

reside in Philadelphia County and having patrons of the Club who reside in Philadelphia County. See Complaint at ¶ 2.

7. Denied as a conclusion of law. It is further denied because Plaintiff has expressly pled that Defendants regularly conduct business in Philadelphia County, Pennsylvania. See Complaint at ¶ 2 (“Venue in this Court is proper under Pennsylvania Rules of Civil Procedure 1006 and 2179 because Defendants regularly conduct business within Philadelphia County by, *inter alia*, employing Dancers (as defined below) who reside in Philadelphia County and having patrons of the Club (as defined below) who reside in Philadelphia County.”). For example, Plaintiff, who worked as a Dancer for Defendants, resides in Philadelphia County. Id. at ¶ 3. Upon information and belief, Defendants’ business records will identify the precise number of Dancers who have been classified as non-employee independent contractors by Defendants and have resided in Philadelphia County during the three-year statute of limitations period. These records will be sought through discovery. Moreover, Defendants fail to cite to any facts or statistics supporting their conclusory assertion in paragraph 7.

8. Denied as immaterial. As discussed in paragraph 7 *supra*, Plaintiff has sufficiently pled that venue is appropriate pursuant to Civil Procedure 1006 and 2179 because Defendants regularly conduct business within Philadelphia County by, *inter alia*, employing Dancers who reside in Philadelphia County and having patrons of the Club who reside in Philadelphia County. See Complaint at ¶ 2.

9. Denied as immaterial. As discussed in paragraph 7 *supra*, Plaintiff has sufficiently pled that venue is appropriate pursuant to Civil Procedure 1006 and 2179 because Defendants regularly conduct business within Philadelphia County by, *inter alia*, employing Dancers who

reside in Philadelphia County and having patrons of the Club who reside in Philadelphia County. See Complaint at ¶ 2.

10. Denied as a conclusion of law. It is further denied because Plaintiff has expressly pled that Defendants regularly conduct business in Philadelphia County, Pennsylvania. See Complaint at ¶ 2 (“Venue in this Court is proper under Pennsylvania Rules of Civil Procedure 1006 and 2179 because Defendants regularly conduct business within Philadelphia County by, *inter alia*, employing Dancers (as defined below) who reside in Philadelphia County and having patrons of the Club (as defined below) who reside in Philadelphia County.”). For example, Plaintiff, who worked as a Dancer for Defendants, resides in Philadelphia County. Id. at ¶ 3. Upon information and belief, Defendants’ business records will identify the precise number of Dancers who have been classified as non-employee independent contractors by Defendants and have resided in Philadelphia County during the three-year statute of limitations. These records will be sought through discovery. Moreover, Defendants fail to cite to any facts or statistics supporting their conclusory assertion in paragraph 10.

11. Denied as immaterial. As discussed in paragraphs 7 and 10 *supra*, Plaintiff has sufficiently pled that venue is appropriate pursuant to Civil Procedure 1006 and 2179 because Defendants regularly conduct business within Philadelphia County by, *inter alia*, employing Dancers who reside in Philadelphia County and having patrons of the Club who reside in Philadelphia County. See Complaint at ¶ 2.

WHEREFORE, Plaintiff respectfully requests that the Court overrule Defendants’ Preliminary Objections. In the alternative, Plaintiff respectfully requests that the Court provide sixty (60) days for the parties to conduct venue discovery and submit supplemental briefs.

Date: May 9, 2016

Respectfully submitted,

/s/ R. Andrew Santillo

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III. Plaintiff's Claims, Procedural History, and Relevant Facts

On March 16, 2016, Plaintiff filed a class action complaint against Defendants asserting claims under the under the Pennsylvania Minimum Wage Act (“PMWA”), 43 P.S. §§ 333.101, *et seq.*, and the Pennsylvania Wage Payment and Collection Law, 43 P.S. §§ 260.1, *et seq.* (“PWPCCL”). See Complaint at ¶¶ 24-41. Defendants own and operate an adult entertainment club called “Lou Turk’s” (“the Club”) located in Essington, Pennsylvania. Id. at ¶ 8. Defendants employ women as Dancers who perform exotic dances and provide other “adult entertainment” for Club patrons. Id. at ¶ 9. Plaintiff, a Philadelphia resident, worked for Defendants as a Dancer from approximately April 2015 until January 2016. Id. at ¶¶ 3, 9.

Plaintiff alleges that Defendants had a uniform policy of classifying Dancers as non-employee independent contractors. Id. at ¶ 12. Under this classification, Defendants do not pay Plaintiff and other Dancers any wages for their work. Id. at ¶ 14. Instead, Dancers’ sole compensation comes from Club patrons in the form of fees and tips. Id. at ¶ 15. In addition, Plaintiff alleges that Defendants make unlawful deductions from the Dancers’ pay by imposing mandatory fees to their compensation. Id. at ¶ 21. According to Plaintiff, each of these practices violates Pennsylvania wage law. Id. at ¶¶ 24-41. Plaintiff’s claims find support from several courts holding that similar independent contractor classifications of exotic dancers violate federal and state wage laws. Id. at ¶ 13 (citing Verma v. The Penthouse Club, 2014 U.S. Dist. LEXIS 88459 (E.D. Pa. June 30, 2014); Hart v. Rick’s Cabaret Int’l, Inc., 967 F. Supp. 2d 901, 921-22 (S.D.N.Y. 2013)).

