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By: K. BRECKENRIDGE

1 SHANNON LISS-RIORDAN (State Bar No. 310719)
2 (sliss@llrlaw.com)
3 LICHTEN & LISS-RIORDAN, P.C.
4 729 Boylston Street, Suite 2000
5 Boston, MA 02116
6 Telephone: (617) 994-5800
7 Facsimile: (617) 994-5801

8 Attorney for Elana Pera, Penny Nunez, Sarah Murphy,
9 Poohrawn Mehraban, Nicole Hughes,
10 Angelynn Hermes, and Gypsy Vidal,
11 on behalf of themselves
12 and others similarly situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

JANE ROES 1-4,

Plaintiffs, and

ELANA PERA, PENNY NUNEZ, SARAH
MURPHY, POOHRAWN MEHRABAN,
NICOLE HUGHES, ANGELYNN
HERMES, and GYPSY VIDAL

Plaintiffs-Intervenors

v.

DÉJÀ VU SERVICES, INC., et al.

Defendants.

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

**[PROPOSED] COMPLAINT IN
INTERVENTION**

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

Assigned for all purposes to:
Hon. Timothy B. Taylor

Complaint filed: May 31, 2018

1 Plaintiffs-Intervenors Elana Pera, Penny Nunez, Sarah Murphy, Poohrawn Mehraban,
2 Nicole Hughes, Angelynn Hermes, and Gypsy Vidal, on behalf of themselves and a class of
3 similarly situated individuals, by way of this Complaint in Intervention, state and allege as
4 follows:

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6 **I. INTRODUCTION**

7 1. Plaintiffs bring this suit as a class and collective action on behalf of other
8 similarly situated aggrieved employees of S.A.W. Entertainment, Ltd. d/b/a Larry Flynt's Hustler
9 Club ("Hustler Club"), S.A.W. Entertainment, Ltd. d/b/a Condor Gentlemen's Club ("Condor"),
10 Gold Club – S.F., LLC d/b/a Gold Club San Francisco ("Gold Club"), as other adult
11 entertainment clubs in San Francisco that have been managed by Defendant SFBSC
12 Management, LLC (collectively, "the Clubs" or "Defendants"), during the relevant statutory
13 period. Defendants have misclassified Plaintiffs and other similarly situated exotic dancers as
14 independent contractors and, in so doing, have violated various provisions of California and
15 federal law, including: (1) Cal. Lab. Code §§ 1197 and 1194 for failing to pay minimum wage;
16 (2) the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, for failing to pay minimum wage; (3)
17 Cal. Lab. Code § 226(a) for failing to provide itemized wage statements; (4) Violation of Unfair
18 Competition Law, Business & Professions Code §§ 17200, et seq.; (5) Cal. Labor Code §2802
19 by requiring dancers to pay various expenses that should have been borne by the employer; and
20 (6) Cal. Labor Code § 351 (enforceable through Cal. Bus. & Prof. Code § 17200) by failing to
21 allow dancers to retain all gratuities paid by customers. In addition, Plaintiffs bring
22 representative claims pursuant to the California Private Attorney General Act of 2004
23 ("PAGA"), Cal. Labor Code §§ 2698 et seq.

24 **II. PARTIES**

25 2. Intervenor-Plaintiffs have performed as exotic dancers at Defendants' clubs in
26 California during the relevant statutory period.

27 3. Plaintiffs bring this case as a class action on behalf of all exotic dancers who have
28 worked for Defendants since four years prior to the filing of *Hughes, et al. v. S.A.W.*

1 *Entertainment, LTD., et al.*, No. 16-3371 (N.D. Cal.), and *Pera v. S.A.W. Entertainment, LTD,*
2 17-138 (N.D. Cal.), and as an FLSA collective action on behalf of all exotic dancers who have
3 worked for Defendants during the applicable statutory period who may choose to opt in to this
4 action.

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6 4. Defendant Déjà vu Services, Inc. is a Michigan Corporation maintaining offices
7 in North Hollywood, California, San Diego, California and Lansing, Michigan. From those
8 offices Déjà Vu Services manages, operates and/or controls the business operations and
9 employment and wage policies at the numerous Déjà Vu Nightclubs in California.

