IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

Kaleigh R. Dittus, Courtney A. Snyder, and Joanna L. Tabler, all individually and on behalf of all other similarly situated individuals, Plaintiffs, vs. K.E.G., Inc., d/b/a Heart Breakers Gentlemen's Club; Shadow Management Company, Inc., d/b/a Platinum Plus (Columbia); Splash, Inc., d/b/a Platinum Plus (Columbia); Elephant, Inc., d/b/a Platinum Plus (Greenville); KWE Group, LLC; KWON, LLC, d/b/a Platinum West; Gregory Kenwood Gaines, a/k/a Ken Wood; and David A. Henson, a/k/a Kevin Ford, Defendants.	Civil Action No. 3:14-cv-00300-JFA **AMENDED COMPLAINT** **(Jury Trial Demanded)**

Plaintiffs, Kaleigh R. Dittus, Courtney A. Snyder, and Joanna L. Tabler, all individually and on behalf of all other similarly situated individuals, by way of their Amended Complaint in the above-captioned matter, would allege and show unto this Honorable Court the following:

I. Nature of Claims

1. This action is brought individually and as a collective action for unpaid minimum wages, overtime compensation, for liquidated damages, and for other relief under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 et seq. ("FLSA"). The collective action provisions under the FLSA provide for opt-in class participation.

2. Plaintiffs also include other causes of action under South Carolina law on an individual and class-wide basis. Those claims are proposed as opt-out class claims under Rule 23 of the Federal Rules of Civil Procedure.

II. Parties, Jurisdiction, and Venue

3. Plaintiff Kaleigh R. Dittus is a citizen and resident of Lexington County, South Carolina.

4. Plaintiff Courtney A. Snyder is a citizen and resident of Richland County, South Carolina.

5. Plaintiff Joanna L. Tabler is a citizen and resident of Lexington County, South Carolina.

6. Defendant K.E.G., Inc. (hereinafter "Defendant KEG") is a corporation organized and existing pursuant to the laws of the State of South Carolina, with its principal place of business in the State of South Carolina. Upon information and belief, Defendant KEG owns property and conducts business in Richland County, South Carolina. Defendant KEG does business as "Heart Breakers Gentlemen's Club," which is an adult entertainment business and bar within Richland County, South Carolina.

7. Defendant Shadow Management Company, Inc. (hereinafter "Defendant Shadow Management") is a corporation organized and existing pursuant to the laws of the State of North Carolina, with its principal place of business in the State of South Carolina. Upon information and belief, Defendant Shadow Management owns property and conducts business in Richland County, South Carolina. Defendant Shadow Management does business as "Platinum Plus (Columbia)," which is an adult entertainment business and bar within Richland County, South Carolina.

8. Defendant Splash, Inc. (hereinafter "Defendant Splash) is a corporation organized and existing pursuant to the laws of the State of South Carolina, with its principal place of business in the State of South Carolina. Upon information and belief, Defendant Splash owns property and conducts business in Richland County, South Carolina. Defendant Splash does business as "Platinum Plus (Columbia)," which is an adult entertainment business and bar within Richland County, South Carolina.

9. Defendant Elephant, Inc. (hereinafter "Defendant Elephant") is a corporation organized and existing pursuant to the laws of the State of South Carolina, with its principal place of business in the State of South Carolina. Upon information and belief, Defendant Elephant owns property and conducts business in Greenville County, South Carolina. Defendant Elephant does business as "Platinum Plus (Greenville)," which is an adult entertainment business and bar within Greenville County, South Carolina.

10. Defendant KWE Group, LLC (hereinafter "Defendant KWE") is a limited liability company organized and existing pursuant to the laws of the State of South Carolina, with its principal place of business in the State of South Carolina. Upon information and belief, Defendant KWE owns property and conducts business in Richland County, South Carolina.

11. Defendant KWON, LLC (herein after "KWON"), is a limited liability company organized and existing pursuant to the laws of the State of South Carolina, with its principal place of business in the State of South Carolina. Upon information and belief, Defendant KWE owns property and conducts business in Richland and Lexington Counties, South Carolina. Defendant KWON does business as "Platinum West," which is an adult entertainment business and restaurant within Lexington County, South Carolina.

