

Topless Dancers Were Employees, Not Contractors, According to Jury

By Matthew Heller
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SAN BERNARDINO – In the first case of its kind to go to a Superior Court trial in California, a jury has ruled that a topless club illegally treated two of its former dancers as independent contractors when they were really employees.

The ruling vindicated the three-year legal quest of Virginia Pritchett and Katherine Cox, who claimed the owners of the Fantasy Topless Theatre in Colton were liable for not paying them the minimum wage and charging them ‘stage fees’ of up to \$30 a shift to perform at the club.

After a two-week trial, a San Bernardino jury Thursday awarded the plaintiffs more than \$54,000 in unpaid wages and reimbursement of stage fees and costume costs. They had asked for \$65,000.

They felt it was wrong, fundamentally wrong, to be made to pay to work,” said their attorney, Ellen

Greenstone of Rothner, Segall and Greenstone in Pasadena.

“It was really a matter of principle to them.”

The Fantasy’s attorney contended that the dancers benefited substantially from the free-lance arrangement, which allowed them to pocket all tip income from customers. “What we’re talking about here is really an issue of greed,” Stephen A. Jamieson argued to the jury last week.

But the panel agreed with the plaintiffs that they qualified as employees under both federal and state standards. In 1994, a state Labor Commission came to a similar conclusion in the case of two former dancers at a San Francisco club, awarding them nearly \$4,000.

“The problem has been that exotic dancing is a socially unacceptable occupation and club owners can get away with it,” Greenstone said.

Following their industry’s trend, Fantasy owners Tom and Marla Green switched to independent contracting in

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1992. That meant they had no longer had to pay the dancers minimum wage or pro

1993. vide employment benefits. The performers could keep tips from stage and private table dances, offset by stage fees.

Pritchett, who called the arrangement “wage rape,” and Cox brought their suit in August 1995, alleging violations of the California Labor Code and unfair business practices. *Pritchett v. Tom L. Theatres*, SCV23015.

To be ruled employees, the plaintiffs had to show under the state test that the Greens exercised control over their work or under the federal standard, that they were economically dependent on the club.

“All factors weigh heavily in favor of employee status,” Greenstone told the jury.

Among other things, Pritchett and Cox testified that managers set their schedules, even firing them for being late. They were also directed to wear football jerseys on Monday nights and, like the club’s employees, prohibited from using the pay phone or chewing gum.

However, Jamieson maintained that the women had nothing to complain about. “They were making substantial money under that (free-lance) arrangement, more than when they were employees,” he noted, comparing their status to that of hairdressers who rent space in a salon.

The fact that dancers negotiated their own “fees” with customers for table dances was “indicative of being in business for themselves,” said the partner at Solomon, Saltsman & Jamieson of Marina del Rey. He did not return a call requesting comment on the verdict.

Before trial, Judge A. Rex Victor dismissed the Greens’ cross-complaint, which claimed the plaintiffs had a duty to remit their table-dance fees to the club if they did not consider themselves independent contractors. He still has to rule on the plaintiffs’ motion for attorney fees – a sum certain to be more than the jury award to the dancers.

In July, attorneys for about 500 dancers at a San Francisco theater announced a \$2.85 million settlement in a dispute over their employment status. Earlier this month, five strippers filed similar class-action suits against 12 clubs in Los Angeles Superior Court.

“You can’t misclassify dancers as independent contractors,” said Ray A. Mandialor, a Beverly Hills attorney who represents the Los Angeles plaintiffs. “If they’re employees, you have to treat them that way”.