

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

JANE DOE, individually, and on behalf of all
others similarly situated,

Plaintiff,

v.

CIN-LAN, INC.; and,
DÉJÀ VU CONSULTING, INC.

Defendants.

Case No.

Honorable:

COMPLAINT

Jury Trial Demanded

I. INTRODUCTION

1. This is a class action brought by Plaintiff Jane Doe, on behalf of herself and the Plaintiff Class, defined below, against Defendants Cin-Lan, Inc. and Déjà Vu Consulting, Inc. (hereinafter collectively referred to as “Defendants”). The Plaintiff Class is composed of female employees who, during the relevant time period, worked as exotic dancers for Defendants and were denied their fundamental rights under applicable federal and state laws. Specifically, Plaintiff complains that Defendants misclassified Plaintiff, and all other members of the Class, as “independent contractors,” as opposed to employees, at all times in which they worked as dancers at Defendants’ Michigan-based nightclubs. As a result, Defendants failed to pay Plaintiff, and all other members of the Plaintiff Class, the minimum wages that they were entitled to under both federal and state law. Plaintiff brings this class action seeking injunctive relief, damages, backpay, restitution, liquidated damages, civil penalties, prejudgment interest, and any other relief that the Court deems just and reasonable in the circumstances.

II. JURISDICTION & VENUE

2. This Complaint alleges causes of action under the laws of the United States, including the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* (“FLSA”). Accordingly, this Court has jurisdiction pursuant to 28 U.S.C. §1331.

3. This Complaint also alleges causes of action under the laws of the State of Michigan, including the Minimum Wage Law of 1964, M.C.L. §408.381 *et seq.* (“MWL”), which arise out of the same set of operative facts as the federal causes of action and which would be expected to be tried in a single judicial proceeding with the federal claims. Accordingly, this Court has pendent jurisdiction over those claims pursuant to 28 U.S.C. §1367(a).

4. A substantial part of the events and conduct giving rise to the claims in this action occurred in this Judicial District. Specifically, Defendants’ illegal actions occurred in, and continue to occur in the State of Michigan, including within this district. Certain Michigan Déjà Vu Nightclubs, as defined below, whose practices are contested within this Complaint are located in this district. Further, Defendants Cin-Lan, Inc. and Déjà Vu Consulting, Inc. reside in this district. As a result, venue is proper in this jurisdiction pursuant to 28 U.S.C. §1391.

III. PARTIES & STANDING

5. Plaintiff Jane Doe (hereinafter “Plaintiff”), is a resident of the City of Lansing, Ingham County, State of Michigan. Plaintiff is an employee of Defendants Cin-Lan, Inc. and Deja Vu Consulting, Inc., as defined in 29 U.S.C. §201 *et seq.* and M.C.L. §408.382, working as an exotic dancer at Déjà Vu - Lansing, located at 1000 W. Jolly Road, Lansing, Michigan, 48910 since approximately June, 2007.

6. Pursuant to the principals set forth in Doe v Bodwin, 119 Mich. App. 264, 326 N.W.2d 473 (Mich. App., 1982), Plaintiff files this action under a fictitious name and proceeds

anonymously because: (a) she wishes to preserve her rights to privacy; (b) there is a significant social stigma attached to the Plaintiff's occupation as an exotic dancer; (c) there is an inherent amount of risk associated with Plaintiff's profession and she fears that disclosure of her legal name and address may subject to her risk of injury by current and former patrons; and (d) in addition to the fear of retaliation by the Defendants, she would be hesitant to maintain this action enforcing fundamental employment rights if her name were to be forever associated with the Defendants.

7. It is customary in Defendants' business for employee-dancers, like Plaintiff, to use pseudonyms and stage names for both security and privacy purposes. The use of these names allays any reasonable fear that proceeding anonymously would offend the "customary and constitutionally-embedded presumption of openness in judicial proceedings." In N.W. Enterprises, Inc. v. City of Houston, 352 F.3d 162 (5th Cir.2003), the Fifth Circuit addressed the need for adult entertainers to remain anonymous stating:

Adult entertainers may anonymously (or through stage names) put their bodies on display in front of strangers, but these actions do not imply a willingness to publicize the entertainers' personal information through which customers or other private persons may trace the entertainers to their homes or otherwise invade their privacy without permission. The fact that an entertainer is willing to dance publicly or a manager is willing to be employed in a sexually oriented business that deals with the public, or the fact that a determined harasser or stalker might conceivably follow an entertainer home after she leaves work, does not mean that adult entertainers and managers have voluntarily sacrificed all privacy rights and need for safety protections.

8. There is no prejudice to Defendants if Plaintiff files this action under a fictitious name and proceeds anonymously. In the ordinary course of business, Defendants themselves, identify the exotic dancers they employ through stage names and employee codes. See e.g. copies of Plaintiff's "clock out" receipts provided by Defendants, true and correct copies of

which are attached hereto as Exhibit A. Defendants will be made aware of Plaintiff's identity in a confidential manner so as to satisfy any due process concerns.

