"** are the amounts over and above the Dance Fee, voluntarily handed directly to Performer; they are the exclusive property of Performer.
- F. **"Schedule"** is an open calendar which owner will publish every Sunday at opening for Performer's selection of desired Performance Dates.
- G. **"Scheduled Performance Date"** is a date on which Performer has chosen to place herself on the schedule one week in advance.
- H. **"Full Performance Date"** is a continuous period of time when Performer is present, available and ready to perform consistent with the schedule she chose.
- I. **"Good Standing"** means a Performer who is NOT in breach of her contract, and whose contract has been kept "active" in the system by performing at least one Full Performance Date in the current month.

III. **BREACH OF CONTRACT**

A. **Breach of Contract by Performer:**

- Violating the law including laws on drugs, alcohol, soliciting or engaging in prostitution;
- Allowing patrons to pay Dance Fees to you directly, i.e., by failing to require patrons to deposit Dance Fees directly into Bill Acceptor Machines or failing to hand them directly to a club employee, both of which are designed to prevent commingling of Dance Fees with Tips;
- Failing to use your best efforts to sell Personal Dances;
- Failing to appear on and complete a Performance Date you chose to schedule, and
- Engaging in fighting and/or bullying.

B. **Breach of Contract by Owner** includes failure to maintain appropriate licenses and permits, failure to advertise in a mutually beneficial manner, and failure to pay performer her contract Division of Gross Revenues.



C. **Breach Notice/Remedies.** In the event of a Material Breach by Performer, Owner may impose paragraph IV C, Reduced Division of Gross Revenues. If the breach is by Owner, Performer may demand Premium Division of Gross Receipts. Either party may terminate the Contract for Material Breach on 3 days written notice or in the case of drug, alcohol or other violations of law, on 24 hours' notice.

IV. DIVISION OF GROSS REVENUE:

- A. **PREMIUM DIVISION:** For a Performer NOT in breach of her contract, who is ON THE SCHEDULE AND COMPLETES HER FULL PERFORMANCE DATE, Club will ~~forfeit its right to retain the first \$60.00 of Gross Revenues~~ and the total Gross Revenues will be divided 60% to Performer and 40% to Owner. This Premium Division constitutes a \$60 Bonus for being ON A SCHEDULE AND COMPLETING A FULL PERFORMANCE DATE.
- B. **STANDARD DIVISION:** For a Performer who is NOT ON THE SCHEDULE but also NOT IN BREACH of her Contract, Owner shall retain the first \$60.00 of Gross Revenues, and thereafter Gross Revenue will be divided 50/50% basis between Owner and Performer.
- C. **REDUCED DIVISION:** For a Performer who IS IN BREACH, Owner shall retain the first \$60.00 of Gross Revenues and thereafter Gross Revenues will be divided 40% Performer and 60% Owner.

The parties may negotiate to reduce the Owner's Division based on business, scheduling and promotional needs.

V. PERFORMER'S OBLIGATIONS:

A. **Perform Nude or Semi Nude.** The essence of this Contract is Performer's willingness, agreement and intent to Perform Nude to the extent allowed by applicable law.

B. **Dance Fees.** Performer specifically agrees to ensure that patrons pay all Dance Fees directly into the Bill Acceptor Machines or by handing the Fee directly to a club employee. *Performer is prohibited from allowing patrons to pay Dance Fees directly to her. This term is intended to mandate the separation of Dance Fees from Tips, and is a material term, breach of which subjects Performer to Termination of Contract and a claim of Conversion.*

C. **Market Services.** Performer shall use her skills, artistic talents and best efforts to market and sell nude or semi-nude Personal Dances as permitted by law.

D. **Tips / Gratuities.** Performer owns all tips handed directly to her by patrons. *She is NOT required to share her tips with any club employee, and should report to Owner if anyone demands a portion of her tips.*

E. **Permits.** Performer agrees to maintain all licenses and permits required by law and to know and comply with all related laws and regulations.

F. **Appear on Stage and in Promotions.** Performer agrees to perform on stage on a rotational basis and to participate in promotions held on site during her Performance Date. If Performer chooses to perform in off-site promotions, the Parties will negotiate such performances separately.

G. **Scheduling.** ~~Performer is free to perform if and when she chooses.~~ If Performer chooses a schedule, it shall be based on available performance dates chosen by her one week in advance. **Premium Divisions are available for Scheduled Performance Dates. See Paragraph IV A.**

H. **Breaks.** Performer may take breaks (including rest or meal breaks) at her option, except during scheduled stage shows.

I. **Property, Law and Safety.** Performer agrees not to damage Owner's property and to comply with safety and legal requirements, including laws on drugs, alcohol and soliciting or engaging in prostitution.

J. **No Assignment.** This Contract is for Performer's personal skills and artistic talents. She may not assign her rights or obligations, but she may supply a qualified substitute (an entertainer with a valid contract and permits) who will then be responsible for her own scheduling.

