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CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

OCT 14 2020

Sherril R. Carter, CLERK OF COURT  
By Steven Drew, Deputy

6 Attorneys for Plaintiff ADRIANA HERNANDEZ,  
Individually, and on behalf of all others similarly situated  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES

10  
11 ADRIANA HERNANDEZ, individually, and  
on behalf of all others similarly situated,

12 Plaintiffs,

13  
14 v.

15 2523 E. ANAHEIM, INC. dba XS  
16 AFTERHOURS GENTLEMENS CLUB, a  
California corporation; and DOES 1 through  
17 100, inclusive,

18 Defendants.  
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Lead Case No. 19STCV16831  
(Related to Case No. 19STCV15211)

Assigned for All Purposes to the Hon. Ann I.  
Jones in Department 11

**CLASS ACTION**

**DECLARATION OF JOHN M.  
KENNEDY IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF  
COLLECTIVE AND CLASS  
SETTLEMENT**

[MOTION FOR PRELIMINARY APPROVAL;  
DECLARATION OF PROPOSED CLASS COUNSEL  
PETER E. GARRELL; DECLARATION OF  
PROPOSED CLASS REPRESENTATIVE ADRIANA  
HERNANDEZ; AND [PROPOSED] ORDER FILED  
CONCURRENTLY HEREWITH]

DATE: TBD  
TIME: TBD  
PLACE: Department 11

Action Filed: May 15, 2019

BY FAX

1 **DECLARATION OF JOHN M. KENNEDY**

2 I, John M. Kennedy, declare:

3 1. I am an attorney at law admitted to practice in all courts in the State of California. I  
4 am a partner with FORTIS LLP, Counsel of record for Plaintiff ADRIANA HERNANDEZ,  
5 individually, and on behalf of all others similarly situated (collectively, “Plaintiffs”) in this action.  
6 I am admitted to practice law in the United States District Courts for all Districts in California, as  
7 well as the Southern, Central and Northern District Bankruptcy Courts. I make this declaration of  
8 my own personal knowledge, and if called to testify, I could and would competently testify hereto  
9 under oath.

10 2. This Declaration is filed with respect to a settlement of two related class actions:  
11 *Adriana Hernandez, et al. v. 2523 E. Anaheim, Inc. dba XS Afterhours Gentlemen’s Club*, Los  
12 Angeles Superior Court Case No. 19STCV16831 **AND** *Adriana Hernandez, et al. v. GC Brothers*  
13 *Entertainment, LLC dba The Palms Gentlemen’s Club*, Los Angeles Superior Court Case  
14 No. 19STCV15211. Both are wage and hour class actions filed by a performer (Adriana  
15 Hernandez) against the two clubs, The Palms (“Palms”) and XS Afterhours (“XS” and collectively  
16 with the “Palms,” the “Clubs”). Ms. Hernandez did her research and contacted me. Peter E.  
17 Garrell, my partner at Fortis, LLP and I have been involved in adult industry wage and hour class  
18 litigation for years – generally as defense counsel.

19 3. Here, I set forth my qualifications to serve as Class Counsel. The investigation into  
20 the risk and exposure analysis related to the class action settlement agreement (which is the subject  
21 of the corresponding motion for preliminary approval) is set forth in the Declaration of Peter E.  
22 Garrell, my partner at Fortis, LLP.

23 **QUALIFICATIONS OF COUNSEL**

24 4. I graduated magna cum laude from Michigan Law School and joined O’Melveny &  
25 Myers in 1991, where I tried cases for the Catholic Church, including numerous immigration cases  
26 in which the issue was asylum. I served as part of trial teams in massive tort cases involving the  
27 *Exxon Valdez* oil spill (defending numerous class actions), the Time Beach Missouri dioxin cases,  
28 and other toxic-chemical related class action lawsuits filed by the Giradi and Keese firm, such the

1 train derailment case, and other similar toxic tort class actions filed by Rafael Metzger's law firm.  
2 With respect the *Exxon Valdez* case, I was a leader of the expert witness team and traveled to Texas  
3 and Massachussets, took numerous depositions and become part of the appellate team following  
4 trial. After a short time with my own practice obtaining trial experience in smaller cases, from  
5 2000 to 2009, I served as a Senior Chambers Attorney to Justice Patti Kitching; and have since  
6 become a State Bar Certified Appellate Specialist and have appeared before the California Court of  
7 Appeal in dozens of appeals.

