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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 KIMBERLY JONES, et al.

14 Plaintiffs,

15 v.

16 DÉJÀ VU INC., et al.,

17 Defendants.

Case No. C-05-0997 BZ

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF PLAINTIFFS'
MOTION FOR A PRELIMINARY
INJUNCTION**

Date: September 7, 2005
Time: 10:00 a.m.
Courtroom G

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTRODUCTION..... 1

STATEMENT OF FACTS RE: PROSTITUTION 2

 A. Declaration of Roe Nine..... 3

 B. 2004 Police Raids..... 5

 C. Declaration of Private Investigator Sam Brown..... 10

 D. Declaration of Private Investigator Jasmine Lamento 10

 E. Declaration of Private Investigator Endah Susilowaty 11

 F. Declaration of Private Investigator Apple Feng..... 12

 G. Declaration of Matthew C. Straub..... 13

 H. Declaration of Kimberly Jones..... 13

 I. Declaration of Roe Seven 16

 J. Declaration of Roe Three 16

STATEMENT OF FACTS RE: INJURY TO COMPETITOR CLUB 16

STATEMENT OF THE ISSUE 17

STANDARD 17

 A. General Preliminary Injunction Standard..... 17

 1. Irreparable Harm Generally Results from Unfair
 Advantages over Competitors from Illegal Business
 Practices 18

 2. Public Policy Considerations 19

ARGUMENT..... 19

 I. PLAINTIFFS ARE ENTITLED TO A PRELIMINARY
 INJUNCTION ENJOINING DEFENDANTS FROM ENGAGING
 IN UNLAWFUL BUSINESS PRACTICES..... 19

 A. The Traditional Criteria for Preliminary Injunctive
 Relief are Satisfied..... 21

 1. Plaintiffs Have a Likelihood of Success on the Merits..... 21

 2. Plaintiffs Demonstrate the Possibility of Irreparable Injury..... 21

TABLE OF AUTHORITIES

Federal Cases

A.O. Smith Corp. v. FTC
530 F.2d 515 (3d Cir. 1976)..... 19

Baby Tam & Co., Inc. v. City of Las Vegas
154 F.3d 1097 (9th Cir. 1998)..... 18, 23

Clear Channel Outdoor, Inc. v. City of Los Angeles
340 F.3d 810 (9th Cir. 2003)..... 17, 23

Johnson v. Cal. State Bd. Of Accountancy
72 F.3d 1427 (9th Cir. 1995)..... 21

Optinrealbig.com, LLC v. Ironport Systems, Inc.
323 F. Supp. 2d 1037 (N.D. Cal. 2004)..... 18, 21

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213 F. Supp.2d 1146 (C.D. Cal. 2002)..... 18

Regents of Univ. of Cal. v. American Broadcasting Cos.
747 F.2d 511, 519-20 (9th Cir. 1984)..... 18, 19

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944 F.2d 597 (9th Cir. 1991)..... 18, 21

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846 F. Supp. 1247, 1255 (W.D. Va. 1993)..... 19

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625 F.2d 1055, 1057 (3d Cir. 1980)..... 19

University of Texas v. Camenisch
451 U.S. 390, 101 S.Ct. 1830, 68 L.Ed.2d 175 (1981) 5

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AICCO, Inc. v. Insurance Co. of North America
90 Cal.App.4th 579 (Cal. Ct. App. 2001)..... 19

People v. James
122 Cal.App.3d 25 (Cal. Ct. App. 1981)..... 18

People v. Los Angeles Palm, Inc.
121 Cal.App.3d 25 (Cal. Ct. App. 1981)..... 19

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2
3
4
5
6
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9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. The Hardships Balance in Plaintiffs' Favor 22

4. Public Policy Favors an Injunction..... 23

B. Alternatively, Plaintiffs are Entitled to Preliminary Relief
Under the Ninth Circuit's "Sliding Scale" Standard..... 23

CONCLUSION..... 24

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16 INTRODUCTION

17 This motion presents overwhelming evidence that Déjà Vu, a multinational strip club
18 operator that has taken over the majority of adult-entertainment nightclubs in San Francisco,
19 allows rampant prostitution at its clubs in San Francisco.

20 Based in Las Vegas, Nevada, Déjà Vu now controls eleven of the seventeen adult
21 nightclubs in San Francisco. Déjà Vu's control has an unconscionable impact on those who work
22 in the San Francisco exotic-dancing industry, and indeed on the San Francisco community as a
23 whole. Dancers at Déjà Vu clubs are forced to work under unsafe, demeaning and indeed illegal
24 conditions. Specifically, prostitution at Déjà Vu clubs is rampant, as illustrated by the numerous
25 declarations in support of this portion of the motion.

26 Not only does Déjà Vu management know of this rampant prostitution, they actually
27 encourage it and sometimes even require it. At the "low-end" Déjà Vu clubs (which are by no
28 coincidence placed in economically disadvantaged areas where the clientele is cash-strapped and

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Statutes

Cal. Bus. & Prof. Code § 17200, *et seq.* passim

Cal. Pen. Code § 315 21

1 often miscreant), prostitution is not merely common, it is required. Dancers there are charged high
2 "stage fees" – fees they must pay to work – and since dancers don't get wages or any other form of
3 compensation from the club, they must get enough tips from customers to cover their stage fees.
4 Since customers come to these clubs with an expectation of sex and will only pay any substantial
5 amount of money when they get it, sex is the only way dancers can get the customers to tip them
6 enough to cover their stage fees. Rather than taking any steps to mitigate these egregious
7 conditions, Déjà Vu management actually helps facilitate these required acts of prostitution by
8 providing private booths – individual private rooms entered by doors that close or curtains that can
9 be drawn – that enable the dancers to engage in prostitution (and indeed have no other purpose).

10 Déjà Vu's egregious act of putting dancers in a position where they have no choice but to
11 engage in prostitution is having an unconscionable impact on this industry in San Francisco, and
12 plaintiffs in particular. Plaintiffs co-own the Lusty Lady. Not only are they constantly subject to
13 the harassment and propositions of patrons who expect sex, their competing club – the Lusty Lady
14 – is actually losing market standing because the Lusty Lady does not offer prostitution and Déjà
15 Vu clubs do.

16 Perhaps worst of all, Déjà Vu's practices have remained in place because the only dancers
17 with actual knowledge of the rampant prostitution at Déjà Vu's clubs are too afraid of the
18 consequences (*i.e.*, their own criminal prosecution) to step forward themselves. In other words,
19 Déjà Vu is operating under the presumption that it can subject its dancers to patently illegal
20 conditions with impunity, because their dancers will be too afraid to assert their own rights.

21 This motion presents overwhelming evidence – most of which has never been produced in
22 any court – conclusively showing that Déjà Vu clubs are patently violating laws against
23 prostitution. Plaintiffs, whose business is suffering intangible lost market standing that cannot be
24 compensated, accordingly ask that this Court end Déjà Vu's unconscionable practices.

25 **STATEMENT OF FACTS RE: PROSTITUTION AT DÉJÀ VU CLUBS**

26 This motion presents ten declarations offering evidence showing that Déjà Vu and its San
27 Francisco nightclubs are offering sex for money in violation of state prostitution laws.
28 Specifically, this motion presents the following:

- 1 1. The declaration of an exotic dancer formerly employed at a Déjà Vu club who
2 describes acts of prostitution she witnessed there (while exercising her Fifth
3 Amendment right against self-incrimination with respect to any act of prostitution
4 in which she may be been involved);
- 5 2. The declaration of a male private investigator who went to a Déjà Vu club in San
6 Francisco posing as a patron, and was solicited for prostitution there;
- 7 3. The declarations of three female private investigators who went to various Déjà Vu
8 clubs in San Francisco posing as exotic dancers looking for employment, and were
9 told by managers that they could engage in prostitution if they took a job there;
- 10 4. The declaration of a Déjà Vu patron regarding the prices for various sexual services
11 available there.
- 12 5. The declaration of plaintiff Kimberly Jones, who notes that the Déjà Vu brazenly
13 peddles prostitution over the internet, and who further notes that the prostitution
14 taking place at individual Déjà Vu clubs in San Francisco is now common
15 knowledge in the community;
- 16 6. The declaration of counsel authenticating nine police reports of raids on various
17 Déjà Vu clubs leading to evidence of rampant prostitution at those clubs;
- 18 7. The declaration of Jane Roe number seven, who notes that dancers at Centerfolds
19 (where prostitution is less common) were instructed to direct patrons seeking
20 prostitution to Déjà Vu clubs where prostitution is more common;
- 21 8. The declaration of Roe Three, who notes that Déjà Vu's prostitution is particularly
22 egregious because it is most common (and even required) at the worst Déjà Vu
23 clubs, where non-Caucasians must disproportionately work because of Déjà Vu's
24 practice of disproportionately hiring Caucasian dancers at the best clubs and non-
25 Caucasians at the worst ones.

