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ATTORNEYS FOR PLAINTIFFS

DISTRICT COURT
CLARK COUNTY, NEVADA

19 FAME OPERATING CO., INC., a Nevada
20 corporation d/b/a ELLIS ISLAND BEER,
21 ELLIS ISLAND BREWERY, ELLIS
22 ISLAND CASINO, & ELLIS ISLAND
23 RESTAURANT; FLAMINGO PARADISE
24 GAMING, LLC, a Nevada limited liability
25 company d/b/a TERRIBLE'S HOTEL AND
26 CASINO; VILLAGE PUB, INC., a Nevada
27 corporation d/b/a VILLAGE PUB; HIGCO.
28 INC., a Nevada corporation d/b/a THREE
ANGRY WIVES PUB; VILLAGE PUB
SANDHILL, LLC, a Nevada limited liability
company d/b/a YORKY'S; LORITIN, INC.,
a Nevada corporation d/b/a VILLAGE PUB
AND CASINO - GREEN VALLEY;
VILLAGE PUB & POKER - AIRPORT,
LLC, a Nevada limited liability company
d/b/a VILLAGE PUB & POKER; VILLAGE
PUB FT. APACHE, LLC, a Nevada limited

CASE NO. :
DEPT. NO. :

PLAINTIFFS' COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF

Hearing Date:
Hearing Time:

FILED

DEC 5 8 13 AM '06

Elizabeth Williams
CLERK

1 liability company d/b/a VILLAGE PUB &
2 POKER; VILLAGE PUB RAINBOW, LLC,
3 a Nevada limited liability company d/b/a
4 VILLAGE PUB & POKER; VILLAGE PUB
5 NELLIS, LLC, a Nevada limited liability
6 company d/b/a VILLAGE PUB & POKER;
7 VILLAGE PUB HORIZON, INC., a Nevada
8 corporation d/b/a VILLAGE PUB;
9 VILLAGE PUB MAULE, INC., a Nevada
10 corporation d/b/a VILLAGE PUB &
11 POKER; VILLAGE PUB WIGWAM, LLC,
12 a Nevada limited liability company d/b/a
13 VILLAGE PUB & POKER; VILLAGE PUB
14 & CASINO-SUMMERLIN, INC., a Nevada
15 corporation d/b/a VILLAGE PUB &
16 CASINO-SUMMERLIN;
17 INTERNATIONAL VINTAGE WINE
18 CELLAR, INC., a Nevada corporation;
19 MARKET GAMING, INC., a Nevada
20 corporation; CARDIVAN COMPANY, a
21 Nevada corporation; E-T-T, Inc., a Nevada
22 corporation; BECKER GAMING GROUP, a
23 Nevada corporation; THE LODGE AT
24 FORT APACHE OPERATOR, LLC, a
25 Nevada limited liability company d/b/a THE
26 LODGE AT FORT APACHE; THE LODGE
27 AT TENAYA OPERATOR, LLC, a Nevada
28 limited liability company d/b/a THE LODGE
AT TENAYA; THE LODGE AT
SHELBOURNE OPERATOR, LLC, a
Nevada limited liability company d/b/a THE
LODGE AT SHELBOURNE,

Plaintiffs,

vs.

GEORGE J. CHANOS, Attorney General of
the State of Nevada; DAVID ROGER, Clark
County District Attorney; BILL YOUNG,
Sheriff of Las Vegas Metropolitan Police
Department; BRADFORD JERBIC, City
Attorney for the City of Las Vegas; KAREN
COYNE, Chief City Marshall for the City of
Las Vegas; RICHARD D. PERKINS, Police
Chief of the City of Henderson; SHAWNA
HUGHES, City Attorney for the City of
Henderson; MARK S. PARESI, Police Chief
of City of North Las Vegas; SEAN
MCGOWAN, City Attorney for the City of
North Las Vegas; DR. DONALD S.
KWALICK, Chief Health Officer for the
Southern Nevada Health District, and DOE
DEFENDANTS I-XX,

Defendants.

