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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

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11 DISCOPOLUS LLC, dba the WILD
12 ORCHID, FANTASY GIRLS, LLC, and
13 DIAMOND DOLLS OF NEVADA, LLC dba
the SPICE HOUSE,

14 Plaintiff,

15 v.

16 CITY OF RENO and MICHAEL CHAUMP,
17 in his official capacity as Business Relations
18 Manager of Community Development and
19 Business Licenses for the CITY OF RENO
and DOES 1 through 10, inclusive,

20 Defendants.

Case No.:

**COMPLAINT FOR INJUNCTION AND
DECLARATORY RELIEF FOR
VIOLATION OF CIVIL RIGHTS:
EQUAL PROTECTION and FIRST
AMENDMENT**

28 U.S.C.1983

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23 Comes now DISCOPOLUS LLC, dba the WILD ORCHID, FANTASY GIRLS, LLC,
24 and DIAMOND DOLLS OF NEVADA, LLC dba the SPICE HOUSE (herein collectively
25 referred to as “Plaintiffs”), and allege as follows:

26 **JURISDICTION AND VENUE**

27 1. Pursuant to 28 U.S.C. §1983, this Court has original jurisdiction over the claims presented
28 herein for violation of plaintiff’s civil right to equal protection of laws under the First and

1 Fourteenth Amendments to the United States Constitution for the selective application and
2 enforcement of Reno Municipal Code (RMC) Section CHAPTER 5.06. - ADULT
3 INTERACTIVE CABARETS against strip clubs that feature women performers and not those
4 that feature male reviews of a similar nature. The Court also has jurisdiction that work card
5 requirement of CHAPTER 8.21. - ADULT INTERACTIVE CABARETS; ESCORT AND OUT
6 CALL SERVICES and on its face and as applied violates the First Amendment for the reasons
7 more fully set forth in *Key, Inc. v. Kitsap Cty.*, 793 F.2d 1053 (9th Cir. 1986) and *Nightlife*
8 *Partners, Ltd. v. City of Beverly Hills*, 304 F. Supp. 2d 1208 (C.D. Cal. 2004)

9 2. This court has supplemental jurisdiction over these claims of violation of Sections 1 and
10 9 of Article I of the Nevada State Constitution. The State of Nevada has waived its sovereign
11 immunity and there is no sovereign immunity for injunctive and declaratory relief for violation
12 of the constitution.

13 3. Venue is proper in the Northern Division of the District of Nevada as Defendants are
14 located within the City of Reno.

15 **PARTIES**

16 4. Plaintiffs DISCOPOLUS LLC, dba the WILD ORCHID, FANTASY GIRLS, LLC, and
17 DIAMOND DOLLS OF NEVADA, LLC dba the SPICE HOUSE are each Limited Liability
18 Companies organized and lawfully doing business as adult interactive cabarets (more commonly
19 known as strip clubs) within the City of Reno, Nevada.

20 5. Defendant CITY OF RENO is a political subdivision of the State of Nevada, with its main
21 offices located at 1 East First Street, Reno, NV 895505.

22 6. Defendant MICHAEL CHAUMP represents and Plaintiffs have no reason to dispute, that
23 he is the Business Relations Manager for the City of Reno, Nevada. In his official capacity, he
24 charged with the enforcement and interpretation of the RMC.

25 7. At all times relevant herein, Defendants, and each of them, were acting for themselves
26 and as agents within the scope of their authority or ostensible authority for all other defendants
27 herein.

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STATEMENT OF FACTS

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2 8. A copy of the current version of RMC CHAPTER 5.06. - ADULT INTERACTIVE
3 CABARETS and CHAPTER 8.21. - ADULT INTERACTIVE CABARETS; ESCORT AND
4 OUT CALL SERVICES are attached as an appendix to this complaint for the convenience of the
5 Court.

6 9. Defendants know, or should know, that the Atlantis Casino, Harrah’s, Tronix, Five Star,
7 Sinful, Empire club, and “The Spot” are each a “fixed place of business which offers to patrons
8 on a regular basis or as a substantial part of the premises activity, the opportunity to view
9 performers whose attire, costume, clothing or lack thereof exposes ‘specified anatomical areas’
10 whose performance or exposure of specified anatomical areas while providing services
11 emphasizes exposure of and focus on specified anatomical areas and whose performance is
12 designed specifically to arouse sexual passions, all of which is typically associated with allowing
13 the performer to solicit from patrons present anything of value such as drinks, lap dances, table
14 dances, tips or other gratuities, bookings or dates or other compensation, whether monetary or
15 otherwise.”

16 10. RMC Section 8.21.010(f) says “Specified anatomical areas means human genitals or pubic
17 region; buttock or anus; or female breast below a point immediately above the top of the areola.”