26 **A. Declaration of Roe Nine**

27 Roe Nine worked as an exotic dancer at Déjà Vu – Hungry I, Déjà Vu – New Century
28 Theater, and Déjà Vu – Market Street Cinema. While working at these the clubs, she was also

1 periodically sent to "fill in" at other Déjà Vu clubs in San Francisco, particularly Déjà Vu –
2 Garden of Eden, Déjà Vu – Roaring 20's, and Déjà Vu – Little Darlings. (Roe Nine Decl. at ¶ 1.)

3 Roe Nine states it is a "commonly known fact that there were 'extras' [sex] going on in the
4 private booths there (although they were less common at Déjà Vu – Hungry I, where the dancers'
5 stage fees were less)." (Roe Nine Decl. at ¶ 3.) Roe Nine states that she witnessed countless acts
6 of prostitution at Déjà Vu – New Century Theater in particular. (Roe Nine Decl. at ¶ 6.) Roe
7 Nine explains the reasons for prostitution at Déjà Vu clubs:

- 8 Dancers at certain Déjà Vu clubs often resort to prostitution due to the following facts:
- 9 a) Déjà Vu clubs charge dancers high "stage fees" they must pay in order to work;
 - 10 b) Since dancers don't get wages or any other form of compensation from the club,
11 they must get enough tips from customers to cover their stage fees;
 - 12 c) At certain Déjà Vu clubs, such as Déjà Vu New Century or Déjà Vu Market
13 Street Cinema, doing "extras" is the only way most dancers can get the
14 customers to tip them enough to cover their stage fees (indeed, customers
15 often come to these clubs because they know they can get sex there); and
 - 16 d) The relevant Déjà Vu clubs directly encourage dancers to do extras, and enable
17 them to do so by providing private booths – individual private rooms entered
18 by doors that close or curtains that can be drawn – that enable the dancers to
19 engage in prostitution (and indeed have no other purpose).

20 (Roe Nine Decl. at ¶ 4.)

21 Roe Nine further elaborates on the prostitution at Déjà Vu – New Century Theater, which
22 is particularly egregious:

23 At Déjà Vu – New Century, for example, very high stage fees are charged.
24 We had to pay \$120 or more at the end of per shift, and management told us that
25 we would be fired if we couldn't pay the fee. Resorting to prostitution was the
26 only way for most dancers to make enough money to pay these high stage fees,
27 particularly at Déjà Vu – New Century. There were a times 50 to 100 girls
28 working at Déjà Vu – New Century. Dancers had to do extras to stay in the game,
pay their stage fees and not get fired. The club provided dancers private booths
where dancers could have sex with patrons. Men knew they could obtain sex for
money there, they expected it, and they routinely solicited it. Most dancers would
not be paid much money if they did not do extras, but they would receive
significant money when they did. There were even established prices for various
forms of sex – dancers were paid less for hand jobs and blow jobs, and more for
straight up sex. Straight up sex, in particular, would get dancers \$300 or more.

(Roe Nine Decl. at ¶ 5.)¹

¹ By separate motion, plaintiffs will ask that this declaration be sealed pursuant to the terms of the protective order already in place, in light of the strong privacy and safety concerns implicated by it. The motion to seal will be filed when defendants stipulate to sealing it, or indicate they will not

1 **B. 2004 Police Raids**

2 In May 2004, a series of police activities were conducted by the Vice Division of the San
3 Francisco Police Department at two Déjà Vu clubs: Déjà Vu – New Century and Déjà Vu –
4 Market Street Cinema.² As a result, the manager of Déjà Vu – New Century Theater was arrested
5 for maintaining a house of ill repute.

6 In incident 040569602, dated May 18, 2004, Inspector Repetto of the San Francisco Police
7 Department, Vice Crimes Division, made the following observations of prostitution at Déjà Vu –
8 Market Street Cinema:

9 At 4:20 PM I entered the Market Street Cinema, located at 1077 Market
10 Street, San Francisco, in an undercover capacity and in plainclothes. . . .

11 At approximately 4:25 PM I was approached by C. L. [REDACTED]
12 [REDACTED] grabbed me by the arm and escorted me to one of the private booths. Once
13 inside booth #15 [REDACTED] asked me if I wanted to have fun with her. I stated,
14 “Yea.” “I want to have fun.” [REDACTED] told me, “You have to pay for time,
15 \$20.00 dollars for 5 minutes.” I stated, “That’s OK.” . . . I told her, “OK I need to
16 tell you. I want a blow job and I’ll only pay forty extra for that.” [REDACTED]
17 replied, “OK.” I then handed [REDACTED] \$40.00 dollars. [REDACTED] then asked
18 me for \$20.00 dollars more for booth time. I then asked [REDACTED] “Wait, I have
19 to get a condom.” [REDACTED] stated, “It’s OK. I have condoms.” [REDACTED] then
20 reached into her purse and removed a strip of condoms. At this time cover officers
21 had entered the theater and I identified myself to [REDACTED] and told her she was
22 under arrest. I then recovered the \$40.00 dollars I had given [REDACTED] from her
23 purse along with the listed condoms, Trojan sexual lubricant and mouthwash.

24 (Walston Decl., Exh. A, Report of Inspector Repetto, page 3.)

25 In Incident No. 040569599, dated May 18, 2004, Inspector Marcic of the San Francisco
26 Police Department, Vice Crimes Division, made the following observations of prostitution at Déjà
27 Vu – Market Street Cinema:

28 Upon my entrance, I was immediately approached by a white female, who
29 told me her name was [REDACTED] (later identified as [REDACTED]) was
30 scantly dressed in a white top and bottom bikini outfit. She asked me if I’ve ever
31 been there before? I told her “no”. Simultaneously, a light skinned black female
32 identified herself to me as [REDACTED] She was

33 so stipulate, as required by Local Rule 79-5(b). In the meantime, to ensure the parties have an
34 opportunity to read the declaration, plaintiffs have attached a redacted copy of it as Exhibit A.
35 ² At trial, plaintiffs will produce the individual detectives involved in these raids. For now, to the
36 extent these reports (which are made under penalty of perjury), are not admissible under the Rules
37 of Evidence, plaintiffs respectfully point out that the Rules of Evidence do not apply to pre-
38 discovery, preliminary matters such as motions for preliminary injunctions. *University of Texas v.*
39 *Camenisch*, 451 U.S. 390, 395, 101 S.Ct. 1830, 68 L.Ed.2d 175 (1981) (Rules of Evidence do not
40 apply to preliminary injunction motions).

scantly dressed in a black bikini top and bottom. An additional dark skinned black female also approached me and told me her name was [REDACTED]

[REDACTED] was dressed in a see through lime colored lingerie outfit.

Sophia then told me, "come on in, its just ten dollars to get in the back. I want to give you a free dance and play around". She also told me that I had in and out privileges until 4:00 a.m. in the morning. All three girls began to walk me down to a room that had a neon sign stating, "SIN CITY".

All three suspects, [REDACTED] began to fondle me simultaneously, touching my hair and chest. . . .