10 5. Defendant S.A.W. Entertainment, Ltd. is a California corporation, with its
11 principal place of business in San Francisco, California, which operates the Larry Flynt's Hustler
12 Club and Condor Gentlemen's Club located in San Francisco, California.

13 6. Defendant GOLD CLUB – S.F., LLC is a Nevada corporation, with its principal
14 place of business in San Francisco, California, which operates Gold Club San Francisco located
15 at 650 Howard Street in San Francisco, California.

16 7. Defendant SFBSC Management, LLC is a business organized under the laws of
17 Nevada and registered to do business in California, and it maintains management authority and
18 control over the operations of Hustler Club, Gold Club, and approximately ten other adult
19 entertainment clubs that have operated in San Francisco.

20 **III. JURISDICTION AND VENUE**

21 8. This is an action in intervention in the above-captioned suit as filed by Plaintiff-
22 Intervenors. The above-captioned suit is a class action brought pursuant to Section 382 of the
23 California Code of Civil Procedure and seeks to remedy Defendants' violations of various states'
24 labor laws. To the extent that the Court finds it has jurisdiction over Plaintiffs' claims in this
25 case, it should also find that it has jurisdiction over the instant Complaint-in-Intervention.

26 **IV. RIGHT TO INTERVENE**

27 9. As shown by the facts alleged below, Plaintiff-Intervenors have a right to
28 intervene under Code Civ. Proc. § 387(b) in this action because they are class members in the

1 above-referenced action and they have been actively litigating wage claims and PAGA claims on
2 behalf of a putative class of dancers for the past two years in *Hughes, et al. v. S.A.W.*
3 *Entertainment, LTD., et al.*, No. 16-3371 (N.D. Cal.), and *Pera v. S.A.W. Entertainment, LTD,*
4 *17-138* (N.D. Cal.). The adjudication of the parties' claims in this case in their absence will
5 completely impair and impede her ability to protect her interest in her ongoing case as well as the
6 interests of the class they seek to represent because it will wipe out the claims in their pending
7 proceedings without adequate consideration or compensation.

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9 10. Furthermore, as shown by the facts alleged below, pursuant to Code Civ. Proc.
10 § 387(a), Plaintiff-Intervenors have an interest in the subject matter of the litigation, because,
11 under California law as under federal law, absent class members are bound by the doctrine of *res*
12 *judicata* in a class action settlement and their claims and those of the class they have sought to
13 represent for the past two years could be wiped out without adequate consideration or
14 compensation. Adjudication of Plaintiff-Intervenors' interests will not delay or unduly expand
15 the trial of this action.

16 **IV. STATEMENT OF FACTS**

17 11. Déjà vu Services, Inc. operates numerous nightclubs that specialize in adult
18 entertainment in California.

19 12. For example, the Hustler Club, Condor Gentlemen's Club, and the Gold Club are
20 adult entertainment clubs located in San Francisco.

21 13. The Hustler Club advertises that it is "San Francisco's top gentleman's club" and
22 that it was voted the "SF Best Strip Club 2015."

23 14. The Gold Club advertises that it is "San Francisco's upscale topless adult club,"
24 and welcomes guests to "[c]ome in and get comfortable with our world class, sexy adult
25 entertainers."

26 15. Defendant SFBSC Management, LLC maintains management authority and
27 control over the operations of Hustler Club, Gold Club, and approximately ten other clubs in San
28

1 Francisco. SFBSC Management, LLC is in the business of operating adult entertainment clubs
2 and holds control over the work conditions of the dancers in these clubs.

3
4 16. The Clubs and SFBSC classify all exotic dancers who perform at these
5 “gentleman’s clubs” and “adult clubs” as independent contractors, when in reality they are
6 employees of Defendants.

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8 17. Defendants have exercised extensive control over the manner in which their
9 exotic dancers, including Plaintiffs, perform their jobs and conduct themselves while on
10 Defendants’ premises, including what dancers are allowed to wear, how much dancers can
11 receive for private dances and sessions, and how dancers can interact with customers. For
12 example, Defendants fine dancers if they violate Defendants’ rules regarding appearance,
13 wardrobe, or behavior. Likewise, Defendants have required Plaintiffs-Intervenors and other
14 dancers to work at least three days per week and Defendants have imposed fines for dancers who
15 miss their scheduled shift, who work less than a full shift, or who attempt to work on a day when
16 they are not scheduled.