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1 **PLAINTIFFS' COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

2
3 Plaintiffs, by and through their attorneys JONES VARGAS and CAMPBELL &
4 WILLIAMS, hereby file this Complaint against the above-named Defendants, and allege as
5 follows:

6 **SUMMARY**

7 1. Plaintiffs seek a temporary restraining order and preliminary injunction to enjoin
8 Defendants, GEORGE J. CHANOS, Attorney General of the State of Nevada; DAVID ROGER,
9 Clark County District Attorney; BILL YOUNG, Sheriff of Las Vegas Metropolitan Police
10 Department; BRADFORD JERBIC, City Attorney for the City of Las Vegas; KAREN COYNE,
11 Chief City Marshall for the City of Las Vegas; RICHARD D. PERKINS, Police Chief of the City
12 of Henderson; SHAWNA HUGHES, City Attorney for the City of Henderson; MARK S. PARESI,
13 Police Chief of City of North Las Vegas; SEAN MCGOWAN, City Attorney for the City of North
14 Las Vegas; DR. DONALD S. KWALICK, Chief Health Officer for the Southern Nevada Health
15 District, and DOE DEFENDANTS I-XX, in their official capacities, from enforcing the Nevada
16 Clean Indoor Air Act ("NCIAA"), a comprehensive State-wide smoking prohibition passed
17 through the initiative process that will become law on December 8, 2006. A copy of the Act is
18 here attached as Exhibit 1.

19 2. The NCIAA is impermissibly vague in violation of the Due Process Clause of the Nevada
20 and United States Constitutions as it fails to provide proper notice to persons of ordinary
21 intelligence as to what conduct is criminalized.

22 3. The NCIAA lacks specific enforcement standards, and authorizes, encourages, and clearly
23 fails to prevent arbitrary and discriminatory enforcement.

24 4. The NCIAA's reliance on arbitrary and irrational classifications, unrelated to a legitimate
25 governmental interest, violates the Equal Protection Clause of the United States and Nevada
26 Constitutions.

27 **THE PARTIES**

28 5. Plaintiff, Fame Operating Company, Inc., a Nevada corporation d/b/a Ellis Island Beer,

- 1 Ellis Island Brewery, Ellis Island Casino, and Ellis Island Restaurant, located at 4178 Koval Lane,
2 Las Vegas, Nevada.
- 3 6. Plaintiff, Flamingo Paradise Gaming, LLC, a Nevada Limited Liability Company d/b/a
4 Terrible's Hotel and Casino, located at 4100 Paradise Road, Las Vegas, Nevada.
- 5 7. Plaintiff, Village Pub, Inc., a Nevada corporation d/b/a Village Pub, located at 3455 E.
6 Flamingo Rd., Las Vegas, Nevada.
- 7 8. Plaintiff, Higco, Inc., a Nevada corporation d/b/a Three Angry Wives Pub, located at 8820
8 W. Charleston, Suite 105, Las Vegas, Nevada.
- 9 9. Plaintiff, Village Pub Sandhill, LLC, a Nevada limited liability company d/b/a Yorky's.
10 located at 3720 E. Sunset. Suite 101. Las Vegas, Nevada.
- 11 10. Plaintiff, Loritrin, Inc., a Nevada corporation d/b/a Village Pub and Casino – Green Valley,
12 Village Pub, located at 4563 E. Sunset Road, Henderson, Nevada.
- 13 11. Plaintiff, Village Pub & Poker – Airport, LLC, a Nevada limited liability company d/b/a
14 Village Pub & Poker, located at 2301 E. Sunset Road, Las Vegas, Nevada.
- 15 12. Plaintiff, Village Pub Ft. Apache, LLC, a Nevada limited liability company d/b/a Village
16 Pub & Poker, located at 5325 S. Ft. Apache Rd., Las Vegas, Nevada.
- 17 13. Plaintiff, Village Pub Rainbow, LLC, a Nevada limited liability company d/b/a Village Pub
18 & Poker, located at 7575 S. Rainbow Blvd., Las Vegas, Nevada.
- 19 14. Plaintiff, Village Pub Nellis, LLC, a Nevada limited liability company d/b/a Village Pub &
20 Poker, located at 3740 S. Nellis Blvd., Las Vegas, Nevada.
- 21 15. Plaintiff, Village Pub Horizon, Inc., a Nevada corporation d/b/a Village Pub, located at
22 10900 S. Eastern Ave., Las Vegas, Henderson, Nevada.
- 23 16. Plaintiff, Village Pub Maule, Inc., A Nevada corporation d/b/a Village Pub & Poker,
24 located at 9732 W. Maule Ave., Las Vegas, Nevada.
- 25 17. Plaintiff, Village Pub Wigwam, LLC, a Nevada limited liability company d/b/a Village Pub
26 & Poker, located at 8515 S. Eastern Ave., Las Vegas, Nevada.
- 27 18. Plaintiff, Village Pub & Casino – Summerlin, Inc., a Nevada corporation d/b/a Village Pub
28 & Casino – Summerlin, located at 2610 Regatta Dr., Las Vegas, Nevada.