Once inside the "Bangkok Room", the three females led me into a booth marked with the number #16 above the entrance. While entering the booth all three females continued to grab and fondle my body. They told me to sit down on the padded bench. The bench was located against the far wall and was approximately 4 feet in length.

[REDACTED] stood next to me, disrobed her top and said, "my secret talent here is my boobies".

[REDACTED] continued to say "you're free to touch. We're a very touchy club". I responded by saying, "is it"?

She responded by saying, "yeah, go ahead and try it. There's not a lot of clubs you can do that." . . .

[REDACTED] all began to fondle themselves. Sophia said, "here we go. We're getting naughty here. We like to get completely naked. We like to get touched everywhere". I asked Sophia, "what else do you guys do?" She responded by saying, "we get even naughtier."

[REDACTED] then told me, "why don't you do a tip and let us get naked and we'll do like, three for the price of one". She continued to say, "what we like to do is get completely naked and touch you everywhere". I asked her "what about huh", (as I pointed to my groin area looking at [REDACTED] signifying sex)? You know what I mean?" [REDACTED] stated, "yeah, I can do that". I asked [REDACTED] "well, how much does it cost". [REDACTED] then leaned over to me and whispered into my ear, "\$200.00 dollars for sex for all three of us"

[REDACTED] asked me if I needed to go to the ATM to get more money. I asked for what? [REDACTED] said, "for sex". I then asked them what do I get for all the money? They said, lets go get the money and we will show you. It's going to be a good time we get real naughty.

(Walston Decl., Exh. B, report of Inspector Marcic.)

In Incident No. 040569599, dated May 18, 2004, Sgt. Lawson of the San Francisco Police Department, Vice Crimes Division, made the following observations of prostitution at Déjà Vu – Market Street Cinema:

I BEGAN TO WALK DOWN THE LEFT AISLE OF THE THEATER WHEN I WAS APPROACHED BY A WHITE FEMALE, INTRODUCING HERSLF AS [REDACTED] WAS WEARING A FLORAL BIKINI TOP AND A FLORAL BIKINI BOTTOM. SHE THEN PLACED HER ARMS AROUND ME AND GAVE ME A HUG AND SHE THEN ASKED, "HAVE YOU BEEN HERE BEFORE. "I REPLIED, "NO, BUT A FRIEND OF MINE WAS HERE AND HE HAD A GREAT TIME". SHE THEN STATED, "COME WITH ME AND I'LL SHOW YOU AROUND". SHE HAD HER ARMS AROUND ME DURING THE CONVERSATION. SHE THEN TOOK MY HAND AND GUIDED ME DOWN THE AISLE TO THE ENTRANCE OF ANOTHER ROOM (BANGKOK ROOM). [REDACTED] AGAIN TOOK MY

1 HAND AND WALKED ME OVER TO A PRIVATE BOOTH #17. SHE
2 OPENED UP THE CURTAIN AND TOLD ME TO COME AND SIT DOWN
3 ON THE PADDED BENCH. THERE WAS AN ELEVATED PADDED
4 PLATFORM ABOUT TWELVE INCHES FROM THE BENCH WHERE I
5 WAS SITTING. ONCE INSIDE SHE CLOSED THE CURTAIN, STOOD
6 DIRECTLY IN FRONT OF ME AND BEGAN RUBBING MY CHEST, ARMS,
7 AND GROIN AREA. SHE ALSO BEGAN RUBBING HER BREASTS.

8 SHE THEN WHISPERED IN MY EAR, "WE CAN BE NAUGHTY IN
9 HERE ("NAUGHTY" IS A PROSTITUTION SLANG TERM—SEX FOR
10 MONEY." BASED ON MY TRAINING AND) EXPERIENCE. SHE
11 WHISPERED AGAIN IN MY EAR THAT SHE WOULD DANCE FOR ME,
12 TAKE OFF HER CLOTHES, AND MAKE ME FEEL REAL GOOD. SHE
13 THEN STATED THAT SHE NEEDED FORTY DOLLARS FOR THE BOOTH.
14 I THEN HANDED HER FORTY DOLLARS IN MARKED CITY FUNDS. SHE
15 ASKED ME FOR A "TIP" FOR HERSELF. I THEN HANDED HER SIXTY
16 DOLLARS IN MARKED CITY FUNDS. . . .

17 SHE CLOSED THE CURTAIN. SHE THEN TOOK OFF HER FLORAL
18 BIKINI TOP EXPOSING HER BARE BREASTS. AS I WAS SITTING ON
19 THE PADDED BENCH SHE SAT ON MY LAP FACING ME WITH HER
20 KNEES ON THE PADDED BENCH. SHE THEN BEGAN RUBBING HER
21 BREASTS. SHE THEN RUBBED MY LEGS AND MY GROIN AREA AND
22 ASKED ME IF I WAS GETTING HARD. I THEN ASKED HER IF I COULD
23 GET A HAND JOB. SHE THEN REPLIED, "WE CAN DO THAT, OH
24 DEFINETLY." I THEN ASKED HER IF I COULD GET A BLOW JOB. SHE
25 SAID, "OH YEAH SURE." I THEN ASKED HER HOW MUCH WAS A BLOW
26 JOB. SHE STATED, "TWO HUNDRED DOLLARS. . . .

27 I HANDED HER ONE HUNDRED AND TWENTY DOLLARS IN
28 MARKED CITY FUNDS AND EIGHTY DOLLARS OF MY OWN MONEY.
AFTER SHE TOOK THE MONEY SHE BEGAN TO AGGRESIVELY TOUCH
MY GROIN AREA AGAIN SO I THEN IDENTIFIED MYSELF AS A POLICE
OFFICER AND PLACED HER UNDER ARREST.

(Walston Decl., Exh. C, Police Report of Sgt. Lawson.)

In Incident No. 040517015D, dated May 5, 2004, Inspector Revalla of the San Francisco Police Department, Vice Crimes Division, made the following observations of activities at Déjà vu – New Century Theater:

While [Lt. Dutto] was searching to ensure the safety of the undercover officers and their locations within the "New Century Theater" (816 Larkin St., San Francisco, Ca.), he heard voices within the booth marked "Warrior Princess .7". He pulled back the entrance curtain that was drawn closed to the booth. He observed [REDACTED] inside the booth. . . .

Lt. Dutto #1235 and I took [REDACTED] to an unoccupied booth so I could conduct an audio taped interview with him. Lt. Dutto #1235 explained the interview process to [REDACTED] and he stated he wanted to fully cooperate. He informed us that [REDACTED] was going to give him a "handjob" for \$250.00. He informed us that he still had the condom on his penis. Lt. Dutto requested that he remove the condom from his penis and place it into a small clear plastic ziplock bag. I seized same as evidence.

(Walston Decl., Exh. E, Report of Inspector Revalla.)

1 In Incident No. 040517015C, dated May 5, 2004, Sgt. Cheong of the San
2 Francisco Police Department, Vice Crimes Division, made the following observations of
3 activity at Déjà Vu – New Century Theater:

4
5 Once inside, I saw several women scantily attired in G-strings and see through
6 tops. After approximately 2 minutes, a young woman came up to me and ask if I
7 wanted a good time (prostitution slang for sex for money). I asked what she meant
8 by a good time. She told he that she would take me to a back room and “rock my
9 world.” She then took me to a back room area which was very dark. There were
10 several rooms with heavy curtains. She took me to the “Geisha Girl” room, the
11 heavy curtains were pulled to the side as we entered the room. I noted that the
12 room had a padded bench and a table with a lamp next to it. On the wall of the
13 room was a towel and a soap dispenser. She then asked me for two hundred
14 dollars. I asked what the two hundred dollars was for. She told me everything
15 (prostitution slang for oral copulation and sexual intercourse). She further stated
16 that she would have sex with me for the money. I told her that I only had \$190.00
17 on me as I paid \$10.00 for the entrance fee. She told me that \$190.00 would do,
18 She then told me to sit back and she would do everything as she closed the curtain
19 to the room. At this time I gave her \$ 190.00 in marked city funds. She then took
20 the money from me and placed it inside her purse. At the same time she took out a
21 condom from her purse and opened it. She then took out a 2.5oz of K Y lube from
22 her purse and placed a drop on the condom. She then placed the condom on the
23 table. She then turned around and placed one of the \$20.00 dollar bills of marked
24 city funds into the money receptacle machine which was mounted on the wall.
25 She then took a key of some type and placed it inside the money receptacle
26 machine. . . . I then asked what else does she do? She told me that for another one
27 hundred dollars, she would have anal sex with me. I told her that I did not have
28 anymore cash on me. She told me that I could use the ATM on the second floor.
She then told me that she would walk me to the ATM. At this time I gave the
signal for my cover team to respond. The Inspectors came in and detained the
woman. The marked city funds were recovered by Officer Rolovich. Inspector
Ziegler then took over the investigation from this point.