12. Defendant Gregory Kenwood Gaines is a citizen and resident of Lexington County, South Carolina. Upon information and belief, Defendant Gaines is the sole or majority shareholder, member, or owner of Defendants KEG, Shadow, Splash, Elephant, KJ, KWLT, and KWE. Defendant Gaines has also been known as "Ken Wood."

13. Upon information and belief, Defendant David A. Henson is a citizen and resident of Richland County, South Carolina. Upon further information and belief, Defendant Henson is a shareholder or owner of Defendant KEG. Upon information and belief, Defendant Henson has also been known as "Kevin Ford."

14. Plaintiffs bring this action individually and as an opt-in, collective action pursuant to 29 U.S.C. § 216(b), on behalf of a class of all individuals who worked as an exotic dancer or stripper at any of the clubs or bars owned or operated by Defendants–namely, Heart Breakers Gentlemen's Club in Columbia, SC, Platinum Plus in Columbia or Greenville, SC, or Platinum West in West Columbia, SC–at any time within the three years prior to joining this lawsuit, who were misclassified as independent contractors and who were not paid at least minimum wage or overtime compensation as required by the Fair Labor Standards Act.

15. Plaintiffs also bring this action individually and as an opt-out class action under Rule 23 of the Federal Rules of Civil Procedure, on behalf of a class of all individuals who worked an exotic dancer or stripper at any of the clubs or bars owned or operated by Defendants in South Carolina–namely, Heart Breakers Gentlemen's Club in Columbia, SC, Platinum Plus in Columbia or Greenville, SC, or Platinum West in West Columbia, SC–at any time within the three years prior to joining this lawsuit, who were misclassified as independent contractors and who were required to pay any portion of their compensation to the owners, managers, employees, or agents of

Defendants or had any compensation deducted for mandatory house fees, tip-outs, or other similar charges, without receiving written notice of such deductions pursuant to the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10 et seq.

16. Upon information and belief, this action satisfies the requirements of Rule 23(a), Fed. R. Civ. P., as alleged in the following particulars:

A. The proposed Plaintiff class is so numerous that joinder of all individual members in this action is impracticable;

B. There are questions of law and/or fact common to the members of the proposed Plaintiff class;

C. The claims of Plaintiffs, the representatives of the proposed Plaintiff class, are typical of the claims of the proposed Plaintiff class; and

D. Plaintiffs, the representatives of the proposed Plaintiff class, will fairly and adequately protect the interests of the class.

17. In addition, upon information and belief, this action satisfies one or more of the requirements of Rule 23(b), Fed. R. Civ. P., because the questions of law and/or fact common to the members of the proposed Plaintiff class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

18. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b), because this action is based, in part, on the FLSA.

19. In addition, this Court has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over Plaintiffs' pendent claims, which are brought pursuant to the laws of the State of South

Carolina, because those claims arise out of the same transaction or occurrence as the federal claims alleged herein.

20. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, because at least one Defendant is located within in this judicial district and division, and the unlawful labor practices giving rise to Plaintiffs' claims were committed, at least in part, within the Columbia Division of this Court.

III. Facts

21. Plaintiff Dittus has been an exotic dancer or stripper at Heart Breakers from June or July 2009 to February 2, 2014. She has also danced or performed at Platinum Plus in Columbia and Greenville on occasion.

22. Plaintiff Snyder has been an exotic dancer or stripper at Heart Breakers from May 2013 to the present. She has also danced or performed at Platinum Plus in Columbia on occasion.

23. Plaintiff Tabler has been an exotic dancer or stripper at Platinum Plus in Columbia from 2010 to the present. She has also danced or performed at Platinum Plus in Greenville on occasion.

24. Defendants have misclassified Plaintiffs and the members of the Plaintiff class as independent contractors or tenants, when in reality they are employees of Defendants under applicable legal standards.

