

1 **LAW OFFICES OF KERMITT L. WATERS**

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8 **Attorney for Defendants**

9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

11 NEVADA RESTAURANT ASSOCIATION,)
12 a Nevada non-profit corporation; RETAIL)
13 ASSOCIATION OF NEVADA, a Nevada)
14 non-profit corporation; WYNN LAS VEGAS,)
15 LLC, a Nevada limited liability company;)
16 NEVADA MOTOR TRANSPORT)
17 ASSOCIATION, INC., a Nevada non-profit)
18 corporation; and NEVADA MANUFACTURERS)
19 ASSOCIATION, INC., a Nevada non-profit)
20 corporation; and NEVADA TAVERN OWNER’S)
21 ASSOCIATION, a Nevada trade association,)

22 Plaintiff,

23 vs.

24 PEST COMMITTEE, a Nevada Ballot Advocacy)
25 Group; TONY BADILLO, an individual; JACK)
26 LIPSMAN, an individual; AL MAURICE, an)
27 individual; ROSS MILLER, in his official capacity)
28 as Secretary of State for the State of Nevada; and)
DOES I through X, inclusive,)

Defendants.)

CASE NO.:

FIRST JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR
CARSON CITY

STATE COURT NO. 08 OC 00045 1B
STATE DISTRICT COURT DEPT NO I

DEFENDANTS’ NOTICE OF
REMOVAL

NOTICE OF REMOVAL

TO: THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT
OF NEVADA

1 PLEASE TAKE NOTICE that the Defendants hereby remove this action to this Court. All of the
2 Defendants who have been served in this case, hereby consent to Removal of this case to Federal
3 Court. The grounds for removal are as follows:
4

- 5
6 1. On February 7, 2008, the Plaintiffs filed a Complaint in the First Judicial Court of the
7 State of Nevada in and for Carson City asking for the state court judge to order
8 declaratory relief. Specifically, the plaintiffs filed suit seeking a declaration that the
9 proposed ballot initiative that Defendants filed on January 16, 2008 is invalid in that
10 it violates the U.S. Constitution, the Nevada Constitution, Nevada Revised Statutes §
11 295.009(1) (a) and (2), or more specifically, the Single Subject Rule, and lastly, that
12 the Description of Effect required of every proposed initiative of NRS 295.009(1)(b)
13 is false and misleading. The proposed ballot initiative is named “Prevent Employers
14 from Seizing Our Tips, or PEST, for short. A copy of said complaint is attached
15 hereto as Exhibit A. A copy of PEST is attached at Exhibit B.
16
17
- 18 2. Plaintiffs served the summons and complaint on Defendants on February 12, 2008
19 and a true and correct copy of the Proof of Service of the Summons and Complaint
20 are attached hereto as Exhibit C.
21
- 22 3. The proposed complaint in the Fourth Cause of Action specifically alleges a violation
23 of the Equal Protection Clause of the 14th Amendment to the United States
24 Constitution. Plaintiffs allege that if the proposed initiative becomes law and amends
25 Nevada Revised Statutes 608.160, it would be creating two separate classes of
26 employees eligible to receive tips. The two classes would be employees who share
27 tips among themselves, and those small business owners who occasionally work as
28

1 employees and are called “*de facto*” employees by the Plaintiffs. Plaintiffs allege that
2 the passage of PEST would discriminate against the *de facto* employees without a
3 rational basis and therefore violates the Fourteenth Amendment Equal Protection
4 Clause.
5

6 4. On February 26, 2008, the Culinary Workers Union Local 226 filed a Motion to
7 Intervene in the state court action pursuant to NRCP 24 and NRS 12.130 and joined
8 in all the claims for relief requested by Plaintiffs, including the claim that PEST
9 would violate the Fourteenth Amendment to the United States Constitution. A true
10 and correct copy of the Motion to Intervene is hereby attached as Exhibit D.
11

12 5. This is a civil action over which this Court has jurisdiction pursuant to 28 U.S.C. §
13 1331, since Plaintiffs raised a Federal Cause of Action and specifically alleging an
14 Equal Protection violation of the Fourteenth Amendment to the U.S. Constitution.
15 This case may be removed to this Court by Defendant pursuant to 28 U.S.C. 1441 *et*
16 *seq.* Under 28 U.S.C. § 1441(c) and the principles of supplemental jurisdiction under
17 28 U.S.C. § 1367, the right exists to remove the entire case to this court.
18

19 6. All pleadings, process, orders, and other filings in the state court action are attached
20 to this notice as required by 28 U.S.C. §1446(a) as Exhibit D.
21

22 7. Venue is appropriate in the unofficial Southern District of Nevada of the Federal
23 District Court, District of Nevada under 28 U.S.C. §§ 1391(b), 1441 *et seq.*, and
24 Local Rule IA 6-1. Although this case originally rose and is pending in the First
25 Judicial District because of the ministerial requirements of NRS 295.061(1), venue is
26 more appropriate in the unofficial Southern District. All of the Plaintiffs including
27 the Nevada Restaurant Association, Wynn Las Vegas, LLC, the Nevada Motor
28

1 Transport Association, the Nevada Manufacturers Association, the Nevada Tavern
2 Owner's Association, and the Culinary Workers Union Local 226 all have their
3 principal places of business in Las Vegas, Nevada. Defendant PEST Committee was
4 organized and has its principal place of business in Las Vegas, Nevada. The
5 individual Defendants, Tony Badillo, Jack Lipsman, and Al Maurice, all live and
6 work in Las Vegas, Nevada. Since all of the Plaintiffs and all of the Defendants
7 reside and do business in the unofficial Southern District, venue should be assigned to
8 the Southern District.
9

10
11 8. Pursuant to 28 U.S.C. 1446, a copy of this Notice of Removal is being filed shortly
12 with the clerk of the First Judicial District Court of the State of Nevada and served on
13 all parties.

14 9. Defendants reserve the right to amend or supplement this Notice of Removal.

15
16 WHEREFORE, Defendants hereby remove the action now pending against them in the First
17 Judicial District Court of the State of Nevada as Case Number 08 OC 00045 1B, Dept. 1.

18
19 DATED: this _____ day of March, 2008.
20

21
22 By: _____

23 **LAW OFFICES OF KERMITT L. WATERS**

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Attorney for Defendant

1 **CERTIFICATE OF SERVICE**

2 In addition to electronic service, I certify that I am an employee of the Law Office of Kermitt
3 Waters in Las Vegas, Nevada and that on the 7th day of March, 2008, I served the Notice of
4 Removal to Federal Court on behalf of Defendants PEST Committee, Tony Badillo, Jack
5 Lipsman, and Al Maurice. I deposited a copy of the above and foregoing Notice of Removal in
6 the United States Mail, postage prepaid at Las Vegas, Nevada, to the last known address(es) of:

7 **KUMMER KAEMPFER BONNER
8 RENSHAW & FERRARIO**

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19 Attorney for Defendant, Ross Miller

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20 _____
21 EVELYN WASHINGTON
22 An employee of Kermitt Waters, Esq.