19 (Walston Decl., Exh. F, Report of Sgt. Cheong.)

20 In Incident No. 040517015B, dated May 5, 2004, Officer Callo of the San Francisco
21 Police Department, Vice Crimes Division, made the following observations of activities at Déjà
22 Vu New Century Theater:

23 AFTER ABOUT A MINUTE, I WAS APPROACHED BY AN UNKNOWN
24 WHITE FEMALE DANCER, LATER TO BE IDENTIFIED AS [REDACTED]
25 SHE ASKED, “DO YOU WANT TO HAVE SOME FUN?” (“FUN” IS A
26 PROSTITUTION SLANG TERM-SEX FOR MONEY) I ASKED “WHERE?”
27 [REDACTED] REPLIED UPSTAIRS.” I SAID SURE. . . .
28 [REDACTED] ESCORTED ME TO A ROOM BEHIND THE MAIN STAGE. I
OBSERVED THAT IT HAD A CURTAIN ACTING AS A DOOR. . . . AS WE
WALKED INTO THE ROOM, I NOTICED A BLACK, SOFT CUSHIONED
BENCH ON THE LEFT WALL. I ALSO OBSERVED A PAPER TOWEL
DISPENSER, ALONG WITH A LOTION DISPENSER NEXT TO IT. NEXT

1 TO THE OPEN DOORWAY, I NOTICED A COMPUTIZED MONEY
RECEPTACLE MACHINE.

2 I TOOK A SEAT ON THE BENCH. [REDACTED] STATED TO ME,
3 "NOBODY WILL BOTHER US IN HERE. I DON'T RIP PEOPLE OFF.
4 BASICALLY, I DO VERY SEXUAL LAP DANCE. FULL CONTACT. YOU
5 CAN TOUCH ME AND I'LL FINISH YOU OFF DOWN THERE." I SAID,
6 "HOW? A BLOWJOB?" [REDACTED] REPLIED, "I CAN DO PRETTY MUCH
7 ANYTHING, AS LONG AS YOU HAVE A CONDOM. YOU HAVE TO RAVE
8 A CONDOM." I THEN ASKED, "HOW MUCH?" SHE REPLIED, "I DON'T
9 QUOTE PRICES. IT'S TWENTY TO RENT THE ROOM AND THAT GOES
10 TO THE HOUSE. WHATEVER YOU GIVE ME GOES TO ME." I
11 ASKED, "HOW ABOUT A HUNDRED?" [REDACTED] STATED, "YEAH, BUT
12 CAN YOU GIVE ME AN EXTRA HUNDRED? I'LL EVEN PAY FOR THE
ROOM." I SAID OK.

13 I THEN ASKED [REDACTED] IF SHE HAD CONDOMS. [REDACTED] REMOVED
14 SEVERAL CONDOMS FROM HER PURSE. I ASKED IF SHE HAD A
15 "LIFESTYLE" BRAND CONDOM. SHE STATED YES AND HANDED IT TO
ME.

16 [REDACTED] THEN ASKED, CAN YOU GIVE ME WHATEVER MONEY
17 YOU HAVE NOW?" I SAID "I ONLY RAVE ONE HUNDRED FORTY NOW,
18 BUT I CAN GO TO THE ATM." [REDACTED] STATED, "OK, WHAT WE'LL DO
19 IS, I'LL GIVE YOU A FULL CONTACT LAP DANCE AND I'LL FINISH
20 YOU OFF WITH A BLOWJOB."

21 (Walston Decl., Exh. G, Report of Ofr. Callo.)

22 In Incident No. 040517015A, Officer Clinton of the San Francisco Police Department, Vice
23 Crimes Division, made the following observations of activities at Déjà Vu – New Century Theater:

24 I walked into the main room, where a girl was dancing on stage, and sat down.
25 I was immediately approached by a Latin female, later identified as [REDACTED].
26 [REDACTED] was wearing a pink see-through laced bra and a white
27 thong. [REDACTED] sat down in a chair next to me and we exchanged names. [REDACTED]
28 [REDACTED] asked me, "do you want to watch the show or go play with me?" Based
29 on my training and experience, I understood the term "play with me" as a
30 prostitution slang meaning sex for money. I said I wanted to "play" with her and
31 [REDACTED] grabbed my hand and led me upstairs. We entered a room, I can not
32 recall the name, and sat down on a couch. Inside the room I observed a roll of
33 paper towels on a holder and a soap dispenser. I further observed a garbage can.
34 The room was also equipped with a curtain, at the entrance, which remained open.
35 [REDACTED] asked me what kind of "fun" I wanted to have. I said, "I don't
36 know" and [REDACTED] offered to read me the "menu". Based on my training
37 and experience, I believed that the term "menu" to be a list of sexual services (i.e.
38 oral sex and sexual intercourse). I declined for [REDACTED] to read me the
39 "menu" and told her that I wanted a "blow job" (oral copulation). [REDACTED]
40 whispered the word "blow job" and said it cost \$250.00. I told [REDACTED] that
41 was too much money and she asked if I could pay \$200. [REDACTED] said she
42 would give me "a good one", referring to the "blow job". [REDACTED] and I
43 agreed on a price \$140.00 and she asked me if I could "cum fast" (ejaculate). I
44 handed [REDACTED] \$140.00 and she observed another \$5.00, of M.C.F., in my
45 hand. [REDACTED] said she wanted the additional \$5.00 and I gave it to her. I
46 gave [REDACTED] a total of \$145.00 of marked city funds.

47 (Walston Decl., Exh. H, Report of Ofr. Clinton.)

1 In Incident No. 030392849, Officer Gee of the San Francisco Police Department, Vice
2 Crimes Division, made the following observations of activity at Déjà Vu – Market Street
3 Cinema:

4
5 I went to the MSC (as it is known) and was charged a nineteen dollar entry
6 fee. Once inside, several girls approached me and offered lap dances for twenty
7 dollars. I accepted when ██████ asked. I asked if there's somewhere more
8 private we can go and she led me down an aisle to another part of the theater in
9 the back. There, I had to pay another ten dollars to a cashier/lookout before being
10 admitted to a booth area.

11 Once inside the booth, ██████ asked whether I wanted sex. I told her I was
12 only interested in oral sex and she told me it would cost sixty dollars. She asked
13 why only oral and I told her that I was afraid of bringing home any diseases but
14 ██████ said she had condoms. ██████ kept trying to talk me into going for
15 full sex. I asked her how much for vaginal sex and she replied, "One hundred
16 twenty."

17 (Walston Decl., Exh. I, Report of Ofr. Gee.)