8         5.         A non-disclosure agreement signed with the California Second District Court of  
9 Appeal, Division Three, bars me from discussing cases by name or case number; but I drafted more  
10 than 400 bench memoranda for the Court of Appeal over nine (9) years; dozens of which dealt with  
11 class action issues, employment cases, wage and hour cases, motions for certification, motions for  
12 summary judgment and trial.

13         6.         Since leaving the Court, I have served as lead trial and co-lead trial counsel in a  
14 number of employment actions, contractual actions, property defect and warranty cases, and other  
15 miscellaneous actions, including a federal copy right action. I also represented groups of  
16 homeowners in a number of construction defect cases and obtained summary judgment in favor of  
17 the home owners.

18         7.         I was part of a trial team for Union Carbide in dozens of alleged asbestos-exposure  
19 related cases; four of which went to trial. Myself and the team prevailed in one of the asbestos  
20 cases based upon proving a lack of exposure. I continue to serve as lead and co-counsel in a  
21 number of pending employment-related class actions as well as two consumer class actions. In  
22 addition, I was lead trial counsel in behalf of the City of Santa Monica in which the City prevailed  
23 in summary judgment in the California Court of Appeal.

24         **Plaintiff Side Class and Complex Cases:**

25         a)         *Charles Johnson, individually and on behalf of all others similarly situated v. Sun*  
26                    *West Mortgage Company, Inc., a California company; Proctor Financial, Inc., a*  
27                    *Michigan corporation; and Does 1 to 50, inclusive (2017) BC541571 (LASC –*  
28

1 Central). Defendants defeated this case on Summary Judgment, which was  
2 unsuccessfully appealed.

3 b) *Adriana Hernandez, individually, and on behalf of all others similarly situated v.*  
4 *Fritz That's It Gentlemens Club, a business entity form unknown; and Does 1*  
5 *through 100, inclusive* (2019) 30-2019-01091557-CU-OE-CXC (OCSC). No  
6 motion for class certification was filed. Parties reached a class action settlement  
7 which was documented and for which a motion for preliminary approval is pending  
8 hearing on October 28, 2020 (continued from October 16, 2020).

9 c) *Adriana Hernandez, individually, and on behalf of all others similarly situated v.*  
10 *2523 E. Anaheim, Inc. dba XS Afterhours Gentlemens Club, a California*  
11 *corporation; and Does 1 through 100, inclusive* (2019) 19STCV16831 (LASC –  
12 Central). No motion for class certification was filed. This matter was mediated on  
13 February 3, 2020 without resolution. Discovery was interrupted by the COVID-19  
14 Pandemic. The parties have documented a class action settlement agreement and are  
15 filing this motion for preliminary approval.

16 d) *Adriana Hernandez, individually, and on behalf of all others similarly situated v.*  
17 *The Palms Gentlemens Club, a California corporation; and Does 1 through 100,*  
18 *inclusive* (2019) 19STCV15211 (LASC – Central). No motion for class  
19 certification was filed. This matter was mediated on February 3, 2020 without  
20 resolution. Discovery was interrupted by the COVID-19 Pandemic. The parties  
21 have documented a class action settlement agreement and are filing this motion for  
22 preliminary approval.

23 e) *Adriana Hernandez and Jane Doe 1, individually, and on behalf of all others*  
24 *similarly situated v. Bob Martin, Inc. dba The Library Gentlemen's Club, et al.*  
25 (2019) 8:19-cv-01849-JFW (ADSx) (Central District of California – Southern  
26 Division). No motion for class certification was filed. This matter was mediated on  
27 February 3, 2020 before the Honorable Louis Meisinger at Signature Resolution at  
28 which the parties reached a class action settlement agreement. The parties

1 documented the class action settlement agreement and preliminary approval has  
2 been granted and is presently going through the Notice and Claims process.

