

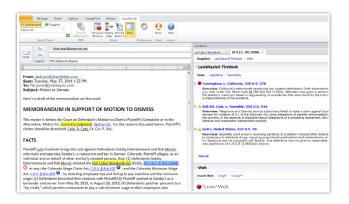
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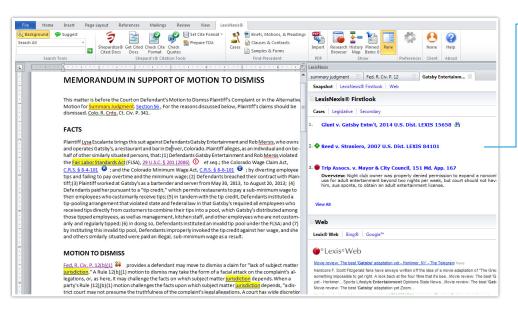
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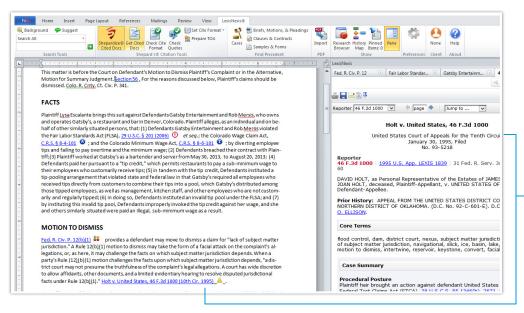
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This matter is before the Court on Defendant's Motion to Dismiss Plaintiff's Complaint or in the Alterr Motion for Summary Judgment. <u>Section 56</u>, for the reasons discussed below, Plaintiff's claims should dismissed. <u>Colo. R. Cnty.</u> Ct. Civ. P. 341. Citations: 28 14 13 0 1 0 0 0 10 PACLS

Plaintiff Lysa Escalante brings this suit against Defendants Gatsby Entertainment and Rob Mersis, who cand operates Gatsby's, a restaurant and bar in Defener, Colorado, Plaintiff alleges, as an individual and on half of other similarly situated persons, that: (1) Defendants Gatsby Entertainment and Rob Mersis violate har large bright and the Fair Labor Standards Act (FLSS, 29U.S.C.) 2012 (2006) et sec.; the Colorado Wage Claim Act, C.R.S. 8-4-101; and the Colorado Minimum Wage Act, C.R.S. 98-6-101; by diverting employee tips and fland Act, C.R.S. 98-6-101; by diverting employee tips and fland and you vertime and the minimum wage; (2) Defendants breached their contract with Plaintiff (3) Plainti worked at Gatsby's say a bartender and server from May 30, 2013, to August 20, 2013; (4) Defendants herpursuant to a five credit, "which permits restaurants to pay a sub-minimum wage to their employ who customarily receive tips; (5) in tandem with the tip credit, Defendants instituted a tip-pooling arrangement that violated state and referealial win that Castby's required all employees, say who are not customarily and ularly tipped; (6) in doing so, Defendants instituted an invalid tip pool under the FLSA; and (7) by instit his invalid tip pool, Defendants instituted an invalid tip pool under the FLSA; and (7) by instituted with invalid tip pool. Defendants instituted an invalid tip pool under the FLSA; and (7) by instituted with invalid tip pool. Defendants instituted an invalid tip pool under the FLSA; and (7) by instituted with sinvalid tip pool. Defendants instituted an invalid tip pool under the FLSA; and (7) by instituted with sinvalid tip pool. Defendants instituted an invalid tip pool under the FLSA; and (7) by instituted with sinvalid tip pool. Defendants instituted an invalid tip pool under the FLSA; and (7) by instituted with sinvalid tip pool. Defendants instituted an invalid tip pool under the FLSA; and (7) by instituted with sinvalid tip pool. Defendants instituted an invalid tip pool under the FLSA; Add Citation R ? Section 56 Let me edit text of current citation 29 U.S.C. § 201 (2006) **✓** Use C Fed., R. Civ., P. 12(b)(1) provides a defendant may move to dismiss a claim for "lack of subject matter ji diction." A Rule 12(b)(1) motion to dismiss may take the form of a facial attack on the complaint's alle tons, or, as here, it may challenge the facts on which subject matter jurisdiction depends. When a pa Rule (12)(b)(1) motion challenges the facts upon which subject matter jurisdiction depends, "a district may not presume the truthfulness of the complaint's legal allegations. A court has wide discretion to al afficavits, other documents, and a limited evidentary hearing to resolve disputed jurisdictional facts u Rule 12(b)(1)." Holtv. United States, 46F.3d 1000 (10th Cir., 1995). Get suggested document | Search Lexis® X Not a C.R.S. § 8-4-101 Suggestion: Colo. Rev. Stat. § 8-4-101 (2010) Plaintiff's claim of federal jurisdiction is predicated on her FLSA allegations. In order to establish both f C.R.S. § 8-6-101