18 11. Under this definition females who wish to dance topless must obtain a work card even if
19 they choose not to expose their buttocks. On the other hand, males who wish to dance without
20 their buttocks do not need a work card. See, *Free the Nipple-Fort Collins v. City of Fort Collins,*
21 *Colorado*, 237 F. Supp. 3d 1126 (D. Colo. 2017) (Court enjoins the City of Fort Collins from
22 enforcing § 17–142(b) of the Fort Collins Municipal Code or Ordinance No. 134 to the extent that
23 it prohibits women, but not men, from knowingly exposing their breasts in public.) See also, *Free*
24 *the Nipple-Springfield Residents Promoting Equal. v. City of Springfield*, 153 F. Supp. 3d 1037,
25 1043 (W.D. Mo. 2015) (First Amendment protects expressing message by showing female
26 breast).

1 12. All the “male reviews” referenced herein feature dancers who expose at least the buttock,
2 and all the places that host such “male reviews” meet the criteria of RMC Sec. 8.21.020 for prima
3 facie evidence of an adult interactive cabaret.

4 13. Female dancers or performers at Plaintiffs’ strip clubs do the exact same thing as the male
5 dancers at these male reviews. Both male and female dancers wear outfits that expose their
6 buttocks but not their anus, dance topless on stage and in the audience, dance on or near the
7 patrons, while they solicit tips for their performances.

8 14. But Defendants only require the establishments that feature female performers to obey the
9 numerous and onerous requirements of RMC Chapters 5.06. and 8.21 and only female performers
10 pay the fees, register and obtain work cards pursuant to RMC 8.21.050.

11 15. Businesses that feature male strippers and serve alcohol can and do admit people under
12 18 in to see these shows, but businesses that feature female strippers and serve alcohol are required
13 to limit their audience to those 21 and over, thus losing revenue from admission fees and soft
14 drink sales.

15 16. To the extent that Defendants contend that these other establishments hosting male
16 reviews are somehow not engaged in activities regulated by RMC Chapters 5.06. and 8.21, then the
17 regulations are void for vagueness.

18 17. In addition, pursuant to RMC 8.21.040, Plaintiffs may only allow to perform dancers with
19 a valid work card issued pursuant to RMC 8.21.050.

20 18. But the registration requirements in RMC 8.21.050 unreasonably diminishes a dancer’s
21 inclination to engage in First Amendment protected activity. RMC 8.21.050 is not sufficiently
22 narrowly tailored to the government’s legitimate interests.

23 19. Defendants require dancers who wish to dance at a strip club to report from 8:30 a.m. to
24 3:30 p.m., Monday thru Thursday to the Reno Police Department’s Work Applicant Registration
25 Unit in order to pay \$101.50, and submit fingerprints, provide a criminal history, three years of
26 work history, child information, citizen verification, social security number and other extraneous
27 information and to undergo a statewide and national FBI background check as a condition of a
28 standard-less review by the Chief of Police before the dancer is allowed to work.

1 20. But most dancers arrive from out of state on a Friday afternoon or evening, and therefore
2 cannot obtain the work card before performing. No other type of performer is required to undergo
3 a day's loss of wages in order to obtain a work card 24 hour in advance just to perform in Reno.

4 21. To further discourage people from becoming dancers at a strip club, the City of Reno posts
5 the name and physical residence address and the fact that the person is dancer on its website for
6 all interested people to see. All one needs to do is log on to "one regional licensing permits" on
7 the Reno website, click search all records, enter the first or the last name of the dancer, click
8 search, and it shows the person's name, and address and confirms that they are a dancer. The
9 City of Reno has not yet mandated that all dancers wear a scarlet letter A on their shoulders, but
10 they must have their work cards on their person when they dance. No other performer is treated
11 this way.

12 22. The work card fee for a street entertainer is \$5 instead of \$101 for a dancer who performs
13 at a strip club. No other type of dancer or performer pays any fee or is required to have a work
14 card.

15 **FIRST CAUSE OF ACTION:**

16 **REGULATION OF FEMALE STRIPPERS ONLY IS A DENIAL OF EQUAL**
17 **PROTECTION**

18 23. Plaintiff realleges and incorporates by reference all the paragraphs above in the Complaint
19 as though fully set forth herein.

20 24. The Fourteenth Amendment to the United States Constitution provides that no state shall
21 deny to any person within its jurisdiction the equal protection of the laws.

22 25. Article I Section I of the Nevada Constitution provides that all people are "free and equal
23 and have certain inalienable rights among which are those of enjoying and defending life and
24 liberty; Acquiring, Possessing and Protecting property and pursuing and obtaining safety and
25 happiness[.]

26 26. As shown above, Defendants have decided to enforce the provisions of RMC Chapters
27 5.06. and 8.21 only to female exotic dancers and the businesses where they perform and not to
28 male exotic dancers and the businesses where they perform.