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18 18. In addition, the Defendants are in the business of providing adult entertainment to
19 its patrons. The dancers perform services in the usual course of this businesses, and without the
20 dancers, Defendants would have no business.

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22 19. Plaintiffs and other exotic dancers who have worked at these clubs are also not
23 engaged in an independently established trade or business. When they dance at these clubs, they
24 wear the “hat” of the club, rather than their own “hat” as an independent business.

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26 20. The Clubs maintain websites on which they provide photographs and other
27 information regarding the dancers who perform at the Clubs, including advertising the specific
28 dates when dancers are working.

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30 21. In order to perform their job, the dancers have been required to pay “house fees”
31 to Defendants. The average house fees can range between \$40-\$60 per shift, and they can be as
32 high as \$240 for one shift.

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34 22. Exotic dancers who have worked for the Clubs have not received any wages from

1 Defendants.

2 23. Instead, any compensation the dancers have received has come directly from
3 patrons in the form of gratuities or tips.

4 24. Out of these gratuities or tips, the dancers have been required to pay a portion
5 back to the Clubs, as well as share their tips with other employees who are not eligible to share in
6 tips, including managers and non-service employees (such as “house moms” and disc jockeys).

7 25. Even if these payments from patrons were deemed to be the dancers’ “wages”, the
8 dancers have not been permitted to retain the full amount of these wages, since the Clubs have
9 subtracted various fines, charges, and fees from these amounts (as well as requiring the dancers
10 to share them with other employees).

11 26. Based on their misclassification as independent contractors, Plaintiffs and other
12 dancers have been required to bear expenses of their employment, including expenses for
13 wardrobe that meets Defendants’ requirements. California law requires employers to reimburse
14 employees for such expenses, which are for the benefit of the employer and are necessary for the
15 employees to perform their jobs.

16 27. Defendants have failed to provide Plaintiffs-Intervenors and other dancers with
17 itemized wage statements showing the dancers’ hours worked, total wages earned, all deductions
18 from wages, and all other information required by Cal. Lab. Code § 226(a).

19 **V. CLASS AND COLLECTIVE ACTION ALLEGATIONS**

20 28. Plaintiffs-Intervenors bring this action as a class action pursuant to Federal Rule
21 of Civil Procedure 23, on behalf of all other dancers who have performed at the Clubs and who
22 have been designated as “independent contractors” since four years prior to the filing of this
23 complaint.

24 29. Plaintiffs-Intervenors and other class members have uniformly been misclassified
25 as independent contractors.

26 30. The members of the class or classes are so numerous that joinder of all class
27 members is impracticable.
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1 31. Common questions of law and fact exist as to members of the class who have
2 been misclassified as independent contractors. Among the questions of law and fact that are
3 common to these dancers are:

4 a. Whether class members have been required to follow uniform procedures and
5 policies regarding their work for Defendants;

6 b. Whether the work performed by class members— nude or semi-nude dancing —
7 is within Defendants’ usual course of business, and whether such service is fully integrated into
8 their businesses;

9 c. Whether these class members have been required to bear the expenses of their
10 employment, such as expenses for, their wardrobe, and other expenses.

11 d. Whether class members were entitled to receive an hourly rate of the applicable
12 California minimum wage for all hours worked at the Clubs.

13 32. The Plaintiffs-Intervenors are members of the class or classes described above,
14 who suffered damages as a result of Defendants’ conduct and actions alleged herein.

15 33. The Plaintiffs-Intervenors’ claims are typical of the claims of the class or classes
16 described above, and the Plaintiffs-Intervenors have the same interests as the other members of
17 the class.

18 34. The Plaintiffs-Intervenors will fairly and adequately represent and protect the
19 interests of the class members. The Plaintiffs-Intervenors have retained able counsel
20 experienced in class action litigation. The interests of the Plaintiffs-Intervenors are coincident
21 with, and not antagonistic to, the interests of the other class members.