Parent: C.R.S. § 8-4-101

Suggestion: id. § 8-6-101 tion of an "enterprise" for the purposes of the Act. 29 U.S.C.  $\frac{6}{2}$  203(s)[1]. Thus, the jurisdictional claim is the minist of this case are intertwined. Because Gatsby 3 did not reach the minimum gross annual voluments 2013 calendar year, this Court's does not have subject matter jurisdiction over Plaintiff's claims, no  $\frac{1}{2}$  3 and  $\frac{1}{2}$  4 and  $\frac{1}{2}$  3 and  $\frac{1}{2}$  4 and  $\frac{1}{2}$  5 and  $\frac{1}{2}$  5 and  $\frac{1}{2}$  5 and  $\frac{1}{2}$  6 and  $\frac{1}{2}$  7 and  $\frac{1}{2}$  7 and  $\frac{1}{2}$  8 and  $\frac{1}$ 

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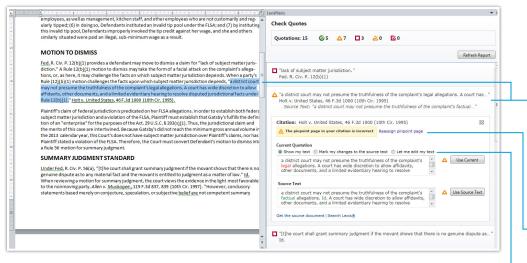
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Table of Authorities judgment evidence." <u>Wellinger Family Trust 1998 v. Hartford Life & Accident Ins. Co.</u>, No. 11-cv-02588-CMA-BNB, 2013 U.S. Dist. LEXIS 136399, at \*6 (D.Colo, Sept, 24, 2013) (citing Bones v. Honey-well Int'l, 36 F-34 869, 375 (LOH Cir. 2044)). Add Citation Refresh Report Federal Cases Holt v. United States, 46 F.3d 1000 (10th Cir. 1995) FLSA CLAIM Defendants contend that Plaintiff has not established enterprise liability coverage under the FLSA. To qualify as a covered enterprise under the FLSA. To a membroyer must have gross annual volume of sales that is not less than \$500,000. 20 U.S.C. § 203 (3)[1](A)(ii). An entity's gross annual volume of sales that is not less than \$500,000. 20 U.S.C. § 203 (3)[1](A)(ii). An entity's gross annual volume of sales that is not gross receipts from all of its sales or its volume of business done during a 12-month period. \*22 C.F.B. § 779.265. A defendant employer may present regularly-kept business records and the accompanying declaration from 800 Mems, President of Gastby Entertainment, Inc. are adequate to establish that Allen v. Muskogee, 119 F.3d 837 (10th Cir. 1997) Wellinger Family Trust 1998 v. Hartford Life & Accident Ins. Co., Civil Action No. 11-cv-02568-CMA-BNB, 2013 U.S. Dist. LEXIS 136399 (D. Colo. Sept. 24, 2013) Motley v. Marathon Oil Co., 71 F.3d 1547 (10th Cir. 1995) Comm. for First Amendment v. Campbell, 962 F.2d 1517 (10th Cir. 1992) Abdulhaseeb v. Calbone, 600 F.3d 1301 (10th Cir. 2010) declariation in minor of mettings, President in disposaries rainflent, inc. ale declaries described in Gastby's does not meet the \$300,000 minimum gross annual volume of sales requirement. Consequently, Gastby's does not meet the definition of enterprise liability under the FLSA, and the Court dismisses Plaintiff's FLSA claims for lack of subject matter jurisdiction. Ball v. Renner, 54 F.3d 664 (10th Cir. 1995) Brereton v. Bountiful City Corp., 434 F.3d 1213 (10th Cir. 2006) Federal Statutes PLAINTIFF IS NOT ENTITLED TO DISCOVERY 29 U.S.C. § 201 (2006) plaintif asks the Curt to permit discovery on the question of Gatby's gross annual volume of sales. "Generally, control of discovery is entrusted to the sound discretion of the appellate courts." Motiev v. Marathon OI Co., 71 7, 34 187, 1389 (I (gith Cir. 1935)) (citation omitted), cert, denied, 1341, Left, 24 781, 116 S. C. 1 1078, 317 U.S. 1190 (1936), Federal Rule of Civil Procedure Sol(QI) permits a court to allow discovery when a "nonmovant shows by affidavit or declaration that, for specified reasons, trannot present facts essentiate by justify is opposition." The nonmovant must file an affidavithat "explainty" buyly facts precluding summary judgment cannot be presented. This includes identifying the probable facts not available and what steps have been taken to obtain these facts." Comm. for First Ameriments V. Campbell, 9367, 24 1351, 1322 (10th Cir. 1932), (Iditation omitted), However, a 56(d) motion cannot be supported by speculation or conclusory declarations, Abdullases by Calbone, 6000-541301, 1131 (10th Cir. 2016), Further, the movant's exclusive control of the desired information does not require automatic relief under Rule 56(f). 29 U.S.C. § 203(s)(1)(A)(ii) (2006) 28 U.S.C. § 1367(d) (1994) Dalal v. Alliant Techsystems, 934 P.2d 830 (1996)