1 27. Gender discrimination as a basis for selective enforcement of a Municipal Ordinance
2 violates both federal and state constitutional guarantees of equal protection of law. See, e.g. *Yick*
3 *Wo v. Hopkins*, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220 (1886).

4 28. To the extent that Defendants claim there is a difference in facts or law that makes these
5 regulations applicable only to female dancers and the establishments where they perform, then
6 the RMC must violate its face the intermediate or heightened scrutiny applicable to a “quasi-
7 suspect” classification like sex. Since male and female strippers do the same thing, the
8 government cannot possibly meet its burden to prove a rational reason to treat them differently,
9 much less an important government interest in treating male and female dancers or they
10 businesses where they dance differently.

11 29. Therefore, by the conduct alleged herein, Defendants, and each of them, have violated the
12 equal protection clause of both state and federal constitution.

13 30. WHEREFORE, plaintiffs pray judgment against defendants and each of them, on its first
14 cause of action, as follows:

- 15 a. That this Court issue an order declaring RMC Chapters 5.06. and 8.21
16 unconstitutional as applied to female strippers and the business establishments
17 where they work, or in the alternative, if there is any factual or statutory reason
18 to distinguish between male and female strippers in the enforcement of RMC
19 Chapters 5.06. and 8.21, then the ordinance is facially unconstitutional as well’
20 b. That this Court issue an order enjoining Defendants and each of them from
21 enforcement of any and all provisions of RMC Chapters 5.06. and 8.21 against
22 any business now licensed as an Adult Interactive Cabaret until such time as it
23 enforces those same provisions against any and all male strippers, exotic
24 dancers, and all other performers who meet the definition of an Adult
25 Interactive Cabaret performer that work in the City of Reno and all businesses
26 in the City of Reno where they may perform including but not limited to the
27 Atlantis Casino, Harrah’s, Tronix, Five Star, Sinful, Empire club, and “The
28 Spot”;

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- c. That this Court issue an order awarding Plaintiffs reasonable attorney’s fees and costs as allowed by statute;
- d. That this Court issue an order awarding such further relief as the court may deem just.

SECOND CAUSE OF ACTION:

DANCER LICENSING A VIOLATION OF FIRST AMENDMENT

31. Plaintiff realleges and incorporates by reference all the paragraphs above in the Complaint as though fully set forth herein.

32. RMC 8.21.050(c) states:

The chief of police or his authorized designee shall deny the issuance or cause the revocation of a work card required under this section for the following reasons:

- (1) The applicant has made false, misleading or fraudulent statements with respect to any material fact contained in the application for a work card;
- (2) The applicant has been convicted of a crime in a five-year period immediately prior to the date of the application for the business license in any state for:
 - a. Solicitation of prostitution, prostitution or pandering, or
 - b. Any sex offense requiring the applicant to register under N.R.S. Chapter 179D;
- (3) The applicant has violated Code regulations, as set forth in section 8.21.060, or has had an adult interactive cabaret performer business license or work card revoked pursuant to this Code, within five years of the application for this specific business license;
- (4) An adult interactive cabaret performer business license or work card of the applicant has previously been revoked within two years of the date of application, or the issuance or renewal thereof has been denied by the City of Reno or another government entity, within two years of the date of the

1 application for any reason set out in subsections (c)(1), (c)(2) or (c)(3) of this
2 section.

3 33. The First Amendment to the United States Constitution states in part that “Congress shall
4 make no law . . . abridging the freedom of speech, or of the press. . .” This Amendment is made
5 applicable to the states by the Due Process Clause of the Fourteenth Amendment. *Edwards v.*
6 *South Carolina*, 372 U.S. 229, 235, 83 S.Ct. 680, 683, 9 L.Ed.2d 697 (1963).

7 34. Section 9 of Article I of the Constitution of the State of Nevada states in part “Every
8 citizen may freely speak, write and publish his sentiments on all subjects being responsible for
9 the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or
10 of the press.”

11 35. Topless dancing is a form of expression, subject to constitutional protection within the
12 free speech and press guarantees of the first and fourteenth amendments. See *Schad v. Borough*
13 *of Mount Ephraim*, 452 U.S. 61, 65, 101 S.Ct. 2176, 2180, 68 L.Ed.2d 671 (1981); *Doran v.*
14 *Salem Inn, Inc.*, 422 U.S. 922, 932–33, 95 S.Ct. 2561, 2568–69, 45 L.Ed.2d 648 (1975); *Chase v.*
15 *Davelaar*, 645 F.2d 735, 737 (9th Cir.1981); *Kev, Inc. v. Kitsap Cty.*, 793 F.2d 1053, 1058 (9th
16 Cir. 1986).

