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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO**

11 **JANE ROE NO. 1, JANE ROE NO. 2, JANE**
12 **ROE NO. 3, and JANE ROE NO. 4,**
13 **individually and on behalf of all others**
14 **similarly situated,**

15 **Plaintiffs,**

16 **vs.**

17 **DÉJÀ VU SERVICES, INC., et al.**

18 **Defendants.**

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

**PLAINTIFF'S EX PARTE APPLICATION
FOR TO STAY LITIGATION FOR 60 DAYS**

Judge: Hon. Timothy Taylor

Dept.: C-72

Date: January 15, 2019

Time: 8:30 a.m.

19 **TO THE COURT AND ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF**
20 **RECORD:**

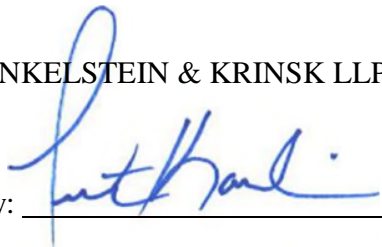
21 **NOTICE IS HEREBY GIVEN THAT** on January 15 at 8:30 AM, in Department C-72 in
22 the Hall of Justice, located at 330 West Broadway, San Diego, California, attorney for Plaintiff, Roe
23 Nos. 1 & 2, will be applying for an order staying the litigation for sixty (60) days to allow the parties
24 an opportunity to discuss settlement of their claims.

25 As further explained in the concurrently filed Memorandum of Points and Authorities, the
26 motion is made on the grounds that the proposed stay will allow the parties to explore resolution of
27 the case.
28

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
01/14/2019 at 11:48:00 AM
Clerk of the Superior Court
By Rhonda Babers, Deputy Clerk

1 The Application is based on this Notice, Memorandum of Points and Authorities, the
2 Declaration of Trenton R. Kashima, the oral argument, and the complete files and records of this
3 action.

4 FINKELSTEIN & KRINSK LLP

5
6 By: _____

6 Dated: January 14, 2019

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28 *Attorneys for Plaintiffs
and the putative class*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs Jane Roes Nos. 1 and 2 respectfully submit this *Ex Parte* Request to Stay this
3 Matter for sixty (60) days to allow the parties an opportunity to discuss resolution of their claims.
4 Defendants join Plaintiffs' Request.

5 **I. RELEVANT BACKGROUND INFORMATION**

6 This case was filed on May 31, 2018 alleging that Defendants misclassified exotic dancers
7 throughout California as independent contractors, as opposed to employees. Plaintiffs allege that, as
8 a result of the misclassification, all dancers were denied their rights under applicable state and
9 federal labor law and Defendants failed to pay Plaintiffs and all other Class members the minimum
10 wages and other benefits they were legally entitled to. Plaintiffs also allege that Defendants engaged
11 in unlawful tip-sharing arrangements with the Class. In their lawsuit, Plaintiffs further allege that
12 Defendants failed to pay the legally required overtime premium wages, as well as meal and rest
13 period wages, resulting in unlawful wage deductions, inaccurate wage statements, and waiting time
14 penalties under California law. Additionally, Plaintiffs seek civil penalties pursuant to the Labor
15 Code Private Attorneys General Act of 2004 ("PAGA") Lab Code §2699 and other provisions of the
16 California Labor Code.

17 This is not the first case to make such allegations, similar claims were previously settled as a
18 result of the judgment in *Does 1-2 v. Deja Vu Services, Inc.*, No. 16-10877 (E.D. Mich.) and *Roe v*
19 *SFBSC*, No. 14-3616 (N.D. Cal.). These cases are currently being appealed in *Doe v. Déjà Vu*, No.
20 17-1801 (6th Cir.) and *Roe v. SFBSC*, No. 17-17079 (9th Cir.). These settlements, however,
21 occurred before the California Supreme Court's decision in the *Dynamex Operations West, Inc. v.*
22 *Superior Court* (2018) 4 Cal.5th 903 ("*Dynamex*") case and did not result in a reclassification of
23 Defendants' dancers as employees.

24 On July 24, 2018, Plaintiffs and Defendants held an initial mediation to explore settlement
25 terms with the assistance of a Hon. Victor Bianchini. The settlement focused on Defendant's
26 outstanding liability following the *Dynamex* decision. This mediation eventually lead to a term
27 sheet, which included a 14-day unconditional recession period for either party to cancel the
28 settlement without condition or penalty.

1 Given that the Intervenor Elana Pera, Penny Nunez, Sarah Murphy, Poohrawn Mehraban,
2 Nicole Hughes, Angelynn Hermes, and Gypsy Vidal (and their counsel, Lichten & Liss) had
3 opposed the settlements in *Does 1-2 v. Deja Vu Services, Inc.*, No. 16-10877 (E.D. Mich.) and *Roe v*
4 *SFBSC*, No. 14-3616 (N.D. Cal.), and are the appellants challenging the judgment in this cases,
5 Plaintiffs and Defendants invited the Intervenor to a second mediation was held with Mark Rudy in
6 San Francisco in August. The goal of the mediation was to have all parties contemplated their
7 respective positions to see if a more comprehensive settlement could be reached, including the
8 existing terms and their case, and perhaps the two appeals. It was unsuccessful.