18 **C. Declaration of Private Investigator Sam Brown**

19 Private Investigator Sam Brown recently supervised an investigation of prostitution at
20 eight of the eleven Déjà Vu clubs in San Francisco: Déjà Vu – Little Darlings, Déjà Vu – Roaring
21 20's, Déjà Vu – Garden of Eden, Déjà Vu – Centerfolds, Déjà Vu – Broadway Showgirls, Déjà Vu
22 – Market Street Cinema, Déjà Vu – LA Gals, Déjà Vu – New Century Theater, and Déjà Vu –
23 Gold Club. Brown directly participated in investigating Déjà Vu – Roaring 20's, where he entered
24 the establishment posing as a patron, and observed the following:

25 The dancer then showed me her shaved pubic area and offered to let me touch it
26 for \$40. I asked her if there were any "extra" favors she could do for me. (A
27 request phrased in this manner is commonly understood as a request for
28 prostitution in San Francisco adult establishments.) She replied that the price
went up incrementally depending on what I wanted. She then ground herself into
my lap and asked me what I wanted.

Brown Decl. at ¶¶ 9-10.

D. Declaration of Private Investigator Jasmine Lamento

Lamento is another private investigator who participated in the Sam Brown Group's recent
investigation of prostitution at Déjà Vu clubs. Ms. Lamento's duties were to pose as an exotic
dancer looking for employment. Lamento reports the following from Déjà Vu – LA Gals:

1 At approximately 7:50 p.m., my colleague and I arrived at LA Gals. We
2 were met by a young woman, and, when we inquired of employment as dancers,
we were introduced to the club managers. One manager escorted us into the club.

3 As part of this tour, I was shown private rooms with money machines in
4 them. The rooms also had windows, and I was told that these windows fogged
over whenever money is placed in the room's machine in order to give the dancer
and customer privacy.

5 I asked the manager if the club limited what services a customer could
6 request. The manager advised that customers could do whatever they liked "as
soon as the windows fog up" although the dancer is only expected to provide the
services for which she has been paid.

7 Lamento Decl. at ¶¶ 5-7.

8 Further, at Déjà Vu – Roaring 20's, Ms. Lamento reports the following:

9 At approximately 8:00 p.m., I left Déjà Vu – LA Gals for Déjà Vu –
10 Roaring 20's. At approximately 8:10 p.m., I arrived at Déjà Vu – Roaring 20's
and asked the doormen if I could audition. One of the doormen was a manager
and escorted me inside the club where he introduced me to another manager.

11 The manager escorting me said that I would pick two songs available to
12 the club's disk jockey, begin stripping by the middle of the first song, and be nude
by the middle of the second. The manager asked if I had a costume. I responded
that I did not.

13 The manager then asked if I was uncomfortable with full nudity. I initially
14 answered "I don't think so." The manager then asked if I felt uncomfortable with
doing "more than dancing" with patrons. I responded that I was not comfortable,
15 and the manager stated: "up to you, but if the customer complains, he will deal
with the manager and the manager will deal with you."

16 Lamento Decl. at ¶¶ 8-9.

17 **E. Declaration of Private Investigator Endah Susilowaty**

18 Ms. Susilowaty, another female investigator employed by the Sam Brown Group,
19 accompanied Ms. Lamento during her investigation, as they both posed as dancers looking for
20 employment. Not surprisingly, Ms. Susilowaty's observations are identical to Ms. Lamento's. At
21 Déjà Vu – LA Gals, Susilowaty reports the following:

22 At approximately 7:50 p.m., my colleague and I arrived at Déjà Vu – LA
23 Gals where we asked about becoming employed as dancers. A club manager took
us both inside.

24 I asked the manager if the club limited what services a customer could
25 request. He responded that once the windows fogged up, they could do whatever
they wanted to do.

26 Susilowaty Decl. at ¶¶ 9-10.

27 At Déjà Vu – Roaring 20's, Susilowaty reports the following:

1 We met with the club manager who asked if I had ever danced before and
2 if I had ever danced nude. I advised him that I had danced in Las Vegas for
approximately 6 months and danced nude.

3 I asked then asked the Déjà Vu – Roaring 20's manager if customers
would be to touching me. He stated that they would.

4 Susilowaty Decl. at ¶¶ 13-16.

5
6 **F. Declaration of Private Investigator Apple Feng**

7 Feng is another private investigator who participated in the Sam Brown Group's recent
8 investigation of prostitution at Déjà Vu clubs. Ms. Feng's duties were to pose as an exotic dancer
9 looking for employment. Feng reports the following from Déjà Vu – Garden of Eden:

10 The Déjà Vu – Garden of Eden manager asked if I had ever worked before
and if I had identification, a Taiwan passport and a social security number. I
advised that I had not worked and that I had the requested documentation.

11 I then asked what I would have to pay to the club in order to work there.
12 The manager replied: "If you come in before 6 p.m., it's \$20, 7 p.m. it's \$30, 8,
\$40, 9, \$50 and on" The manager further explained that the club opened at
13 5:00 p.m. and that I would have to pay the club for booth and room dances.

14 I then asked how many female dancers would be competing with me for
customers. The manager replied: "About 15 girls, but no Chinese, only one
Filipino."

15 I then asked if the customers were allowed to touch me. The manager
replied: "Yes, they can do all that they want and you can too."

16 The manager then advised that the club wanted me to work daily and start
each day as early as possible.

17 The manager also advised that I had to pay the club whether or not I made
any money.

18 Later during this conversation, I asked again if I had to have sex with
customers. The manager responded that I could do whatever I wanted to do.

19 Feng Decl. at ¶¶ 15-21.

20 Further, at Déjà Vu – New Century, Ms. Feng reports the following:

21 On June 28, 2005, at approximately 6:30 p.m., I went to Déjà Vu – New
22 Century Theater and asked a girl behind a reception table about employment. She
advised that the club held auditions on Sundays around 8:30 p.m.

23 I asked for a tour of the club. The girl called a doorman who walked me
around. The club did not require identification.

24 During the club tour, I learned that dancers are required to perform three-
song dance sets. Dancers first perform clothed, then topless, and then fully nude.

25 The doorman explained that the club has both booths and rooms. He
further explained that the booths are openly constructed and that customers are
accordingly encouraged to use the private upstairs rooms.

26 The private rooms had time tracking machines into which the customer
places money. The machine was set to time 3 minutes for \$20 or to accept \$120
27 for a longer period. I was told that I must stay in the room until the customer's
time expired. The doorman advised that a green light outside of the door
28 permitted the club to monitor payment.

1 The doorman further advised that the amount of money given to the house
2 would be deducted from the money placed in the machines as tracked by a
magnetic identification card keyed to me personally.

3 He also told me that if anything less than \$120 was made in a shift or day
4 that I would be required to pay the club the difference before leaving. I would be
allowed to keep anything above \$120 deposited into the machine.

5 The doorman further advised that I could directly charge the customers for
services including sex. He pointed out that each room included a tissue dispenser
to clean myself after providing services.

6 Feng Decl. at ¶¶ 22-29.

7 **G. Declaration of Matthew C. Straub**

8 Mr. Straub, a patron of Déjà Vu, provides his observations of prostitution at Déjà Vu –
9 Market Street Cinema:

10 I was approached by a young woman who identified herself as “Liz.” . . .
11 After about ten seconds of small talk, Liz asked me if she could show me around
the back rooms. I said “OK,” and followed her to the front left side of the theater,
12 where there was an entryway into another part of the club. At the entryway, I was
met by a male club employee, and Liz told me I had to pay him another \$10 to
13 enter the private booth area of the club. I paid the \$10, and Liz and I went
through a short hallway and into an area with several private booths.

14 Liz then took me into one of the private booths shut the curtain. Liz then
told me that we were now in an “all touch room.” I replied, “what does that
15 mean?” Liz said, “it means you can play with me,” gesturing to her breasts.

16 I asked Liz she meant I could touch her underneath her clothes, and she
told me I would have to pay her more money for that. I then asked Liz what else I
17 could get if I paid more money. Liz told me that I could get a “hand job” for
\$120, a “blow job” for \$200, and “the whole shebang” for an unspecified amount.

18 I paid Liz \$20 for a lap dance, which lasted approximately five minutes.
After the dance was over, I told Liz that I had to go meet a friend and would be
back in an hour. I then left Déjà Vu – Market Street Cinema and did not return.

19 (Straub Decl. at ¶¶ 5-9.)