9. Defendant Cin-Lan, Inc. (hereinafter "Cin-Lan") is a Michigan corporation located at 1000 W. Jolly Road, Lansing Michigan, 48910, and/or 3800 Capitol City Blvd, Lansing, Michigan 48906-2177. Upon information and belief, Defendant Cin-Lan maintains ownership, recruitment, management and/or operational interests in various nightclubs featuring exotic dancing by class members, including the Deja-Vu-Lansing nightclub, located at 1000 W. Jolly Road, Lansing Michigan, 48910 where Plaintiff is employed.

10. Defendant Déjà Vu Consulting, Inc. (hereinafter "Déjà Vu Consulting") is a Michigan Corporation doing business at 1000 W. Jolly Road, Lansing Michigan, 48910, 8252 E. Lansing Road, Durand, Michigan, 48429, and/or 3800 Capitol City Blvd, Lansing, Michigan 48906-2177. The registered office for Déjà Vu Consulting is 8252 E. Lansing Road, Durand, Michigan, 48429. Upon information and belief, Déjà Vu Consulting also maintains corporate offices in North Hollywood, California. See <http://www.dejavu.com/club.asp?c=18518> ("Deja Vu - Corporate Office, North Hollywood, California ... Corporate Contact, 818 503 4278, North Hollywood, California 91605 USA"). Upon information and belief, Déjà Vu Consulting maintains ownership, recruitment, management, controlling and/or operational interests in various nightclubs in Michigan and other states which feature exotic dancing by class members, including the Déjà-Vu-Lansing nightclub where Plaintiff works.

11. Déjà Vu Consulting owns, manages and controls the business operations at the numerous nightclubs doing business under the "Déjà Vu" moniker in the state of Michigan and listed on the www.Déjàvu.com website, including but not limited to: "Déjà Vu Showgirls," 2402 S. Dort Hwy, Flint, Michigan; "Déjà Vu Greektown," 415 E. Congress St., Detroit, Michigan;

“Déjà Vu Showgirls,” 16549 Woodward Ave., Highland Park, Michigan; “Little Darlings,” 1336 Ravine Road, Suite A, Kalamazoo, Michigan “Déjà Vu Showgirls,” 1336 Ravine Road, Suite C, Kalamazoo, Michigan; “Déjà Vu-Showgirls,” 1000 W. Jolly Road, Lansing, Michigan (also referred to herein as “Déjà Vu - Lansing”); “Déjà Vu - Port Huron,” 3811 24th Avenue, Fort Gratiot, Michigan; “Déjà Vu – Saginaw,” 6530 Bay Road, Saginaw, Michigan; and “Déjà Vu – Ypsilanti,” 31 N. Washington, Street, Ypsilanti, Michigan (hereinafter collectively referred to as the “Michigan Déjà Vu Nightclubs”). Upon information and belief, Déjà Vu Consulting owns a majority stake in each of the aforementioned Michigan Déjà Vu Nightclubs, controls the operations in each, and dictates the common employment policies applicable to each.

12. All major business decisions regarding the operations and management of the Michigan Déjà Vu Nightclubs, including the decision to classify dancers as independent contractors as opposed to employees are made by Déjà Vu Consulting.

13. Wikipedia, a encyclopedia available on the Internet describes Déjà Vu Consulting as follows at <[http://en.wikipedia.org/wiki/D%C3%A9j%C3%A0_Vu_\(company\)](http://en.wikipedia.org/wiki/D%C3%A9j%C3%A0_Vu_(company))>:

Déjà Vu Consulting, Inc. is a U.S. company which (as of 2006) owns about 75 strip clubs in 16 U.S. states, as well as one club in Toronto and one in Paris.

The company is headquartered in Lansing, Michigan; it was founded and is controlled by Harry Mohny, who partners with Roger Forbes and opened his first Déjà Vu strip club in Seattle in 1987. At the time, his main business was the large-scale distribution of pornography; beginning in 1991 he served three years in prison for tax evasion.

The strip clubs are called "Déjà Vu Showgirls" or "Dream Girls" or (by agreement with Mohny's long-time friend Larry Flynt, who is not involved in the management of the clubs) "Larry Flynt's Hustler Club". Déjà Vu also owns most of the adult theatres and clubs in San Francisco; these however carry different names.

The clubs typically aim for a clean and upscale atmosphere and offer fully nude stage dancing as well as lap dances. Many do not serve alcohol, to avoid stringent liquor license requirements. Several clubs have associated boutiques selling sex

toys, cigars, Déjà Vu merchandise etc. The chain organizes nation-wide competitions for the "Déjà Vu Showgirl of the Year".