Plaintiff asserts her PMWA and PWPCCL claims as a class action on behalf of herself and other Dancers who worked at the Club since March 16, 2013 and were classified by Defendants as non-employee independent contractors. Id. at ¶ 24. Plaintiff alleges that many of Defendants’

Dancers are, like herself, residents of Philadelphia County. Id. at ¶¶ 2-3.

On April 18, 2016, Defendants filed preliminary objections pursuant to Pa. R. Civ. P. 1028 as to venue, arguing that this case should be transferred to Delaware County, Pennsylvania. Defendants do not cite to any facts or statistics in support of their preliminary objections.

IV. Argument

A. **Standard of review.**

The Pennsylvania Rules of Civil Procedure state that a party must challenge improper venue via preliminary objection. See Pa. R. Civ. P. 1028(a)(1). Defendants, as the moving parties, bear the burden of demonstrating that “a change in venue *is necessary*.” See Purcell v. Bryn Mawr Hosp., 579 A.2d 1282, 1284 (Pa. 1990) (emphasis supplied). However, as the Pennsylvania Supreme Court has observed, a “Plaintiff’s choice of forum is entitled to weighty consideration and should not be disturbed lightly.” See Zappala v. Brandolini Prop. Mgmt., 909 A.2d 1272, 1281 (Pa. 2006) (quoting Walker v. The Ohio River Co., 205 A.2d 43, 45 (Pa. 1964)); see also Purcell v. Bryn Mawr Hosp., 579 A.2d 1282, 1284 (Pa. 1990) (“[A] plaintiff generally is given the choice of forum so long as the requirements of personal and subject matter jurisdiction are satisfied.”); Gilfor v. Altman, 770 A.2d 341, 343 (Pa. Super. 2001) (“A plaintiff’s choice of forum is given great weight and a defendant has the burden in asserting a challenge to plaintiff’s choice of venue.”).

In a case involving defendants that are “corporation[s] or similar entit[ies]” (as with co-defendants 500 Jansen, Inc. and The Saddic family Limited Partnership here)¹ a plaintiff may

¹ If venue is established as to one defendant, then venue is proper as to all defendants. See Zappala v. Brandolini Property Management, 909 A.2d 1272, 1281 (Pa. 2006) (“Thus, reading Rule 1006(c) in conjunction with Rule 2179, a plaintiff may bring her action in any county where one corporate defendant maintains a registered office or its principal place of business, or

establish venue through one of the five methods provided in Pa. R. Civ. P. 2179:

Rule 2179. Venue.

(a) Except as otherwise provided by an Act of Assembly, by Rule 1006(a.1) or by subdivision (b) of this rule, a personal action against a corporation or similar entity may be brought in and only in

(1) the county where its registered office or principal place of business is located;

(2) a county where it regularly conducts business;

(3) the county where the cause of action arose;

(4) a county where a transaction or occurrence took place out of which the cause of action arose, *or*

(5) a county where the property or a part of the property which is the subject matter of the action is located provided that equitable relief is sought with respect to the property.

Pa. R. Civ. P. 2179 (emphasis supplied).²

As discussed above, Plaintiff specifically asserts in her Complaint that venue is proper because Defendants regularly conduct business in Philadelphia County pursuant to Pa. R. Civ. P. 2179(a)(2). Pennsylvania courts utilize a “quality-quantity” analysis to determine whether venue is proper pursuant to Pa. R. Civ. P. 2179(a)(2). See Purcell v. Bryn Mawr Hospital, 579 A.2d 1282, 1285 (Pa. 1990). The “quality” component is satisfied if the acts of the defendant in the subject county “further or are directly related or essential to its business objectives. Rogers v. Thomas, 2011 Pa. Dist. & Cnty. Dec. LEXIS 609, *11-12 (C.C.P. Lacka. Cty. June 20, 2011) (citing Purcell, 579 A.2d 1285)). The “quantity” element is satisfied if the defendant’s acts in the subject county “are sufficiently continuous so as to be considered habitual for purposes of

regularly conducts business; where the cause of action arises; or where the subject matter property is located, notwithstanding that a co-defendant resides in another county.”).

² Only one of these requirements needs to be satisfied for venue to be established. See Deyarmin v. Consolidated Rail Corp., 931 A.2d 1, 8 (Pa. Super. 2007).

venue.” Id. However, as the Pennsylvania Supreme Court has warned, these terms should not be so strictly interpreted to preclude venue in a plaintiff’s chosen location:

It must be remembered that it is the word “regularly” which we are construing and not “principally.” A corporation may perform acts “regularly” even though these acts make up a small part of its total activities. Nor does “regularly” necessarily mean, as defendant contends, that the acts must be performed on a fixed schedule or, when driving is involved, over a fixed route. The question is whether the acts are being “regularly” performed within the context of the particular business.