20 **H. Declaration of Kimberly Jones**

21 Kimberly Jones comments on two subjects: 1) her direct observations of prostitution at
22 Déjà Vu clubs, and 2) the common knowledge of prostitution at Déjà Vu clubs in San Francisco.

23 Regarding the first subject, Ms. Jones states that in addition to working at Déjà Vu –
24 Hungry I, she applied for work at Déjà Vu – New Century Theater and Déjà Vu – Little Darlings.
25 Each time she applied for work, Ms. Jones was given the opportunity to look around the club.
26 While looking around Déjà Vu – New Century, Ms. Jones observed dancers carrying condoms and
27 lubricant, and she recalls one saying that she was running low on condoms and was going to see
28 the manager about getting more. Ms. Jones also observed private booths where the dancer could

1 be alone with a patron in a room. While looking around at Déjà Vu – Little Darlings, Ms. Jones
2 again observed dancers with condoms and lubricant in plain view. (Jones Decl. at ¶¶ 5-9.)

3 Regarding the second subject, Ms. Jones testifies, “it is common knowledge in the San
4 Francisco community that Déjà Vu and its nightclubs offer prostitution. I have heard this
5 acknowledged by both dancers and patrons on countless occasions – far too many to summarize in
6 this declaration or anywhere.” (Jones Decl. at ¶ 11.)

7 To illustrate the general public awareness of Déjà Vu’s prostitution, Ms. Jones states,
8

9 First, it is well known that Déjà Vu uses the internet to peddle sex-for-money
10 ‘escort’ services. This can easily be seen on Déjà Vu’s website, DeJaVu.com. On
11 that internet site, one can access “Déjà Vu Personals,” where one sees a
12 photograph of a naked young woman in a provocative position with the words
13 “Just think your best date ever is waiting!” written next to her. On the same page,
14 one can enter criteria of what they want in an escort.

15 When one clicks on the “search” icon on the “Déjà Vu Personals” page,
16 another web page entitled “Escort Sex Guide” is then displayed. The “Escort Sex
17 Guide” page asks the internet user to choose what kind of “sex escort” he or she
18 desires.

19 When the internet user clicks on a particular type of escort on the “Escort Sex
20 Guide,” he is then directed to another web page showing a variety of those
21 particular types of escorts, and it is up to him which one to choose.

22 Significantly, the individual escorts listed in the “Escort Sex Guide” list which
23 services they offer. Some of these services do not necessarily involve sex, but
24 some do. In particular, “girlfriend” services generally involve various forms of
25 sex, most commonly oral copulation without a condom and vaginal intercourse
26 with a condom.

27 When the internet user chooses a particular escort by clicking on their profile,
28 the user is directed to the escort’s web page, which depicts various provocative
pictures of her, and a description of what she offers. As an example, I attach true
and correct copies of the web pages of several such escorts.

(Jones Decl. at ¶¶ 12-16.)

21 Ms. Jones then points to several Déjà Vu’s “escort sex personals” that specifically
22 advertise sex-for-money services. As an example, one says “I’m 100 percent full service!” (which
23 means she offers vaginal intercourse). (Jones Decl., Exh. D.)

24 Ms. Jones further states:

25 Déjà Vu’s overt prostitution is not limited to its internet site, as it is well
26 known in San Francisco that prostitution is common at Déjà Vu clubs. On
27 countless occasions, I have heard dancers, managers and patrons discuss the
28 availability of prostitution at Déjà Vu clubs. As noted above, I have seen it first
hand at Déjà Vu – New Century and Déjà Vu – Little Darlings. And at some
clubs – Déjà Vu Market Street Cinema and Déjà Vu New Century Theater in

1 particular – it is well known and common knowledge that sex is more common
2 than dancing.

3 (Jones Decl. at ¶ 25.)

4 As evidence of publicly available information pertaining to prostitution at
5 individual Déjà Vu clubs, Ms. Jones states:

6 To see the widespread knowledge that prostitution is available at Déjà Vu's
7 clubs, one need look no further than various internet message boards, which are
8 replete with comments from Déjà Vu patrons that brazenly discuss prostitution
9 they received at Déjà Vu clubs in San Francisco. I do not offer these patrons'
10 messages as substantive evidence of the prostitution itself (although that is the
11 subject of other portions of this declaration), but rather as evidence of the
12 common understanding in the San Francisco community that prostitution is
13 available at Déjà Vu clubs.

14 (Jones Decl. at ¶ 28.)

15 Ms. Jones then points to countless “reviews” (which can be viewed by anyone on
16 the internet) by Déjà Vu patrons regarding the prostitution services they received at Déjà
17 Vu clubs. These “reviews” are numerous and explicit. For the sake of illustration, one
18 such example states:

19 After a while she [the dancer] started to sell me on a PS [private
20 service] for \$80 and i told her i only had \$60 left. She agreed and we went
21 behind the curtain. She left to grab a condom and came back. Then she
22 started giving me a lil dance naked this time to get me hard. Once i was
23 hard I took it out while she put the condom on. . . . then she stroked it for
24 a lil bit and then got on her knees. She made eye contact with me as she
25 put it in her mouth. damn it felt good. She started working it as i was
26 grabbing her hands so her mouth could do all the work. A little bit more
27 stroking and playing with her [expletive] and finally came as she was
28 sucking it. I tried to make it last but the session probably took about 10
minutes.

(Jones Decl. at ¶ 29.)

Ms. Jones then comments on the effects of Déjà Vu's prostitution on the San
Francisco community and exotic dancer in particular.

The fact that Déjà Vu clubs' prostitution is so overt and well known has a
distinctly negative impact on the adult-entertainment industry in San Francisco.
Frankly, in my experience as a dancer, many if not most patrons now expect sex,
and they accordingly favor clubs that illegally offer prostitution.

The expectation of sex that Déjà Vu is creating among clientele adversely
impacts two groups. First, it unfairly penalizes other adult nightclubs, such as the
Lusty Lady, that do not violate prostitution laws, as many customers will not go
there because they know they cannot obtain prostitution there. Second, it

1 adversely affects the working conditions of dancers who do not wish to prostitute
2 themselves but are subject to the constant propositions and harassment from
3 clientele who actually have the audacity to insist on sex and be upset when they
4 don't get it.

5 (Jones Decl. at ¶ 41.)

6 **I. Declaration of Roe Seven**

7 Jane Roe Seven's declaration states that prostitution is less common at Déjà Vu –
8 Centerfolds (although it is not non-existent there). However, Déjà Vu – Centerfolds helps other
9 Déjà Vu clubs offer illegal prostitution to patrons. Specifically, when a patron comes to Déjà Vu
10 – Centerfolds and asks for prostitution, staff often tell the patron to go to another Déjà Vu club
11 where prostitution can easily be obtained, such as Déjà Vu – New Century Theater. Generally, the
12 patron is even given a free pass so he does not have to pay a second cover fee.³

13 **J. Declaration of Roe Three**

14 Jane Roe Three states that Déjà Vu's prostitution is most common at low-end Déjà Vu
15 clubs, where non-Caucasian dancers are disproportionately hired due to Déjà Vu's city-wide
16 practice of race discrimination.⁴

17 **STATEMENT OF FACTS RE: INJURY TO COMPETITOR CLUB**

18 Déjà Vu's illegal prostitution is causing irreparable harm to plaintiffs' business standing.
19 The members of subclass one co-own a lawfully operated competitor nightclub, the Lusty Lady.
20 They are at the market disadvantage inherent when one competitor follows the law and one does
21 not. Further, they are at the particular market disadvantage of trying to compete in the adult
22 entertainment industry when their competitor illegally offers prostitution and they do not, and are
23 losing goodwill because of this disadvantage. (Roe No. Two Decl. at ¶¶ 6, 7.)⁵

24 ³ Roe Seven's identity is subject to a protective order. Accordingly, by separate motion, plaintiffs
25 will ask that this declaration be sealed. The motion to seal will be filed when defendants stipulate
26 to sealing it, or indicate they will not so stipulate, as required by Local Rule 79-5(b). In the
27 meantime, to ensure the parties have an opportunity to read the declaration, plaintiffs have
28 attached a redacted copy of it as Exhibit B.