Dancers in the clubs have the legal status of independent contractors. Their income results from tips and lap dance fees; about one third of this money is handed over to the house and other employees. In a landmark case in Minneapolis in 1994, dancers at the Déjà Vu club there won the right to be recognized as employees, arguing that they did not have full control over their working conditions. This resulted in payment of back wages and led to similar cases in several other states, often ending in confidential settlements out of court. Repeated attempts to unionize the Déjà Vu-owned clubs in San Francisco (modeled on the earlier unionization of the Lusty Lady peep show there) have so far been unsuccessful.

Upon information and belief, the foregoing description of Déjà Vu Consulting is accurate in all material respects.

14. The registered agent for both Déjà Vu Consulting, Inc. and Cin-Lan, Inc. is Modern Bookkeeping, Inc., 8252 E. Lansing Road, Durand, Michigan, 48429 (hereinafter "Modern Bookkeeping"). The mailing address for Modern Bookkeeping is 3800 Capitol City Blvd., Lansing, Michigan, 48906, the same address of Déjà Vu Consulting.

15. Upon information and belief, Modern Bookkeeping is an entity that is controlled by Déjà Vu Consulting and that is responsible, either through contract or practice, for maintaining the records and system that help perpetrate the misclassification of the Class as independent contractors.

16. Upon information and belief, the majority ownership share of Defendants, all of the Michigan Déjà Vu Nightclubs and Modern Bookkeeping is held, directly or indirectly, by Harry Mohny ("Mohny"). Upon information and belief, Mohny plays a significant role in managing and controlling the business operations of Defendants, all of the Michigan Déjà Vu Nightclubs and Modern Bookkeeping. Upon information and belief, at all relevant times

Mohney has been employed by Déjà Vu Consulting, conducting his work from California and other foreign locations.

17. Upon information and belief, Déjà Vu Consulting employs entities such as Cin-Lan to create the appearance that those entities own and operate the Michigan Déjà Vu Nightclubs when in reality the Michigan Déjà Vu Nightclubs are controlled, operated and managed by Déjà Vu Consulting. In addition, upon information and belief, Mohney and Deja Vu Consulting employ sham consulting agreements to control, operate, manage and hold majority interests in the vast network of business entities used at the club-level. Cin-Lan and those entities are the alter-egos of Déjà Vu Consulting.

18. At all relevant times, Defendants have owned and operated a night club business engaged in interstate commerce and which utilized goods which moved in interstate commerce. Déjà Vu Consulting and Cin-Lan own, manage and control the business operations at numerous nightclubs doing business under the Déjà Vu moniker in Michigan, as well as in other states. On information and belief, during the relevant time period the annual gross revenues of each Defendant exceeded \$500,000.00 per annum.

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

20. Both the FLSA and the MWL applied to each class member while they worked at the Michigan Déjà Vu Nightclubs.

21. No exceptions to the application of the FLSA and the MWL apply to Plaintiffs and the Class. For example, Plaintiff and the Class have never been professionals or artists exempt from the provisions of the FLSA or the MWL. The exotic dancing performed by class members while working at the Michigan Déjà Vu Nightclubs does not require invention, imagination or talent in a recognized field of artistic endeavor, and class members are not compensated on a set salary, wage or fee basis, but rather by tips given to them by patrons.

IV. GENERAL ALLEGATIONS APPLICABLE TO ALL COUNTS

22. At all relevant times, Plaintiff and each member of the Class, defined below, were employees of Defendants under the FLSA and the MWL. Upon information and belief, during the relevant time period over 500 different women have worked as exotic dancers at the Michigan Déjà Vu Nightclubs without being paid any minimum wages.

23. At all relevant times, Déjà Vu Consulting was a joint employer of Plaintiff, and all members of the Class, under the FLSA and the MWL. Plaintiff's and the other class members' employment for one Defendant is not completely disassociated from their employment by the other Defendant. Cin-Lan and Déjà Vu Consulting do not act entirely independent of each other and are not completely dissociated with respect to the employment of Plaintiff. Déjà Vu Consulting maintains control over Plaintiff and all Class members while working at the Michigan Déjà Vu Nightclubs. Déjà Vu Consulting establishes the employment policies that are to be applied to Plaintiff and all Class members while working at the Michigan Déjà Vu Nightclubs. Déjà Vu Consulting benefits financially from the work Plaintiff and the Class perform while working at the Michigan Déjà Vu Nightclubs. Additionally, joint employers like

Cin-Lan act directly or indirectly in the interest of Déjà Vu Consulting in relation to any supervision it provides Plaintiff and the other class members. As a joint employer of all class members Déjà Vu Consulting is responsible both individually and jointly for compliance with all of the applicable provisions of the FLSA and the MWL. 29 C.F.R. §791.2(a) and (b).