- 1 19. Plaintiff, International Vintage Wine Cellar, Inc., a Nevada corporation d/b/a La Havana
- 2 Cigar Lounge, located at 25 Via Brianza #100, Henderson, Nevada.
- 3 20. Plaintiff, Market Gaming, Inc., a Nevada corporation, located at 4040 N. Tenaya Way, Las
- 4 Vegas, Nevada.
- 5 21. Plaintiff, Cardivan Company, a Nevada corporation, located at 5195 S. Las Vegas Blvd.,
- 6 Las Vegas, Nevada.
- 7 22. Becker Gaming Group, a Nevada corporation, located at 740 S. Decatur Blvd., Las Vegas,
- 8 Nevada.
- 9 23. The Lodge at Fort Apache Operator, LLC, a Nevada limited liability company d/b/a the
- 10 Lodge at Fort Apache, located at 5790 Ft. Apache Rd., Las Vegas, Nevada.
- 11 24. The Lodge at Tenaya Operator, LLC, a Nevada limited liability company d/b/a the Lodge at
- 12 Tenaya, located at 5711 Sky Pointe Rd., Las Vegas, Nevada.
- 13 25. The Lodge at Shelbourne Operator, LLC, a Nevada limited liability company d/b/a the
- 14 Lodge at Shelbourne, located at 8350 S. Rainbow Blvd., Las Vegas, Nevada.
- 15 26. Defendant, George J. Chanos, in his official capacity as Attorney General of the State of
- 16 Nevada.
- 17 27. Defendant David Roger, in his official capacity as Clark County District Attorney.
- 18 28. Defendant, Bill Young, in his official capacity as Sheriff of Las Vegas Metropolitan Police
- 19 Department.
- 20 29. Defendant Bradford Jerbic, in his official capacity as City Attorney for the City of Las
- 21 Vegas.
- 22 30. Defendant Karen Coyne, in her official capacity as Chief City Marshall for the City of Las
- 23 Vegas.
- 24 31. Defendant, Richard D. Perkins, in his official capacity as Police Chief of the City of
- 25 Henderson.
- 26 32. Defendant Shawna Hughes, in her official capacity as City Attorney for the City of
- 27 Henderson.
- 28 33. Defendant Mark S. Paresi, in his official capacity as Police Chief of City of North Las

1 Vegas.

2 34. Defendant Sean McGowan, in his official capacity as City Attorney for the City of North
3 Las Vegas.

4 35. Defendant, Dr. Donald S. Kwalick, in his official capacity as Chief Health Officer for the
5 Southern Nevada Health District.

6 **FIRST CAUSE OF ACTION**

7 **(Violation of Due Process Protected by the Fifth and Fourteenth Amendments**
8 **to the United States Constitution and Nevada Constitution)**

9 36. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 35 as if
10 fully set forth herein.

11 37. The NCIAA does not give fair notice to a person of ordinary intelligence as to against
12 whom the Act is to be enforced.

13 38. The NCIAA does not give fair notice to persons of ordinary intelligence as to what a "place
14 of employment" is for the purposes of the act, and is specifically vague as to whether smoking is
15 permitted in hotel and motel rooms.

16 39. The NCIAA does not give fair notice to persons of ordinary intelligence as to what entities
17 qualify as "casinos" under the Act.

18 40. The NCIAA does not give fair notice to persons of ordinary intelligence as to what is a
19 "stand-alone bar, tavern, or saloon" for purposes of the Act.

20 41. The NCIAA does not give fair notice to persons of ordinary intelligence as to what "food
21 service... incidental to its operation" means under the Act.

22 42. The NCIAA does not give fair notice to persons of ordinary intelligence as to whether
23 smoking is prohibited in establishments that fit into more than one of the categories created by the
24 NCIAA.