⁴ Roe Three's Declaration was filed, under seal, on April 15, 2005. For the Court's convenience,
plaintiffs have attached a copy of the declaration (in redacted form) as Exhibit C.

⁵ Roe Two's Declaration was filed, under seal, on April 15, 2005. For the Court's convenience,
plaintiffs have attached a copy of the declaration (in redacted form) as Exhibit D.

1 Tellingly, messages posted on the local internet message board discussed in Ms. Jones'
2 declaration have the audacity to express disappointment and even anger because they cannot
3 obtain prostitution services at plaintiff's business. One poster called it "the biggest rip off in
4 North Beach" because he had to spend \$20 for only a show, which is "the price of an actual touch-
5 the-girl lap at any other place." (Jones Decl. at ¶ 40.)

6 STATEMENT OF THE ISSUE

7 A preliminary injunction is proper when plaintiffs show a likelihood of success, irreparable
8 injury, and the hardships balance in their favor. Here, Déjà Vu and its San Francisco nightclubs
9 are illegally offering prostitution in violation of section 17200 of the California Business and
10 Professions Code (not to mention the state Penal Code). In addition to doing incalculable damage
11 to the entire industry in which plaintiffs work, Déjà Vu's illegal prostitution is causing plaintiff's
12 competing nightclub to lose intangible market standing that is impossible to remedy. This motion
13 addresses whether a preliminary injunction is proper under these circumstances.

14 STANDARD

15 A. General Preliminary Injunction Standard

16 The standard for issuing a preliminary injunction is well settled. "The standard for
17 granting a preliminary injunction balances the plaintiff's likelihood of success against the relative
18 hardship to the parties." *Clear Channel Outdoor, Inc. v. City of Los Angeles*, 340 F.3d 810, 813
19 (9th Cir. 2003).

20 The Ninth Circuit has described two sets of criteria for preliminary injunctive relief.
21 Under the "traditional" criteria, a plaintiff must show "(1) a strong likelihood of success on the
22 merits, (2) the possibility of irreparable injury to plaintiff if preliminary relief is not granted, (3) a
23 balance of hardships favoring the plaintiff, and (4) advancement of the public interest (in certain
24 cases)." *Id.*

25 Alternatively, a court may grant the injunction if the plaintiff "demonstrates *either* a
26 combination of probable success on the merits and the possibility of irreparable injury *or* that
27 serious questions are raised and the balance of hardships tips sharply in his favor." *Id.* (emphasis
28 in original; internal quotation marks and citations omitted). As the Ninth Circuit has reiterated

1 many times regarding the two alternative formulations of the preliminary injunction test: "These
2 two formulations represent two points on a sliding scale in which the required degree of
3 irreparable harm increases as the probability of success decreases. They are not separate tests but
4 rather outer reaches of a single continuum." *Baby Tam & Co., Inc. v. City of Las Vegas*, 154 F.3d
5 1097, 1100 (9th Cir. 1998) (internal quotation marks and citations omitted).⁶

6 **1. Irreparable Harm Generally Results from Unfair**
7 **Advantages over Competitors from Illegal Business**
8 **Practices**

9 Actions for unfair business practices by competitors are frequently subject to preliminary
10 injunctions because the plaintiff's diminished ability to compete in the marketplace is generally an
11 irreparable injury in itself. *See, e.g., Perfect 10, Inc., v. Cybernet Ventures, Inc.*, 213 F. Supp.2d
12 1146, 1190-91 (C.D. Cal. 2002). "Damage to a business's goodwill is typically an irreparable
13 injury because it is difficult to calculate." *Optinrealbig.com, LLC v. Ironport Systems, Inc.* 323 F.
14 Supp. 2d 1037, 1050-51 (N.D. Cal. 2004). Further, "irreparable harm is further found where the
15 conduct of a defendant threatens the existence of the business itself." *Id.*

16 This is because the Ninth Circuit follows the well accepted rule that damages to business
17 standing, goodwill and the ability to compete in a free market are irreparable injuries. *See, e.g.,*
18 *Rent-A-Center, Inc. v. Canyon Television and Appliance Rental, Inc.* 944 F.2d 597, 603 (9th Cir.
19 1991). "[I]ntangible injuries, such as damage to ongoing recruitment efforts and goodwill, qualify
20 as irreparable harm." *Id., citing Regents of Univ. of Cal. v. American Broadcasting Cos.*, 747 F.2d
21 511, 519-20 (9th Cir. 1984).

22 Therefore, when a court finds that plaintiffs have shown that defendants' unlawful business
23 practices are causing injury to their ability to compete in the market, a finding of irreparable harm
24 should generally follow. *Rent-A-Center*, 944 F.2d at 603; *Optinrealbig.com*, 323 F. Supp. 2d at
25 1050-51. It is irrelevant whether the Court is able to ascertain the actual degree of plaintiffs' lost
26 standing in the market, as this uncertainty is the essence of an irreparable injury that cannot be

27 ⁶ The fact that plaintiffs are prosecuting pendant state claims under Cal. Bus & Prof. Code § 17200
28 has no bearing on this analysis, as state courts apply the same standard to preliminary injunctions
under this section. *See, e.g., People v. James*, 122 Cal.App.3d 25, 38-39 (Cal. Ct. App. 1981).

1 forbidden by law,” and there is not a single reported case where a party had the audacity to argue
2 the contrary.

3 Déjà Vu’s illegal prostitution is causing irreparable harm to plaintiffs. Not only must they
4 live with the constant harassment and propositions from patrons who expect sex due to the fact
5 that it is common knowledge that prostitution is offered at Déjà Vu’s clubs, which is irreparable in
6 itself. Plaintiffs’ business standing is harmed because their business – the Lusty Lady – is at the
7 market disadvantage inherent when one competitor follows the law and one does not. In
8 particular, some customers are not patronizing the Lusty Lady because it does not offer
9 prostitution. Not only is this a cognizable business injury resulting from Déjà Vu’s violations
10 section 17200, it is an irreparable one because it is difficult if not impossible to put a monetary
11 measurement on plaintiffs’ lost market standing.

12 This situation meets every requirement for a preliminary injunction. At the outset, it is a
13 remarkable understatement that plaintiffs have a “likelihood” of success in arguing that the
14 prostitution at Déjà Vu clubs is unlawful. Prostitution is unlawful in itself, and it practically goes
15 without saying that it is an unlawful business practice under section 17200.

16 Further, the injury inflicted on plaintiffs (and indeed on the entire City of San Francisco)
17 by the rampant prostitution at Déjà Vu clubs is incalculable. At the outset, the damage to the
18 exotic dancing industry in San Francisco is immeasurable. Because Déjà Vu controls the majority
19 of this industry while allowing and even encouraging prostitution, plaintiffs must work with the
20 harassment and propositions that are inherent when patrons have learned to expect sex. Since it is
21 impossible to monetarily remedy plaintiffs’ injury in working in an industry in which they are
22 subject to propositions and harassment from patrons who have learned to expect prostitution, this
23 is an irreparable injury in itself.

24 Plaintiffs also demonstrate an irreparable injury in light of the intangible yet ongoing
25 market disadvantage and lost goodwill sustained by the Lusty Lady, which they co-own, due to the
26 fact that they are losing business because of Déjà Vu’s unlawful business practices. Courts
27 generally hold that lost market standing is an irreparable injury because it is intangible and
28 therefore difficult to remedy.

1 Finally, the hardships balance in the favor of requiring defendants to simply comply with
2 applicable labor law. They should be doing that anyway, and their present failure to do so is
3 causing hardship on plaintiffs and their lawfully operated business.