24. Throughout the relevant time period, Defendants owned and operated several nightclubs in the state of Michigan where Plaintiff and the other members of the Class worked as exotic dancers. Those nightclubs are identified above as the Michigan Déjà Vu Nightclubs.

25. During the relevant time period, the employment terms, conditions and policies that applied to Plaintiff were the same as those applied to the other class members who worked as exotic dancers at the Michigan Déjà Vu Nightclubs.

26. Throughout the relevant time period, Defendants' policies and procedures regarding the classification of all exotic dancers (including Plaintiff) at the Michigan Déjà Vu Nightclubs were the same.

27. Plaintiff's injury was caused by Defendant's application of those common policies in the same manner as they were applied to absent class members.

28. As a matter of common business policy, Defendants misclassified Plaintiff and all class members as independent contractors, as opposed to employees. Defendants' classification of Plaintiff as an independent contractor as opposed to as an employee was not due to any unique factor related to her employment or relationship with Defendants. As a matter of common business policy, Defendants misclassified Plaintiff and all class members as independent contractors, as opposed to employees. As a result of this classification, Plaintiff, and the members of the Class, were not paid the minimum wages required under the FLSA and the MWL.

29. During the relevant time period, no class member received any wages or other compensation from Defendants. Members of the Class generated their income solely through the tips received from customers when they performed dances.

30. The members of the Class are tipped employees under both the FLSA and the MWL as they are engaged in an occupation in which they customarily and regularly receive more than \$30 a month in tips. Throughout the relevant time period Plaintiff and each class member have averaged more than \$7.40 per hour in tips while working at the Michigan Déjà Vu Nightclubs. Nevertheless, as employees of Defendants, class members remain entitled to: (i) receive minimum wages under the FLSA and MWL, and (ii) to retain all tips given to them by customers when they performed dances.

31. Defendants' misclassification of Plaintiff and other class members as independent contractors was designed to deny class members their fundamental rights as employees to receive minimum wages, to retain all tips given to them by customers, and done to enhance Defendants' profits.

32. Defendants' misclassification of class members was willful. Defendants knew, or should have known, that Plaintiff and the Class were improperly misclassified as independent contractors. For instance, in Harrell v. Diamond A Entertainment, Inc., 992 F.Supp. 1343, 1347-48 (M.D. Fla. 1997) the United States District Court for the Middle District of Florida confirmed:

Arrangements factually similar to the one in this case have been tested by federal courts in Texas, Indiana and Colorado. See Reich v. Circle C. Investments, Inc., 998 F.2d 324 (5th Cir.1993) (whether dancer was "employee" under FLSA); Reich v. ABC/York-Estes Corp., 1997 WL 264379 (N.D.Ill.1997) (whether dance fees were "tips" under FLSA); Reich v. Priba Corp., 890 F.Supp. 586 (N.D.Tex.1995) (whether dancer was "employee" under FLSA); Reich v. ABC/York-Estes Corp., 157 F.R.D. 668 (N.D.Ill.1994) (whether dance fees were "tips" under FLSA), rev'd on other grounds, 64 F.3d 316 (7th Cir.1995); Martin v.

Priba Corp., 1992 WL 486911 (N.D.Tex.) (whether dancer was “employee” under FLSA); Martin v. Circle C Investments, Inc., 1991 WL 338239 (W.D.Tex.); Donovan v. Tavern Talent & Placements, Inc., 1986 WL 32746 (D.Colo.) (whether “tips” could be used to offset completely the minimum wage requirement). ***Without exception, these courts have found an employment relationship and required the nightclub to pay its dancers a minimum wage.***

(Emphasis added).

33. The touchstone for determining whether an individual is an “employee” under the FLSA and MWL is the “economic reality” test. Under the test, employee status turns on whether the individual is, as a matter of economic reality, in business for herself. Here, as a matter of economic reality, Plaintiff, and all class members, were not in business for themselves and truly independent, but rather were “economically dependent” on Defendants.

34. Courts utilize six factors to determine economic dependence. They are: (i) the degree of control exercised by the alleged employer, (ii) the relative investments of the alleged employer and employee, (iii) the degree to which the employee's opportunity for profit and loss is determined by the employer, (iv) the skill and initiative required in performing the job, (v) the permanency of the relationship, and (vi) the degree to which the alleged employee's tasks are integral to the employer's business. The totality of circumstances surrounding the employment relationship between Defendants and the Class establishes economic dependence by the Class on Defendant. Class members are not in business for themselves but dependent upon finding employment in others, namely Defendants.

A. Degree Of Control – Plaintiff And The Class Exercise No Control Over Their “Own” Or Their Employers’ Business.

35. Plaintiff, and the members of the Class, do not exert control over a meaningful part of the nightclub business and do not stand as separate economic entities from Defendants. Defendants exercise control over all aspects of the working relationship with the Class.