22 35. The questions of law and fact common to the members of the class or classes
23 predominate over any questions affecting only individual members, including legal and factual
24 issues relating to liability and damages.

25 36. A class action is superior to other available methods for the fair and efficient
26 adjudication of this controversy because joinder of all class members is impractical. Moreover,
27 since the damages suffered by individual class members may be relatively small, the expense and
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1 burden of individual litigation makes it practically impossible for the members of the class
2 individually to redress the wrongs done to them. Prosecution of this action as a class action will
3 eliminate the possibility of repetitive litigation. There will be no difficulty in the management of
4 this action as a class action.

5 37. Plaintiffs-Intervenors also bring this case as a collective action under 29 U.S.C.
6 § 216(b) on behalf of any dancers who have worked for Defendants since three years prior to the
7 filing of this case, who may choose to “opt in” to this case.

8 38. Plaintiffs-Intervenors are similarly situated to all other dancers who worked at the
9 Clubs, and there is a group of similarly situated employees who were subject to Defendants’
10 common policies and who are entitled to notice of this action under 29 U.S.C. § 216(b).
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13 **COUNT I**

14 **Violation of Cal. Lab. Code §§ 1197 and 1194**

15 39. Defendants’ conduct, as set forth above, in failing to pay their dancers minimum
16 wage for all hours worked as required by California law, violates Cal. Lab. Code §§ 1197 and
17 1194. This claim is brought on behalf of a class of similarly situated individuals who worked for
18 Defendants.

19 **COUNT II**

20 **Violation of 29 U.S.C. § 206(a)(1)(C)**

21 40. Plaintiffs-Intervenors and other dancers who worked for Defendants were
22 employees of Defendants for purposes of the Fair Labor Standards Act. However, Defendants
23 have failed to pay the dancers an hourly rate of at least the federal minimum wage of \$7.25 per
24 hour. Defendants have thus violated the FLSA, 29 U.S.C. § 206(a)(1)(C), and have done so
25 willfully, intentionally, and in bad faith.
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27 **COUNT III**

28 **Violation of Cal. Lab. Code § 226(a)**

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(Enforceable Through Cal. Bus. & Prof. Code § 17200 *et seq.*)

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44. Defendants' conduct, as set forth above, in failing to permit dancers to retain all gratuities, including dance fees, paid by customers, constitutes a violation of California Labor Code § 351. This violation is enforceable pursuant to the California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200 et seq. Defendants' conduct constitutes unlawful, unfair, or fraudulent acts or practices, in that Defendants have violated California Labor Code §351 in not permitting dancers to retain all gratuities, including dance fees, paid by customers. As a result of Defendants' conduct, Plaintiffs-Intervenors and class members suffered injury in fact and lost money and property, including the loss of gratuities to which they were entitled. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiffs-Intervenors and class members seek declaratory and injunctive relief for Defendants' unlawful, unfair, and fraudulent conduct and to recover restitution.

COUNT VII


Penalties Pursuant to Private Attorney General Act of 2004, Cal. Lab. Code §§ 2698 et seq.

45. Plaintiffs-Intervenors are aggrieved employee as defined by Cal. Lab. Code §2699(c), as they were employed by the Clubs during the applicable statutory period and suffered injury as a result of the Clubs' Labor Code violations. Accordingly, Plaintiffs-Intervenors seek to recover on behalf of the State of California, as well as themselves and all other current and former aggrieved employees of the Clubs who have worked in California, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

46. Exotic dancers of the Clubs are entitled to penalties pursuant to PAGA for the following: (1) violations of Cal. Lab. Code §§ 1197 and 1194 for failure to pay minimum wage; (2) violations of Cal. Lab. Code §§ 1194, 1198, 510, and 558, for failure to pay overtime wages; (3) violations of Cal. Lab. Code § 226(a) for failure to provide itemized wage statements; and (4) violations of Cal. Lab. Code § 2802 by requiring dancers to pay various expenses that should have been borne by the employer.

1 Dated: November 2, 2018

LICHTEN & LISS-RIORDAN, P.C.

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3 By: 

4 Shannon Liss-Riordan
5 Attorney for Proposed Intervenors
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