K. **Non-Exclusive.** Performer's obligations under this contract are non-exclusive; PERFORMER IS FREE TO PERFORM AT OTHER BUSINESSES.

L. **Control of Performances, Costumes & Music.** Performer has the right to select available music for her stage shows, choose the patrons for whom she performs Personal Dances, and to choose her costumes, provided they are consistent with industry standards for professional entertainers. *Performer also has exclusive control over the character, manner and means of her performances, so long as no law is violated, and the end product (nude or semi nude entertainment and sale of Personal Dances) is accomplished.*

M. **Intellectual Property.** Performer shall retain all intellectual property rights to her performances, stage names and

likeness unless assigned in writing.

N. Nature of Business. Performer recognizes she may be subjected to nudity, sexually explicit language and depictions of explicit conduct. Performer represents that she does not find such sights or sounds offensive. **OWNER PROHIBITS SEXUAL HARASSMENT; PERFORMER SHOULD REPORT UNWELCOME CONDUCT TO CLUB MANAGEMENT OR POSTED COMPLAINT NUMBERS.**

VI. OWNER'S OBLIGATIONS:

A. Premises/Licenses. Owner shall maintain the premises and applicable licenses and permits.

B. Advertising and Music Copyright Fees. Owner shall pay any music copyright fees, and shall advertise and host promotions in a reasonable manner for the mutual benefit of the parties. Performer may advertise her performance dates on her social media or publically at her own expense.

C. Dance Records. Owner will keep an accurate record of Gross Revenue attributable to Performer.

D. Dance Fees Posted. Owner will announce the price of Personal Dances, so patrons have notice of the Fees and that they are divided between both parties.

E. Time of Payment. Performer will receive her Division of Gross Revenue at the end of each performance date and she will be provided a receipt.

F. Income Tax Records. Owner will issue Performer a Form 1099 for monies paid to her under this contract. Performer is required to account separately for all tips given her, as tips are unknown and not reported to Owner and therefore not included in the Form 1099.

G. Privacy Rights. Owner will not disclose Performer's personal information to any third party without written permission unless required by law. Owner will notify Performer, as practicable, on receipt of a request for information about Performer unless prohibited by law.

VII. OTHER CONTRACT TERMS:

A. No Employment Relationship. THE PARTIES DISAVOW AN EMPLOYEE-EMPLOYER RELATIONSHIP.

1. PERFORMER ACKNOWLEDGES THAT SHE HAS BEEN PROVIDED WITH A WRITTEN STATEMENT CONCERNING HER RIGHTS IF SHE WERE AN EMPLOYEE AS OPPOSED TO A CONTRACTOR;

2. PERFORMER REPRESENTS THAT SHE CONSIDERED AND REFUSED AN OPTION TO BE AN EMPLOYEE, AND THAT SHE UNDERSTANDS AND AGREES SHE WILL BE PAID UNDER CONTRACT IN LIEU OF WAGES;

3. PERFORMER AGREES THAT AS A CONTRACTOR, OWNER WILL NOT REIMBURSE BUSINESS EXPENSES OR PROVIDE EMPLOYEE-RELATED BENEFITS SUCH AS WAGES, MEAL AND BREAK PERIODS, WORKERS COMP, UNEMPLOYMENT, PAID LEAVE, DISABILITY BENEFITS, OR ANY OTHER EMPLOYEE RELATED BENEFITS.

4. PERFORMER AGREES THAT IF THE PARTIES' RELATIONSHIP IS LATER DEEMED TO BE, OR IF SHE REPUDIATES HER CONTRACT AND ASSERTS THAT SHE IS OR SHOULD BE, AN EMPLOYEE, THEN OWNER SHALL IMMEDIATELY CONVERT HER TO AN EMPLOYEE, AND RETAIN 100% OF GROSS REVENUES FROM DANCE SALES AND PAY HER THE LEGAL WAGE AND OTHER BENEFITS REQUIRED BY LAW.

B. Unjust Enrichment. Performer acknowledges that if she is later deemed to be an employee entitled to wage and hour benefits during any period under this Contract, it would be unjust for her to retain both the monies she collected under this Contract and be paid wage benefits for the same period. Performer therefore agrees that all payments received under the terms of this Contract shall be offset or credited against any wage and hour claim.

C. Inactive or Voluntary Termination by Notice. The Contract automatically terminates as "inactive" if Performer has not performed at least once during each 30-day period the contract is in force. Also, either party may voluntarily terminate this Contract on 30 days written notice.

D. Severability. Any unenforceable portion of this Contract, to the extent possible, shall be severable from this Contract and not affect the enforceability of the remainder.