25 43. The NCIAA, therefore, is impermissibly vague and violates the Due Process Clause of the
26 Nevada Constitution and the Due Process Clause of the Fifth and Fourteenth Amendments to the
27 United States Constitution.

28 44. Plaintiffs have no adequate remedy at law.

1 ///

2 SECOND CAUSE OF ACTION

3 **(Violation of the Equal Protection Clause of the Fifth and Fourteenth Amendments to the**
4 **United States Constitution and Article IV, Section 21 of the Nevada Constitution)**

5 45. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 44 as if fully set forth
6 herein.

7 46. The NCIAA's stated purpose is to prevent children and families from being exposed to
8 secondhand smoke.

9 47. The NCIAA permits smoking in taverns with unrestricted gaming licenses.

10 48. The NCIAA bans smoking in taverns with restricted gaming licenses.

11 49. Permitting smoking in taverns with unrestricted gaming licenses while banning smoking in
12 taverns with restricted gaming licenses is not rationally related to the purpose of preventing
13 children and families from being exposed to secondhand smoke nor is it related to any other
14 legitimate government interest.

15 50. The NCIAA permits smoking in grocery stores with unrestricted gaming licenses.

16 51. The NCIAA bans smoking in grocery stores with restricted gaming licenses.

17 52. Permitting smoking in grocery stores with unrestricted gaming licenses while banning
18 smoking in grocery stores with restricted gaming licenses is not rationally related to the purpose of
19 preventing children and families from being exposed to secondhand smoke nor is it related to any
20 other legitimate government interest.

21 53. The NCIAA permits smoking in taverns that do not serve food.

22 54. The NCIAA bans smoking in taverns that do serve food.

23 55. Permitting smoking in taverns that do not serve food while banning smoking in taverns that
24 do not serve food is not rationally related to the purpose of preventing children and families from
25 being exposed to secondhand smoke nor is it related to any other legitimate government interest.

26 56. The NCIAA, therefore, arbitrarily distinguishes between similarly situated entities without
27 rational relation to a legitimate a government interest violating Plaintiffs' rights under the Equal
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1 Protection Clause of the Fifth and Fourteenth Amendments to the United States Constitution and
2 Article IV, Section 21 of the Nevada Constitution.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment against Defendants,
5 awarding the following relief:

6
7 A declaration that the Act, and any actions of Defendants in adopting and implementing the Act,
8 denies Plaintiffs their rights to substantive due process under the Fifth and Fourteenth
9 Amendments to the United States Constitution and Article I, Section 8 (5) of the Nevada
10 Constitution;

11
12 A declaration that the Act, and any actions of Defendants in adopting and implementing the Act,
13 denies Plaintiffs their rights secured under the Equal Protection Clause of the Fifth and Fourteenth

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3 Amendments to the United States Constitution and Article IV, Section 21 of the Nevada
4 Constitution;

5

6 An injunction barring Defendants from implementing or enforcing of the Act; and

7

8 An award to Plaintiffs of such other and further relief that this Court may deem just and equitable.

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10 DATED this 5th day of December, 2006.

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JONES VARGAS

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By: 

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ATTORNEYS FOR PLAINTIFFS

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EXHIBIT 1

STATE QUESTION NO. 5

Amendment to Title 15 of the Nevada Revised Statutes

FULL TEXT OF THE MEASURE

CLEAN INDOOR AIR ACT INITIATIVE PETITION

SUMMARY: Provides for enactment of Nevada Clean Indoor Air Act: Protecting children and families from secondhand smoke in most public places, excluding stand-alone bars and gaming areas of casinos.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This Act shall be known, cited and referred to as the “Nevada Clean Indoor Air Act: Protecting children and families from secondhand smoke in most public places, excluding stand- alone bars and gaming areas of casinos.”

Sec. 2. Chapter 202 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 3, smoking tobacco in any form is prohibited within indoor places of employment including, but not limited to, the following:

- (a) Child care facilities;
- (b) Movie theatres;
- (c) Video arcades;
- (d) Government buildings and public places;
- (e) Malls and retail establishments;
- (f) All areas of grocery stores; and
- (g) All indoor areas within restaurants.