3 f) *Ontario Food and Beverage, LLC v. Andre Schoorl, Director of the State of*  
4 *California Department of Industrial Relations and David M. Lanier, Secretary of*  
5 *the California Labor and Workforce Development Agency, D.C. No. 5:18-CV-*  
6 *00753-SJO-SP. This action challenged the Constitutionality of California Labor*  
7 *Code Section 350(e) as applied to “dancers.” The State’s Motion to Dismiss was*  
8 *granted and injunction denied. On November 25, 2019, the 9th Circuit affirmed the*  
9 *District Court.*

10 g) *DV Diamond Club of Flint, LLC, et al. v. United States Small Business*  
11 *Administration, et al., (2020) 4:20-cv-10899. This case is currently pending in the*  
12 *Eastern District of Michigan. Plaintiffs seek injunctive relief to restrain the Small*  
13 *Business Administration and others from discriminating against workers who are*  
14 *entitled to benefit from the Paycheck Protection Program (“PPP”) provisions of the*  
15 *recently-enacted Coronavirus, Aid, Relief and Economic Security Act, Pub L. No.*  
16 *116-136 Sections 1101-03, 1107, 1114 (2020) (the “CARES Act”). The regulations*  
17 *and operating procedures of the Small Business Administration conflict with the text*  
18 *of the PPP and violate business’ and workers’ fundamental rights under the First and*  
19 *Fifth Amendments of the United States Constitution, among others. Preliminary*  
20 *Injunction granted. Defendants appealed. The case is currently stayed pending*  
21 *forgiveness phase of PPP and any government denials of forgiveness.*

22 h) *Victor Mallh, individually and on behalf of all others similarly situated v. Incase*  
23 *Designs Corp. (2019) 2:19-cv-06414-DSF-SK. This is a nationwide class action*  
24 *case filed in the California Central District Court, in which Plaintiff prevailed on*  
25 *two motions to dismiss pursuant to Federal Rule 12(b)(6). Plaintiff commenced this*  
26 *action on behalf of himself and all others similarly situated, alleging claims for*  
27 *breach of express warranty, breach of implied warranty, violation of the covenant of*  
28 *good faith and fair dealing, violation of the Magnuson-Moss Warranty Act, 15.*

1 U.S.C. § 2301, *et seq.* (“MMWA”), and violation of the New York General  
2 Business Law § 349 (“GBL § 349”) based on Incase’s manufacture and sale of  
3 knowingly defective laptop cases, the MacBook Hardshell, which crack and chip  
4 shortly after purchase, and for refusing to provide a non-defective replacement case  
5 or other comparable remedy under the limited one year warranty. After a mediation  
6 before Judge Carl West, retired, this matter settled.

7 **Other Complex Cases**

8 6. In addition to the cases listed above that I handled in conjunction with Mr. Garrell, I  
9 have defended countless complex class actions, some California-only classes and other nationwide  
10 classes. Each of the cases litigated after 2009 were handled in conjunction with Mr. Garrell. Mr.  
11 Garrell and I have worked together since 2009 with only a small gap of time (less than six months)  
12 as Mr. Garrell established GARRELL LAW, P.C. before taking on other lawyers, including myself.  
13 In particular, concerning cases of entertainer misclassification, I am very familiar with this practice  
14 area. Some of these cases that I have defended, starting with the most recently filed, are as follows:

- 15 a. *Graciela Guerra Morales individually, and on behalf of all others similarly situated*  
16 *v. Jet Strip Cabaret, a corporate entity of unknown form and DOES 1 through 50,*  
17 *inclusive* (2019) 19STCV07841 (LASC – Central). Presently being litigated, albeit  
18 stayed pursuant to stipulation during the COVID19 pandemic.
- 19 b. *Katherine Scarlett Kappella, individually, and on behalf of all others similarly*  
20 *situated v. 18301 - 1/2 E. 5th Ave. Corp. (dba Jumbo’s Clown Room), a California*  
21 *corporation; and Does 1 through 50, inclusive* (2019) BC723618 (LASC – Central).  
22 Settled. Preliminary approval granted. Presently going through the notice and  
23 claims process.
- 24 c. *Jane Roe, individually and on behalf of all others similarly situated v. Imperial*  
25 *Project, Inc., d/b/a Bare Elegance; Mike Galam; Victor Galam; Jacqueline Barnes;*  
26 *and Does 1-200, jointly and severally* (2018) BC720147 (LASC – Central). Settled.  
27 Currently pending preliminary approval.  
28