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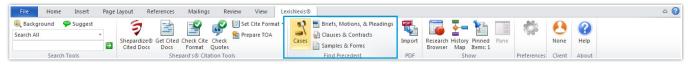
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State Statutes

Colo. Rev. Stat. § 8-4-101 (2010)

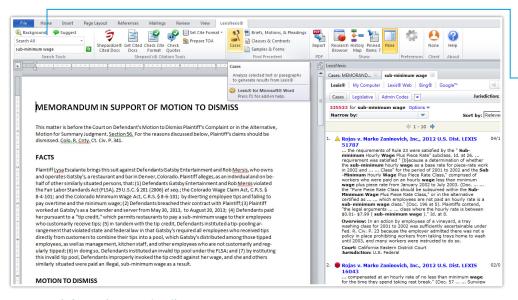


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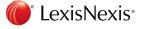
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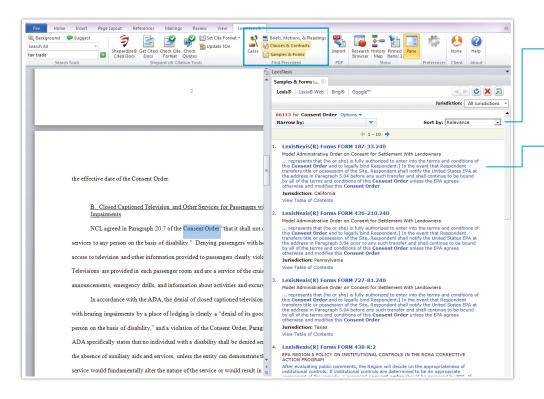
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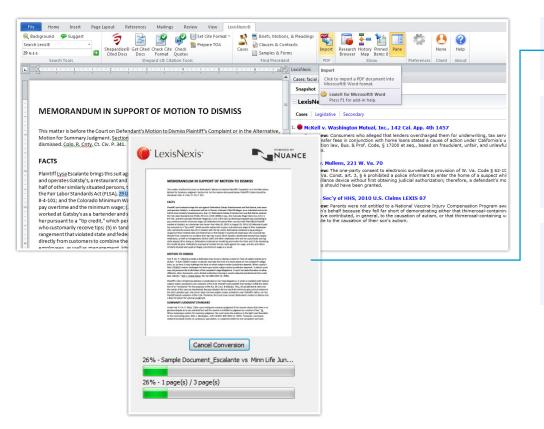


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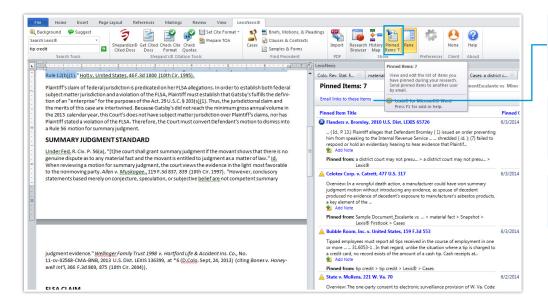
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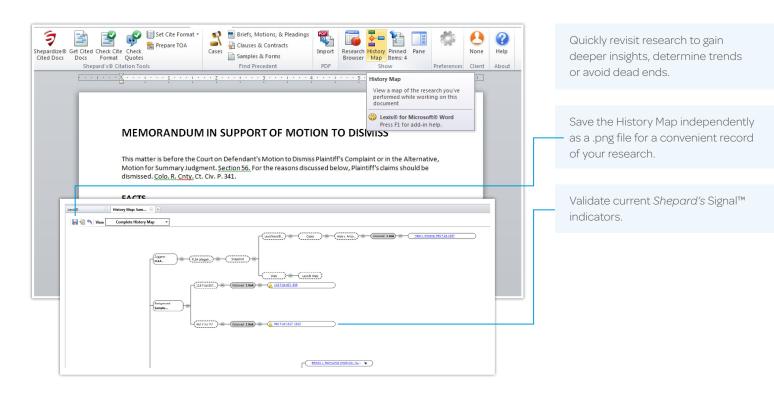


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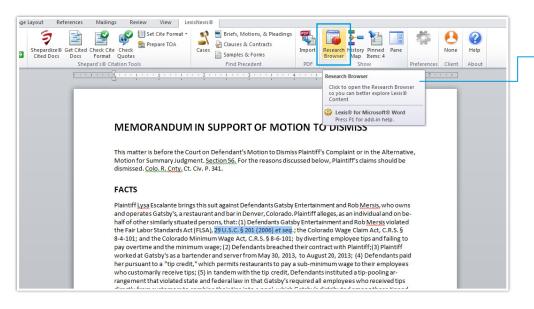
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