2. Without exception, smoking tobacco in any form is prohibited within school buildings and on school property.

3. Smoking tobacco is *not* prohibited in:

(a) Areas within casinos where loitering by minors is already prohibited by state law pursuant to NRS 463.350;

- (b) Stand-alone bars, taverns and saloons;
- (c) Strip clubs or brothels;
- (d) Retail tobacco stores;

(e) Private residences, including private residences which may serve as an office workplace, except if used as a childcare, an adult day care or a health care facility.

4. In areas or establishments where smoking is not prohibited by this Act, nothing in state law shall be construed to prohibit the owners of said establishments from

voluntarily creating nonsmoking sections or designating the entire establishment as smoke free.

5. Nothing in state law shall be construed to restrict local control or otherwise prohibit a county, city or town from adopting and enforcing local tobacco control measures that meet or exceed the minimum applicable standards set forth in this Act.

6. "No Smoking" signs or the international "No Smoking" symbol shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this Act. Each public place and place of employment where smoking is prohibited shall post, at every entrance, a conspicuous sign clearly stating that smoking is prohibited. All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited.

7. Health authorities, police officers of cities or towns, sheriffs and their deputies shall, within their respective jurisdictions, enforce the provisions of this Act and shall issue citations for violations of this Act pursuant to NRS 202.2492 and NRS 202.24925.

8. No person or employer shall retaliate against an employee, applicant or customer for exercising any rights afforded by, or attempts to prosecute a violation of, this Act.

9. For the purposes of this Act, the following terms have the following definitions:

(a) "Childcare facilities" has the meaning ascribed to it in NRS 432A.024;

(b) "Video arcade" has the meaning ascribed to it in paragraph (d) of subsection 3 of NRS 453.3345;

(c) "Government building" means any building or office space owned or occupied by (1) any component of the University and Community College System of Nevada and used for any purpose related to the system, (2) the State of Nevada and used for any public purpose, or (3) any county, city, school district or other political subdivision of the State and used for any public purpose;

(d) "Public places" means any enclosed areas to which the public is invited or in which the public is permitted;

(e) "School building" means all buildings on the grounds of any public school described in NRS 388.020 and any private school as defined in NRS 394.103;

(f) "School property" means the grounds of any public school described in NRS 388.020 and any private school as defined in NRS 394.103;

(g) "Casino" means an entity that contains a building or large room devoted to gambling games or wagering on a variety of events. A casino must possess a nonrestricted gaming license as described in NRS 463.0177 and typically uses the word "casino" as part of its proper name;

(h) "Restaurant" means a business which gives or offers for sale food, with or without alcoholic beverages, to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere;

(i) "Place of employment" means any enclosed area under the control of a public or private employer which employees frequent during the course of employment including, but not limited to, work areas, restrooms, hallways, employee lounges, cafeterias, conference and meeting rooms, lobbies and reception areas;

(j) "Health Authority" has the meaning ascribed to it in NRS 202.2485;

(k) "Stand-alone bar, tavern or saloon" means an establishment devoted primarily to the sale of alcoholic beverages to be consumed on the premises, in which food service is incidental to its operation, and provided that smoke from such establishments does not infiltrate into areas where smoking is prohibited under the provisions of this Act. In addition, a stand-alone bar, tavern or saloon must be housed in either: (1) a physically independent building that does not share a common entryway or indoor area with a restaurant, public place or any other indoor workplaces where smoking is prohibited by this Act, or (2) a completely enclosed area of a larger structure, such as a strip mall or an airport, provided that indoor windows must remain shut at all times and doors must remain closed when not actively in use;

(l) "Completely enclosed area" means an area that is enclosed on all sides by any combination of solid walls, windows or doors that extend from the floor to the ceiling;

(m) "Incidental food service or sales" means the service of prepackaged food items including, but not limited to, peanuts, popcorn, chips, pretzels or any other incidental food items that are exempt from food licensing requirements pursuant to subsection 2 of NRS 446.870;

(n) "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

10. Any statute or regulation inconsistent with this Act is null and void.

11. The provisions of this Act are severable. If any provision of this Act or the application thereof is declared by a court of competent jurisdiction to be invalid or unconstitutional, such declaration shall not affect the validity of the Act as a whole or any provision thereof other than the part declared to be invalid or unconstitutional.

Sec. 3. This act shall be in full force and effect 10 days from and after its passage and approval.