- 1 d. *Jenetta L. Bracy, on behalf of herself and all others similarly situated v. DG*  
2 *Hospitality Van Nuys, LLC; The Spearmint Rhino Companies Worldwide, Inc.;*  
3 *Spearmint Rhino Consulting Worldwide, Inc.; Dames N’ Games; John Does #1-10;*  
4 *and XYZ Corporations #1-10* (2017) 5:17-cv-00854-VAP (DTBx) (C.D. Cal.).  
5 Settled. Received final approval. Expected to be paid in the near future, although  
6 recently interrupted by the COVID-19 pandemic.
- 7 e. *Lauren Byrne, on behalf of herself and all others similarly situated v. Santa Barbara*  
8 *Hospitality Services, Inc., The Spearmint Rhino Companies Worldwide, Inc.,*  
9 *Spearmint Rhino Consulting Worldwide, Inc., and Santa Barbara Hospitality*  
10 *Services, LLC* (2017) 5:17-cv-00527-SVW (SPx) (C.D. Cal.). Settled. Received  
11 final approval. Expected to be paid in the near future, although recently interrupted  
12 by the COVID-19 pandemic.
- 13 f. *Adriana Ortega, individually and on behalf of all others similarly situated v.*  
14 *Spearmint Rhino Companies Worldwide, Inc., Spearmint Rhino Consulting*  
15 *Worldwide, Inc., and Midnight Sun Enterprises, LLC* (2017) 5:17-cv-00206-JGB  
16 (KKx) (C.D. Cal.). Settled. Final approval granted on the record on July 27, 2020.  
17 Awaiting written order.
- 18 g. *Richard J. Soltis, Brittany Leigh Boltinghouse, Leigh Ann Soltis and Stephen Soltis*  
19 *v. City of Santa Monica and Aubrie Ahmadpour* (2014) BC538405 (LASC –  
20 Central). We moved for summary judgment on behalf of the City of Santa Monica  
21 in a catastrophic injury case based on governmental design immunity which motion  
22 was denied, but successfully overturned on a writ petition with judgment being  
23 entered in favor of the City of Santa Monica.
- 24 h. *Luis A. Cabrera, individually and on behalf of all others similarly situated v.*  
25 *Complete Facilities Maintenance, Inc. and Does 1 through 25, inclusive* (2014)  
26 BC538248 (LASC – Central). This was a class action involving janitorial workers.  
27 Settled after private mediation. Final judgment entered and a class stipulated to for  
28 settlement only.

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- i. *Stacy Salazar, an individual; and Erica Sullivan, an individual v. Rouge Gentlemen's Club, Inc. aka Rouge Gentlemen's Clubs, aka Rouge, Downtown LA Club Venture, Inc., aka Spearmint Rhino Consulting Worldwide, Inc.; Olympic Avenue Ventures, Inc., aka Spearmint Rhino Companies Worldwide, Inc. aka Spearmint Rhino Gentlemen's Club (Los Angeles); Spearmint Rhino Gentlemen's Club (City Of Industry), aka City of Industry Hospitality Venture, Inc., aka Huntington Beach Hospitality Venture, Inc., and Does 1-1000, inclusive (2010) BC445244 (LASC – Central). The Salazar class representatives objected to the settlement in Trauth (below) and in the interim all counsel and the objectors entered into a global settlement and final judgment was entered.*
  
- j. *Veronica Mendez, individually and on behalf of all others similarly situated v. Jewels Connection, Inc. and Does 1 through 50 (2010) BC443303 (LASC – Central). Settled. Final judgment having been entered.*
  
- k. *Christian Broce v. The Spearmint Rhino Companies Worldwide, Inc., a Nevada corporation doing business as "Spearmint Rhino Gentleman's Club"; Spearmint Rhino Consulting Worldwide, Inc., a Delaware corporation doing business as "Spearmint Rhino Gentleman's Club"; WPS Entertainment, Inc., a California corporation doing business as "Spearmint Rhino Gentleman's Club"; Santa Maria Restaurant Enterprises, Inc., a California corporation doing business as "Spearmint Rhino Gentleman's Club"; The Oxnard Hospitality Services, Inc., a California corporation doing business as "Spearmint Rhino Gentleman's Club"; and Does 1 through 10, inclusive (2010) 1320074 (Santa Maria Superior Court). Settled. Final judgment having been entered.*
  