25. At all times relevant to this Complaint, Defendants have exercised extensive control over the manner in which Plaintiffs and the members of the Plaintiff class perform their jobs and conduct themselves while on Defendants' premises, including when and how Plaintiffs perform, what they are allowed to wear, what music they perform to, how much they can charge or receive

for private dances and sessions in the VIP or champaign rooms, and how they can interact with customers.

26. At all times relevant to this Complaint, Defendants have treated all Plaintiffs and the members of the Plaintiff class in a substantially similar manner.

27. Plaintiffs and the members of the Plaintiff class have not received any wages or other compensation directly from Defendants. Instead, any compensation received by Plaintiffs and the members of the Plaintiff class has come directly from Defendants' customers or patrons in the form of gratuities or tips.

28. At all times relevant to this Complaint, Plaintiffs and the members of the Plaintiff class have been required to pay "house fees" to Defendants in order to be allowed to perform on certain shifts. The house fees charged by Defendants are generally $15.00, $25.00, or $35.00, depending on when the individual arrives at Defendants' premises and checks in with the manager and how long the individual works on a particular shift. Plaintiffs and the members of the Plaintiff class are generally not allowed to leave Defendants' premises unless and until the house fee is paid for a particular shift.

29. In addition to the required house fees, Plaintiff and the members of the Plaintiff class have been required to pay a portion of their tips to managers, floor men or bouncers, disc jockeys, and champaign hosts, all of whom are either managers, employees, or agents of Defendants.

FOR A FIRST CAUSE OF ACTION
(Fair Labor Standards Act–Failure to Pay Minimum Wage)
(Individual and Collective Action)

30. Plaintiffs repeat and reallege each and every allegation of Paragraphs 1-29 as if restated herein verbatim.

31. Defendants KEG, Shadow, Splash, Elephant, and KWON are "employers" for purposes of the Fair Labor Standards Act, 29 U.S.C. § 203(s), because they have annual gross sales or business of at least $500,000.00 and have employees engaged in interstate commerce. In addition, Plaintiffs and the members of the Plaintiff class are covered employees under the FLSA because they were involved in interstate commerce on a regular basis during their employment with Defendants.

32. Defendant KWE is involved in a unified operation involving common control for a common business purpose with Defendants KEG, Shadow, Splash, Elephant, and KWON, such that all Defendants are part of the same business enterprise for purposes of the FLSA.

33. The individual Defendants, Gaines and Henson, are also "employers" under 29 U.S.C. § 203(d) because they have acted directly or indirectly in the interests of Defendants KEG, Shadow, Splash, Elephant, KWE, and KWON in relation to their employees, including Plaintiffs and the members of the Plaintiff class.

34. Plaintiffs and the members of the Plaintiff class were employees of Defendants for purposes of the Fair Labor Standards Act during all times relevant to this Complaint.

35. Defendants have failed to pay Plaintiffs and the members of the Plaintiff class an hourly rate of at least the minimum wage of $7.25 per hour for each and every hour worked, as required by Section 6(a)(1)(C) of the FLSA, 29 U.S.C. § 206(a)(1)(C).

36. Defendants are not allowed to use the tip credit or the reduced hourly rate for tipped employees of $2.13 per hour under the FLSA because they did not provide the required notice to Plaintiffs and the members of the Plaintiff class, and because Plaintiffs and the member of the Plaintiff class were not allowed to keep all tips received by them, but instead were required to share their tips with management and with other employees or agents of Defendants who are not among

employees who customarily and regularly receive tips, and not pursuant to a valid tip pooling or sharing arrangement under applicable law.

37. Plaintiffs and the members of the Plaintiff class are entitled to back wages at the minimum wage rate of $7.25 per hour for ever hour worked, pursuant to section 16(b) of the FLSA, 29 U.S.C. § 216(b).

38. The failure of Defendants to compensate Plaintiffs and the members of the Plaintiff class at least minimum wage was knowing, willful, intentional, and done in bad faith.

39. Plaintiffs and the members of the Plaintiff class are also entitled to liquidated damages equal to the amount of unpaid minimum wages due to them under the FLSA, pursuant to section 16(b) of the FLSA, 29 U.S.C. § 216(b).