17 36. Defendant’s licensing requirements for dancers violates the First Amendment because it
18 inhibits the ability or the inclination of an exotic dancer to work in Reno. See *Thomas v. Collins*,
19 323 U.S. 516, 65 S.Ct. 315, 89 L.Ed. 430 (1945) (requirement that union organizers register with
20 state unconstitutionally inhibits free expression).

21 37. Further, Defendant’s licensing requirements for dancers violates the First Amendment
22 because it does not provide “narrow, objective, and definite standards to guide the licensing
23 authority.” *Shuttlesworth v. City of Birmingham, Ala.*, 394 U.S. 147, 89 S. Ct. 935, 22 L. Ed. 2d
24 162 (1969)

25 38. Defendants’ licensing scheme regulating dancers who show their buttocks or female
26 dancers who are topless is a prior of free speech because the enjoyment of protected expression
27 is contingent upon the approval of government officials. See *FW/PBS, Inc. v. City of Dallas*, 493
28 U.S. 215, 223–24, 110 S.Ct. 596, 107 L.Ed.2d 603 (1990). While prior restraints are not

1 unconstitutional *per se*, any system of prior restraint comes to the courts bearing a heavy
2 presumption against its constitutional validity. See *id.* at 225, 110 S.Ct. 596.

3 39. The licensing of dancers by Defendants herein is unduly burdensome for the reasons stated
4 in *Nightlife Partners, Ltd. v. City of Beverly Hills*, 304 F. Supp. 2d 1208, 1218–19 (C.D. Cal.
5 2004), and the Court’s June 19, 2002 Order therein, a copy of which is included in the appendix
6 hereto.

7 40. Specially, the existing requirements that the dancer submit fingerprints, provide a criminal
8 history, three years of work history, child information, citizen verification, social security number
9 and other extraneous information and to undergo a statewide and national FBI background check
10 as a condition of a standard-less review by the Chief of Police before the dancer is allowed to
11 make the work permit requirement as applied and on its face unconstitutional.

12 41. Defendants violate the First Amendment by requiring anything more from a potential
13 work card applicant to dance than name, address, phone number, birth date, aliases (past and
14 present), and the business name and address where the dancer intended to dance, along with some
15 form of government issued identification and a color photograph prior to receiving a license to
16 dance.

17 42. The information required should be no more than required of a go-go dancer at one of
18 Reno’s many nightclubs or bars.

19 43. The 101-dollar work card fee is in addition to a state business license fee of 200 dollars
20 and a City Business License fee of 70 dollars and is a burden on dancers who perform topless
21 whereas dancers who are street performers pay only a 5 dollar work card fee and dancers who
22 perform at other venues, including male strippers and go-go dancers who perform at night clubs
23 and the casinos, pay no work card fee nor are they required to submit the information for a work
24 card to the Reno Police Department during the narrowly defined times.

25 44. Therefore, RMC 8.21.040 and 8.21.050 constitutes an unreasonable prior restraint on free
26 speech and is therefore unconstitutional.

27 45. WHEREFORE, plaintiffs pray judgment against defendants and each of them, on its first
28 cause of action, as follows:

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- a. The Court issue an order declaring RMC 8.21.040 and 8.21.050 unconstitutional on its face and as applied by the Reno Police Department
- b. The Court issue an order awarding Plaintiffs reasonable attorney’s fees and costs as allowed by statute;
- c. The Court issue an order awarding such further relief as the court may deem just.

PRAYER

46. WHEREFORE, plaintiffs pray judgment against defendants and each of them, as follows:

- a. That this Court issue an order declaring RMC Chapters 5.06. and 8.21 unconstitutional as applied to female strippers and the business establishments where they work, or in the alternative, if there is any factual or statutory reason to distinguish between male and female strippers in the enforcement of RMC Chapters 5.06. and 8.21, then the ordinance is facially unconstitutional as well’
- b. That this Court issue an order enjoining Defendants and each of them from enforcement of any and all provisions of RMC Chapters 5.06. and 8.21 against any business now licensed as an Adult Interactive Cabaret until such time as it enforces those same provisions against any and all male strippers, exotic dancers, and all other performers who meet the definition of an Adult interactive cabaret performer that work in the City of Reno and all businesses in the City of Reno where they may perform including but not limited to the Atlantis Casino, Harrah’s, Tronix, Five Star, Sinful, Empire club, and “The Spot”;
- c. The Court issue an order declaring RMC 8.21.040 and 8.21.050 unconstitutional on its face and as applied by the Reno Police Department
- d. That this Court issue an order awarding Plaintiffs reasonable attorney’s fees and costs as allowed by statute;

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e. That this Court issue an order awarding such further relief as the court may deem just.

Dated: September 18, 2017

Respectfully submitted,

/s/ Mark R. Thierman
Mark R. Thierman