VIII. Arbitration OPTION. Congress enacted the Federal Arbitration Act ("FAA") so that contracting parties could quickly and inexpensively resolve their disputes without the formality of a Court process. Arbitration is the private determination of a dispute by an independent third-party Arbitrator (who is usually an attorney or retired judge). Owner, its officers, employees, principals, agents and its related entities (collectively "Owner") agree to resolve any disputes with you through Binding Arbitration pursuant to the FAA. HOWEVER, YOU must AGREE to Arbitration. Read this section and choose the method you prefer for resolving any possible future disputes. If you agree to arbitration, the following terms apply:

1. ALL DISPUTES BETWEEN THE PARTIES, WHETHER STATUTORY, CONTRACTUAL OR TORT, WILL BE DECIDED BY BINDING ARBITRATION HELD PURSUANT TO THE FAA, AND SHALL BE BEFORE A NEUTRAL ARBITRATOR AGREED UPON BY THE PARTIES.

2. THE PARTIES WAIVE ANY RIGHT TO LITIGATE ANY AND ALL DISPUTES IN A COURT OF LAW, AND WAIVE THE RIGHT TO TRIAL BY JURY.

3. EITHER PARTY MAY DEMAND AN EXPERT IN THE ADULT INDUSTRY TO SERVE AS THE ARBITRATOR. THE ARBITRATOR SHALL BE PERMITTED TO AWARD ANY RELIEF THAT WOULD BE AVAILABLE TO EITHER PARTY IN A COURT. THE COSTS OF ARBITRATION SHALL BE ASSIGNED EXCLUSIVELY AS REQUIRED BY LAW. THE PARTIES WILL BE ENTITLED TO CONDUCT DISCOVERY SUFFICIENT TO ADEQUATELY ARBITRATE THEIR CLAIMS. THE ARBITRATOR SHALL HAVE EXCLUSIVE AUTHORITY TO RESOLVE ANY DISPUTES OVER THE ENFORCEABILITY OF THIS CONTRACT AND THE TERMS HEREIN, INCLUDING THIS ARBITRATION PROVISION. ANY ARBITRATION AWARD MAY BE ENTERED AS A JUDGMENT IN ANY COURT HAVING JURISDICTION.

4. AN ARBITRATOR MAY NOT CONSOLIDATE ANY OTHER PERSON'S OR ENTITY'S CLAIMS, AND MAY NOT PRESIDE OVER ANY FORM OF REPRESENTATIVE, CLASS, CONSOLIDATED OR COLLECTIVE PROCEEDING.

5. SOME CLAIMS MAY NOT BE SUBJECT TO ARBITRATION. Federal Claims with the National Labor Relations Board, Department of Labor and Equal Employment Opportunity Claims, as well as similar state agency claims may not be subject to arbitration. You may file any such claims directly with State and Federal agencies.

6. YOU HAVE THE CHOICE TO ACCEPT OR REJECT THIS ARBITRATION PROVISION. YOU WILL NOT BE RETALIATED AGAINST BASED ON YOUR DECISION. YOUR CHOICE WILL HAVE NO AFFECT ON YOUR PERFORMANCE DATES, PAYMENTS, OR THE RIGHT YOU HAVE TO CONTROL YOUR PERFORMANCES.

CHOOSE ONE OPTION CAREFULLY!

☒ I AGREE TO RESOLVE MY DISPUTES BY BINDING ARBITRATION.

☐ I REJECT HAVING MY DISPUTES RESOLVED BY BINDING ARBITRATION.

IX. WAIVER OF CLASS AND COLLECTIVE PROCEEDINGS. BOTH PARTIES AGREE THAT ANY CLAIM MADE AGAINST THE OTHER SHALL BE IN AN INDIVIDUAL CAPACITY. THIS MEANS YOU AGREE THAT CLAIMS WILL NOT BE MADE AS A CLASS, COLLECTIVE, REPRESENTATIVE OR CONSOLIDATED ACTION. HOWEVER, DEPENDING ON THE STATE OF THE LAW AT THE TIME OF ENFORCEMENT, YOU MAY BE PERMITTED TO PURSUE A CALIFORNIA PRIVATE ATTORNEY GENERAL ACT ("PAGA") CLAIM IN COURT.

☒ I AGREE TO BRING ANY CLAIMS IN AN INDIVIDUAL CAPACITY.

☐ I REJECT LIMITING MY CLAIMS TO INDIVIDUAL CLAIMS.

NOTE: THIS CONTRACT IS VOID IF PERFORMER IS NOT AT LEAST AGE 18. PERFORMER HAS PROVIDED IDENTIFICATION VERIFYING HER AGE AND BY SIGNING HERE, CONFIRMS ITS AUTHENTICITY.

OWNER:
Showgirls of San Diego Inc,

d/b/a Deja Vu Showgirls
2720 Midway Dr.
San Diego Ca. 92110

MANAGER / ASSISTANT MANGER:

ERIC BONILLA

Printed Name


Signature

02/03/2018


Date

Est. 1.15.2018

PERFORMER:

I AGREE TO THESE TERMS

ROE #4


Printed Legal Name


Signature

02/03/2018

Date

Stage Name 

Address 

City 

St 

Zip 

Social Security Number 

License / Permit Number 

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