- l. *Stacy Salazar, an individual; Erica Sullivan, an individual; and Cynthia Gonzalez, an individual v. Rouge Gentlemen's Club, Inc. (Los Angeles; Downtown LA Club Venture, Inc.; Spearmint Rhino Consulting Worldwide, Inc.; Olympic Avenue Ventures, Inc., dba Spearmint Rhino Gentlemen's Club (Los Angeles); Seventh Veil,*



1                    *Inc.; West Coast Undercover, Inc., dba 4-Play; Valley Ball Management, LLC, dba*  
2                    *Bare Elegance, aka Valley Ball (Van Nuys); Scores Gentlemen's Club (Los*  
3                    *Angeles); VIP Showgirls (North Hollywood); Huntington Beach Hospitality*  
4                    *Venture, Inc., dba Rouge Gentlemen's Club (Van Nuys); Spearmint Rhino*  
5                    *Gentlemen's Club (Oxnard), aka The Oxnard Hospitality Service, Inc.; Spearmint*  
6                    *Rhino Gentlemen's Club (Torrance); Spearmint Rhino Gentlemen's Club (City of*  
7                    *Industry); Spearmint Rhino Gentlemen's Club (Van Nuys); Cheetah's Night Club;*  
8                    *Star Strip; Farmdale Hospitality Services, Inc., aka Blue Zebra; Crazy Girls;*  
9                    *Vintage Industrial Strip Club; Godfathers; Eros Station; Players; Thirsty's*  
10                   *Gentlemen's Club; Sunny's Saloon; Candy Cat 1; Candy Cat Too; Club 7557;*  
11                   *Desire Gentlemen's Club; and Does 1-1000, inclusive (2010) BC432102 (LASC –*  
12                   *Central). Case dismissed due to misjoinder of parties.*

13                   m.                   *Victoria Omlor and Anicia Vintimilla, individually, and on behalf of Class of*  
14                   *similarly situated individuals v. The Spearmint Rhino Companies Worldwide, Inc., a*  
15                   *Nevada corporation; Spearmint Rhino Companies, LLC, a California limited*  
16                   *liability company; Inland Restaurant Venture 1, Inc., a California corporation;*  
17                   *Spearmint Rhino Consulting Worldwide, Inc., a Delaware corporation; Farmdale*  
18                   *Hospitality Services, Inc., a California corporation; The Oxnard Hospitality*  
19                   *Services, Inc., fka The Spearmint Rhino Club, Inc., a California corporation; John*  
20                   *Gray dba Spearmint Rhino Adult Cabaret, a California fictitious business;*  
21                   *Spearmint Rhino Van Nuys, a business entity form unknown; Midnight Sun*  
22                   *Enterprises, Inc., a California corporation and Does 1 through 100, inclusive*  
23                   *(2009) BC420882 (LASC – Central). The Omlor class representatives objected to*  
24                   *the settlement in Trauth (below) and in the interim all counsel and the objectors*  
25                   *entered into a global settlement and final judgment was entered.*

26                   n.                   *Michelle Hoisington, on behalf of herself, all others similarly situated, and the*  
27                   *general public v. Rouge Gentlemen's Club, Inc., doing business as Rouge*  
28                   *Gentlemen's Club, and Does 1 through 50 inclusive (2009) BC419646 (LASC –*

1 Central). The Hoisington class representatives objected to the settlement in *Trauth*  
2 (below) and in the interim all counsel and the objectors entered into a global  
3 settlement and final judgment was entered.