40. The work and pay records of Plaintiffs and the members of the Plaintiff class are in the possession, custody, and/or control of Defendants, and Defendants are under a duty pursuant to section 11(c) of the FLSA, 29 U.S.C. § 211(c), and pursuant to the regulations of the United States Department of Labor to maintain and preserve such payroll and other employment records from which the amount of Defendants' liability can be ascertained. Plaintiffs request an order of this Court requiring Defendants to preserve such records during the pendency of this action.

41. Plaintiffs are also entitled to an award of reasonable attorneys' fees and costs incurred in prosecuting this action, pursuant to 29 U.S.C. § 216(b).

FOR A SECOND CAUSE OF ACTION
(Fair Labor Standards Act–Failure to Pay Overtime Wages)
(Individual and Collective Action)

42. Plaintiffs repeat and reallege each and every allegation of Paragraphs 1-41 as if restated herein verbatim.

43. Plaintiffs and the members of the Plaintiff class routinely worked in excess of forty (40) hours per workweek for Defendants.

44. Defendants failed to pay Plaintiffs and the members of the Plaintiff class at the rate of one-and-a-half times their regular rate of pay for all hours worked in excess of forty hours weekly as required by section 7(a) of the FLSA, 29 U.S.C. § 207(a).

45. Plaintiffs and the members of the Plaintiff class are entitled to back wages at the rate of one-and-a-half times their regular rate of pay for all overtime hours worked in excess of forty hours per week, pursuant to section 16(b) of the FLSA, 29 U.S.C. § 216(b).

46. The failure of Defendants to compensate Plaintiffs and the members of the Plaintiff class for overtime work as required by the FLSA was knowing, willful, intentional, and done in bad faith.

47. Plaintiffs and the members of the Plaintiff class are also entitled to liquidated damages equal to the amount of unpaid overtime compensation due to them under the FLSA, pursuant to section 16(b) of the FLSA, 29 U.S.C. § 216(b).

48. Plaintiffs are also entitled to an award of reasonable attorneys' fees and costs incurred in prosecuting this action, pursuant to 29 U.S.C. § 216(b).

FOR A THIRD CAUSE OF ACTION
(Fair Labor Standards Act–Unlawful Kick-Backs)
(Individual and Collective Action)

49. Plaintiffs repeat and reallege each and every allegation of Paragraphs 1-48 as if restated herein verbatim.

50. The house fees and mandatory tip-outs that Defendants required from Plaintiffs and the members of the Plaintiff class constitute unlawful "kick-backs" to an employer under the FLSA.

51. In addition, Defendants unlawfully charged other kick-backs to Plaintiffs and the members of the Plaintiff class, including but not limited to the following: requiring them to pay a fee for employment verification statements; requiring them to pay a fee for 1099s and other income tax forms; and requiring them to pay fees for ATM machines on the premises to obtain cash for required house fees and tip-outs.

52. Plaintiffs and the members of the Plaintiff class are entitled to an award of back pay for all unlawful kick-backs required by Defendants.

53. The unlawful kick-backs received by Defendants or required by Defendants were obtained knowingly, willfully, intentionally, or in bad faith.

54. Plaintiffs and the members of the Plaintiff class are also entitled to liquidated damages equal to the amount of unlawful kick-backs, pursuant to section 16(b) of the FLSA, 29 U.S.C. § 216(b).

55. Plaintiffs are also entitled to an award of reasonable attorneys' fees and costs incurred in prosecuting this action, pursuant to 29 U.S.C. § 216(b).

FOR A FOURTH CAUSE OF ACTION
(South Carolina Payment of Wages Act)
(Individual and Class Action on Behalf of all SC Employees)

56. Plaintiffs repeat and reallege each and every allegation of Paragraphs 1-55 as if restated herein verbatim.

57. Defendants KEG, Shadow, Splash, Elephant, KEW, and KWON are "employers" as defined by the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10(1), because they employ individuals within the State of South Carolina.

58. The individual Defendants, Gaines and Henson, are also "employers" as defined by

the Payment of Wages Act because they are an officers or owners of Defendants KEG, Shadow, Splash, Elephant, KEW and/or KWON, and had the authority and obligation to ensure that their companies complied with applicable state and federal laws regarding employee compensation.