9 On October 11, 2018, Plaintiffs move for preliminary approval of their negotiated settlement
10 without the involvement on the Intervenor. [RoA No. 26] This Motion was challenged by the
11 Intervenor on November 1, 2018. [RoA Nos. 38]. Concurrently, the Intervenor moved to
12 intervene in this case. [RoA Nos. 48]. Their Complaint in Intervention was styled as a class action.

13 On November 30, 2018, the Court denied Plaintiffs' Motion for Preliminary Approval [Dkt.
14 No. 105.] and granted the Motion to Intervene on December 27, 2017. [Dkt. No. 115.] Plaintiffs
15 understand that Defendants will be filing a Demurrer to the Complaint in Intervention.

16 Defendants' Motion to Compel Arbitration is pending, and set to be heard on January 18,
17 2019. Furthermore, the Intervenor were ordered to arbitrate their wage and hour claims in their
18 pending United States District Court for the Northern District of California, *Hughes, et al. v. S.A.W.*
19 *Entertainment, LTD., et al.*, No. 16-3371 (N.D. Cal.) and *Pera v. S.A.W. Entertainment, LTD*, 17-
20 138 (N.D. Cal.). Plaintiffs expect that there will be additional litigation regarding the parties'
21 purported arbitration agreement.

22 Plaintiff contacted counsel for both Defendants and the Intervenor to discuss whether the
23 parties would be willing to stay this action until the parties had a chance to discuss resolution of the
24 case. (*See* Declaration of Trenton R. Kashima, currently filed herewith.) Defendants do not oppose
25 Plaintiffs' request. (*Id.*) Plaintiffs contacted the Intervenor's counsel, but was unable to confirm
26 whether the Intervenor opposed Plaintiffs' request. (*Id.*) Therefore, Plaintiffs' are unsure of the
27 Intervenor's position on this application. (*Id.*)
28

1
2 **II. ARGUMENT**

3 A stay of proceeding is within the sound discretion of the Court. (*See Jordache Enterprises,*
4 *Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal. 4th 739, 758 [“The case management tools
5 available to trial courts, including the inherent authority to stay an action when appropriate.”];
6 C.C.P. § 187) Generally, a stay may be granted upon a showing of good cause. (*Id.* [referencing the
7 standard for protective orders.])

8 Plaintiffs believe that settlement may still be possible and take heed of the Court advice in its
9 December 27, 2017 Order:

10
11 This leads the court to make on other observation that the parties may wish to consider
12 as part of the new years’ resolution: that there are a multiplicity of actions pending in
13 several jurisdictions in various procedural postures. It seems to the court that the only
14 way peace may be purchase is a global settlement of all cases involving the present
15 combatants. To this end, the readers of this ruling may wish to consider assembling all
16 the players in a global mediation.”

17 [Dkt. No. 115.] The proposed stay will allow the parties to discuss resolution of their claims, while
18 avoiding additional expense that would result from concurrent litigation and conserving the Court’s
19 resources on potentially unnecessary motion practice. For these reasons, Plaintiff asserts that good
20 cause exist to grant the parties a short reprieve.

21 **III. CONCLUSION**

22 Based on the foregoing, Plaintiffs request that the Court enter the accompanying Order to
23 stay this matter for a sixty (60) days, *i.e.*, until March 16, 2018, and continuing to all hearings and
24 tolling all outstanding other deadlines, to be reset if the parties’ settlement efforts fail.

25 Respectfully submitted,

26 FINKELSTEIN & KRINSK LLP

27 By:  _____

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DECLARATION OF TRENTON R. KASHIMA

I, Trenton R. Kashima, declare:

1. I am an attorney duly licensed and entitled to practice law in California. I am of counsel at the law firm Finkelstein & Krinsk LLP, attorneys for Plaintiffs in this matter. I have personal knowledge of the matters contained in this declaration, and if called upon to testify, I would and could competently do so as set forth herein. I am making this declaration in support of Plaintiffs' *Ex Parte* Application for a Stay.

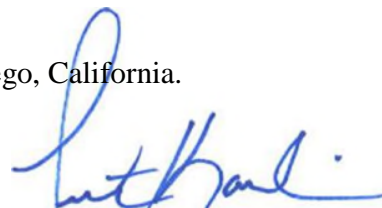
2. I previously contacted Tammara N. Bokmuller, counsel of record for Defendants in this matter, regarding the relief sought in this request. Through Ms. Bokmuller, Defendants do not oppose Plaintiffs' request.

3. On January 11, 2019, I contacted Shannon Liss-Riordan, counsel of record for the Intervenor in this case, by telephone and email, to inform her of this application and inquire if the Intervenor objected to Plaintiffs' request. However, I was unable get in contact with Ms. Liss-Riordan.

4. On January 14, 2019, I called Ms. Liss-Riordan's office. Ms. Liss-Riordan was not available. However, Ms. Liss-Riordan did reply via email. But this email did not confirm whether the Intervenor is opposing Plaintiffs' request accordingly their position is unknown.

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

Executed this 14th day of January, 2019 in San Diego, California.


Trenton R. Kashima