4 o. *Michelle Hoisington, on behalf of herself, all others similarly situated, and the*  
5 *general public v. Inland Restaurant Venture I, Inc., doing business as Spearmint*  
6 *Rhino, and Does 1 through 50 inclusive (2009) BC419669 (LASC – Central). The*  
7 *Hoisington class representatives objected to the settlement in Trauth (below) and in*  
8 *the interim all counsel and the objectors entered into a global settlement and final*  
9 *judgment was entered.*

10 p. *Victoria Omlor, Jasmine Wright, Anicia Vintimilla, Marsha Ellington, Selena*  
11 *Denise Palaez, Nicole Garcia, Reah Navarro, and Tami Sanchez, individually, and*  
12 *on behalf of Class of similarly situated individuals v. City of Industry Hospitality*  
13 *Venture, Inc., Downtown LA Club Venture, Inc., Farmdale Hospitality Services,*  
14 *Inc., Inland Restaurant Venture I, Inc., Midnight Sun Enterprises, Inc., Olympic*  
15 *Avenue Venture, Inc., The Oxnard Hospitality Services, Inc., Rialto Pockets, Inc.,*  
16 *Rouge Gentlemen's Club, Inc., Santa Barbara Hospitality Services, Inc., Santa*  
17 *Maria Restaurant Enterprises, Inc., Spearmint Rhino Companies Worldwide, Inc., a*  
18 *Nevada corporation; Spearmint Rhino Consulting Worldwide, Inc., a Delaware*  
19 *corporation and Does 1 through 100, inclusive (2009) BC418020 (LASC –*  
20 *Central). The Omlor class representatives objected to the settlement in Trauth*  
21 *(below) and in the interim all counsel and the objectors entered into a global*  
22 *settlement and final judgment was entered.*

23 q. *Tracy Dawn Trauth, Christen Rivera, Jennifer Blair, Victoria Omlor, Jasmine*  
24 *Wright, Anicia Vintimilla, Marsha Ellington, Selena Denise Pelaez, Nicole Garcia,*  
25 *Reah Navarro, Tami Sanchez, individually and on behalf of all others similarly*  
26 *situated v. Spearmint Rhino Companies Worldwide, Inc.; Spearmint Rhino*  
27 *Consulting Worldwide, Inc.; The Oxnard Hospitality Services, LP; City of Industry*  
28 *Hospitality Venture, Inc.; Downtown LA Club Venture, Inc.; Farmdale Hospitality*



1 **PROOF OF SERVICE**

2 I am employed in the County of Orange, State of California. I am over the age of 18 and  
3 not a party to the within action. My business address is 650 Town Center Drive, Suite 1530, Costa  
4 Mesa, California 92626. On October 13, 2020, I served the within document(s) described as:

5 **DECLARATION OF JOHN M. KENNEDY IN SUPPORT OF PLAINTIFFS’ MOTION  
6 FOR PRELIMINARY APPROVAL OF COLLECTIVE AND CLASS SETTLEMENT**

7 on the interested parties in this action as stated below:

8 *Attorneys for Defendants 2523 E. Anaheim,  
9 Inc. dba XS Afterhours Gentlemens Club  
10 and The Palms Gentlemens Club:*

11 Steven J. Shapero  
12 Martin M. Shapero  
13 SHAPERO & SHAPERO  
14 5950 Canoga Ave., Suite 404  
15 Woodland Hills, CA 91367  
16 Tel: (818) 710-1200  
17 Fax: (818) 710-1447  
18 *sshapero@shaperoandshapero.com*  
19 *mshapero@shaperoandshapero.com*

20  BY ELECTRONIC TRANSMISSION VIA CASE ANYWHERE: I caused said  
21 document(s) to be sent to the parties listed on the Electronic Service List maintained by  
22 Case Anywhere in the manner set forth in the Court’s Order Authorizing Electronic Service  
23 dated July 29, 2019.

24  BY MAIL: By placing a true copy of the foregoing document(s) in a sealed envelope  
25 addressed as set forth above. I am readily familiar with this firm's practice for collection  
26 and processing of correspondence for mailing. Under that practice it would be deposited  
27 with the U.S. Postal Service on that same day with postage thereon fully prepaid in the  
28 ordinary course of business. I am aware that on motion of the party served, service is  
presumed invalid if postal cancellation date or postage meter date is more than one day after  
date of deposit for mailing contained in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 13, 2020, at Costa Mesa, California.

Lisa Dancel  
(Type or print name)

*/s/ Lisa Dancel*  
(Signature)