Monaco v. Montgomery Cab Co., 208 A.2d 252, 258 (Pa. 1965)

B. Defendants have failed to rebut Plaintiff’s specific allegations that Defendants regularly conduct business in Philadelphia County pursuant to Pa. R. Civ. P. 2179(a)(2).

Here, Defendants have failed to refute Plaintiff’s allegation that venue in Philadelphia County is appropriate because Defendants regularly conduct business in Philadelphia County pursuant to 2179(a)(2). See Complaint at ¶ 2. Specifically, Plaintiff alleges that Defendants employed Dancers to perform at the Club that, like herself, are residents of Philadelphia County. Id. at ¶¶ 2-3. It will be difficult for Defendants to demonstrate that these Dancers were not integral to its operation of an exotic dance club. In addition, Plaintiff alleges that patrons of the Club also reside in Philadelphia County. Id. at ¶ 2. Again, it will be difficult for Defendants to assert that these customers of the Club are not essential to its business operations. Thus, Plaintiff’s allegations in her Complaint satisfy the Purcell quality-quantity test discussed above.

Moreover, Defendants have failed to cite to any facts and/or statistics to counter Plaintiff’s assertions in her Complaint that Defendants regularly conduct business in Philadelphia County. As the Superior Court has repeatedly recognized:

“Once the plaintiff has produced *some evidence* to support jurisdiction, the defendant must come forward with some evidence of his own to dispel or rebut the plaintiff’s evidence. The moving party may not sit back and, by the bare allegations as set forth in the preliminary objections, place the burden upon the plaintiff to negate those allegations.”

Deyarmin, 931 A.2d at 9 (quoting Schmitt v. Seaspray-Sharkline, Inc., 531 A.2d 801, 803 (Pa. Super. 1987)) (emphasis supplied). Defendants here merely rely on bare non-factual assertions that “Defendants do not conduct business in Philadelphia County, Pennsylvania” without any supporting evidence. On this basis alone, their preliminary objections should be overruled. See Deyarmin, 931 A.2d at 14 (“a trial court may appropriately resolve preliminary objections to venue (or jurisdiction) without discovery in cases where ‘no factual issues were raised which necessitated the reception of evidence.’”); Alumbaugh v. Wallace Bus. Forms, Inc., 313 A.2d 281 (Pa. Super. 1973) (affirming dismissal of preliminary objection to jurisdiction where defendants offered no evidence in support of their objection).

- C. If the Court believes that Defendants’ non-factual assertions that they do not conduct business in Philadelphia County sufficiently rebut Plaintiff’s allegations to the contrary, Plaintiff respectfully requests that the parties have sixty (60) days to conduct venue discovery and file supplemental briefs.**

When a factual dispute is created through preliminary objections pursuant to Pa. R. Civ. P. 1028(a), both caselaw and the rules of civil procedure require that the Court allow discovery on the disputed venue issue. See Pa. R. Civ. P. 1028(c)(2) (“If an issue of fact is raised, the court shall consider evidence by depositions or otherwise.”); Deyarmin, 931 A.2d at 9 (“If an issue of fact is raised, the court shall take evidence by deposition or otherwise. The court may not reach a determination based upon its view of the controverted facts, but must resolve the dispute by receiving evidence thereon through interrogatories, depositions, or an evidentiary hearing.”). Here, venue discovery will provide further evidence of the extent of Defendants’ contacts with Philadelphia County and allow the Court to examine the issue beyond Defendants’ non-factual assertions to the contrary.

V. **Relief Requested**

For the reasons set forth above, Plaintiffs respectfully requests that the Court overrule Defendants' Preliminary Objection to Plaintiffs' Complaint. In the alternative, Plaintiff respectfully requests that the Court provide sixty (60) days for the parties to conduct venue discovery and submit supplemental briefs.

Date: May 9, 2016

Respectfully submitted,

/s/ R. Andrew Santillo

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ALEXANDRIA PASSE, on behalf of herself and others similarly situated Plaintiff,	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
v.	:	CLASS ACTION
	:	
500 JANSEN, INC. (d/b/a "Lou Turk's"), THE SADDIC FAMILY LIMITED PARTNERSHIP, and CHRISTOPHER L. SADDIC, Defendants.	:	Case No. 160301416
	:	
	:	

ORDER

AND NOW this _____ day of _____, 2016, upon consideration of Defendants' Preliminary Objections to Plaintiff's Complaint, Plaintiff's opposition thereto, and all other papers and proceedings herein, it is hereby ORDERED and DECREED that Defendants' Preliminary Objections are OVERRULED.

BY THIS COURT:

J.

FILED

09 MAY 2016 03:46 pm

Civil Administration

K. EDWARDS

CERTIFICATE OF SERVICE

The undersigned hereby certifies subject to the penalty of perjury that, on this date, the attached documents were served on the Defendants by delivering same to Defendants' counsel via the Court's electronic filing system:

Thomas A. Musi, Esq.
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Date: May 9, 2016

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