4 **A. The Traditional Criteria for Preliminary Injunctive Relief are**
5 **Satisfied.**

6 As noted above, under the “traditional” criteria, a plaintiff must show “(1) a strong
7 likelihood of success on the merits, (2) the possibility of irreparable injury to plaintiff if
8 preliminary relief is not granted, (3) a balance of hardships favoring the plaintiff, and (4)
9 advancement of the public interest (in certain cases).” *Johnson v. Cal. State Bd. Of Accountancy*,
10 72 F.3d 1427, 1430 (9th Cir. 1995). In this case, each element is present.

11 **1. Plaintiffs Have a Likelihood of Success on the Merits.**

12 At the outset, plaintiffs’ likelihood of success on the merits is not merely strong, it is
13 inevitable. There can simply be no disagreement that prostitution is illegal (*See, e.g., Cal. Pen. C.*
14 *§ 315*), and a business that allows or offers prostitution violates section 17200’s prohibition of
15 unlawful business practices. This case presents overwhelming evidence that Déjà Vu and its
16 nightclubs are allowing sex to be traded for money (which is common knowledge in San
17 Francisco). Since there is no escape that this prostitution is illegal, plaintiffs met – and indeed
18 exceed – the “likelihood of success” prong.

19 **2. Plaintiffs Demonstrate the Possibility of Irreparable Injury.**

20 An injury is irreparable where it is difficult to compensate monetarily. *Johnson v. Cal.*
21 *State Bd. of Accountancy*, 72 F.3d at 1430. As noted above, when a court finds that defendant’s
22 unlawful business practices are causing injury to plaintiff’s ability to compete, a finding of
23 irreparable harm should follow. *Rent-A-Center*, 944 F.2d at 603. As the Northern District of
24 California stated, “[d]amage to a business’s goodwill is typically an irreparable injury because it is
25 difficult to calculate.” *Optinrealbig.com*, 323 F. Supp. at 1050-51. It is irrelevant whether the
26 Court is able to ascertain the actual degree of plaintiff’s lost standing in the market, as uncertainty
27 is the nature an irreparable injury that is difficult to remedy monetarily. *Rubbermaid Commercial*
28 *Products*, 846 F. Supp. at 1255.

1 In this case, defendants have an unfair market advantage, resulting in greater goodwill at
2 the expense of their competitors, because they illegally offer prostitution. It is simply
3 unconscionable to expect plaintiffs' nightclub, the Lusty Lady, to compete with Déjà Vu's clubs
4 when plaintiffs obey the law and Déjà Vu does not. This problem is compounded because Déjà
5 Vu controls the majority of the adult entertainment industry in San Francisco.

6 In particular, as noted above, Déjà Vu's clubs attract more patrons because they use their
7 control over dancers to encourage them to engage in prostitution, while plaintiff's club does not.
8 Accordingly, patrons who are inclined to solicit and engage in prostitution are inclined to spend
9 their money at Déjà Vu's clubs rather than plaintiffs'.

10 Déjà Vu's unlawful business practices are forcing plaintiffs to compete at a market
11 disadvantage, which is increasing. Plaintiffs are losing intangible business goodwill and market
12 standing as a result, which cannot be fully remedied monetarily. This is precisely the situation
13 that qualifies as an irreparable injury for purposes of preliminary relief. *Rent-A-Center*, 944 F.2d
14 at 603.

15 Further, the injury inflicted on plaintiffs' working conditions (and indeed on the entire City
16 of San Francisco) by the rampant prostitution at Déjà Vu clubs is incalculable. Because Déjà Vu
17 controls the majority of this industry while allowing and even encouraging prostitution, plaintiffs
18 must work with the harassment and propositions that are inherent when patrons have learned to
19 expect sex. Since it is impossible to monetarily remedy plaintiffs' injury in working in an industry
20 in which they are subject to propositions and harassment from patrons who have learned to expect
21 prostitution, this is an irreparable injury in itself.

22 3. The Hardships Balance in Plaintiffs' Favor.

23 Déjà Vu's nightclubs are running their nightclubs in violation of the law, and plaintiffs are
24 being irreparably harmed by it. It is simply untenable for Déjà Vu to argue that requiring them to
25 comply with the law implicates any hardship. Déjà Vu should be obeying the law anyway, and
26 their failure to do so is causing hardship for the plaintiffs. The hardships implicated by this
27 situation unequivocally balance in plaintiffs' favor.

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1 **4. Public Policy Favors a Preliminary Injunction**

2 Public policy strongly favors an injunction. It is simply difficult to envision a greater
3 offense to public policy than when a multinational Nevada strip club operator takes over the
4 majority of clubs in San Francisco and then forces women in those clubs into prostitution to the
5 detriment of everyone else in the market. Plaintiffs only want defendants to follow the law like
6 everyone else, and public policy certainly favors this simple request.

7 **B. Alternatively, Plaintiffs are Entitled to Preliminary Relief Under the**
8 **Ninth Circuit's "Sliding Scale" Standard.**

9 As noted above, a court may grant the injunction if the plaintiff "demonstrates *either* a
10 combination of probable success on the merits and the possibility of irreparable injury *or* that
11 serious questions are raised and the balance of hardships tips sharply in his favor." *Clear Channel*
12 *Outdoor*, 340 F.3d at 813 (emphasis in original; internal quotation marks and citations omitted).
13 As the Ninth Circuit has reiterated many times regarding the two alternative formulations of the
14 preliminary injunction test: "These two formulations represent two points on a sliding scale in
15 which the required degree of irreparable harm increases as the probability of success decreases."
16 *Baby Tam & Co., Inc.*, 154 F.3d at 1100 (internal quotation marks and citations omitted).

17 In this case, plaintiffs only want defendants follow the law. Déjà Vu is blatantly violating
18 laws against prostitution, and this prostitution is often not even entirely voluntary. There is simply
19 no chance that Déjà Vu could convince any court that this conduct is a lawful business practice.
20 To whatever extent this Court may believe that plaintiff's intangible lost business standing and
21 deteriorating industry standards are not sufficiently imminent to justify a preliminary injunction,
22 the inevitability of success on plaintiffs' claims that the prostitution at Déjà Vu clubs is illegal
23 nonetheless justifies preliminary relief under the Ninth Circuit's "sliding scale" formula.

24 Plaintiffs respectfully submit they have demonstrated a compelling likelihood of success
25 and irreparable injury, and, indeed, the public policy interest in a free and lawfully operated
26 market. All these considerations support a preliminary injunction.

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CONCLUSION

Because plaintiffs have a strong likelihood of success on their claim that Déjà Vu and its nightclubs are engaging in unfair business practices that are causing them irreparable harm, plaintiffs respectfully request:

1. This motion be granted in its entirety.
2. The Court enter the following preliminary injunction:

Defendants are ordered to stop allowing, encouraging, or requiring prostitution to take place at any nightclub they operate in San Francisco. To ensure defendants' compliance with this order, defendants must place the following posting in a conspicuous area visible to all dancers:

NOTICE

The United States District Court for the Northern District of California has ordered this business to refrain from allowing, encouraging or requiring exotic dancers to engage in prostitution. If you are employed as an exotic dancer at this business and you feel that this order has been violated, you may report the violation to attorney Gregory S. Walston by telephone at (415) 269-3208, by mail at 225 Bush Street, 16th Fl., San Francisco CA 94104, or by e-mail to WilliamsWalston@aol.com.

3. Plaintiffs further respectfully ask the Court to enter the following injunction:

The Court finds that prostitution is most rampant at Déjà Vu – Market Street Cinema and Déjà Vu – New Century Theater, and other Déjà Vu clubs direct prostitution into those two nightclubs. Accordingly, the Court orders those business to close their private booths, as most of the prostitution takes place in those booths. Further, defendant Déjà Vu Consulting, Inc., is ordered to remove from their internet site any internet links to the "Escort Sex Guide." It is clear that that internet site peddles prostitution over the internet in violation of law, and thus contributes to the common knowledge of the availability of prostitution from Déjà Vu businesses, which is detrimental to plaintiffs' business.

4. The Court order any further relief it deems proper.

Dated: July 13, 2005

Respectfully submitted,

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