59. Defendants KEG, Shadow, Splash, Elephant, KEW, and KWON employed Plaintiffs and the members of the Plaintiff class within the State of South Carolina. Although these Defendants misclassified Plaintiffs and the members of the Plaintiff class as "independent contractors," Plaintiff and the members of the Plaintiff class were truly "employees" of the various Defendant businesses for purposes of South Carolina law.

60. Defendants KEG, Shadow, Splash, Elephant, KEW, and KWON failed to provide written notice to Plaintiffs and the members of the Plaintiff class of any and all deductions to their pay, as required by Section 41-10-30 of the Act.

61. Defendants have failed to pay Plaintiffs and the members of the Plaintiff class all wages due, as required by Sections 41-10-40 and -50 of the Act, because of the unlawful deductions to their pay.

62. Defendants' failure to pay Plaintiffs and the members of the Plaintiff class all wages due is willful, without justification, and in violation of the duty of good faith and fair dealing.

63. Pursuant to Section 41-10-80(C) of the Act, Plaintiffs and the members of the Plaintiff class are entitled to recover in this action an amount equal to three times the full amount of their unpaid wages, or their wrongfully deducted wages, plus costs and reasonable attorney's fees.

FOR A FIFTH CAUSE OF ACTION
(Fair Labor Standards Act–Retaliation)
(Individual and Collective Action Against All Defendants)

64. Plaintiffs repeat and reallege each and every allegation of Paragraphs 1-63 as if

restated herein verbatim.

65. During her employment with Defendant KEG, Plaintiff Dittus frequently complained to her managers and co-workers about how dancers were compensated and how they were misclassified as independent contractors when they were really employees of Defendants.

66. Plaintiff Dittus's conduct in opposing and complaining about unlawful wage and hour violations constitutes protected activity under the FLSA.

67. Plaintiff Dittus was terminated on or about February 2, 2014, without legitimate cause.

68. Defendant KEG unlawfully retaliated against Plaintiff Dittus, in violation of 29 U.S.C. § 215(a)(3), because of her complaints about the wage and hour violations committed by Defendants.

69. The original Complaint in this matter was filed on or about February 4, 2014. On or about February 5, 2014, the undersigned counsel for Plaintiffs contacted attorney Richard J. Morgan of the McNair Law Firm in Columbia as a professional courtesy to inform him of the case, because Mr. Morgan is counsel of record for Defendants in another employment case pending before this Court. Mr. Morgan stated that he would contact attorney Harry Heizer, who has represented Defendants on legal matters for years.

70. On February 6, 2014, Mr. Heizer called the undersigned counsel for Plaintiffs and stated that he would accept service on behalf of all Defendants of the pleadings in the case. Mr. Heizer requested that he be allowed to delay the effective date of the acceptance to March 5, 2014, because he had planned a family vacation out of the country for mid-February and would not be returning until March 5, 2014. The undersigned agreed to accommodate Mr. Heizer's request,

provided that Defendants agreed to toll the statute of limitations for 30 days, so that potential class members would not be prejudiced by the delay. Mr. Heizer signed the Acceptance of Service to that effect on February 14, 2014, which was filed with the Court on March 18, 2014. (Dkt. No. 9).

71. On February 28, 2014, Mr. Heizer sent a letter to the undersigned counsel for Plaintiffs regarding the closure of Heartbreakers Gentlemen's Club on March 1, 2014. (A true and accurate copy of Mr. Heizer's letter, hereinafter referred to as "the Heizer letter," is attached hereto as Exhibit A).

72. Upon information and belief, the closure of Heartbreakers had been planned for over 15 months for reasons unrelated to the instant lawsuit. Upon further information and belief, the closure of Heartbreakers was part of a settlement of a lawsuit Defendants brought against Richland County challenging the County's zoning regulations of sexually oriented businesses.

73. All employees of Heartbreakers, including Plaintiffs and members of the Plaintiff class who had danced at Heartbreakers, had previously been promised that they would all have their same jobs at the new club in West Columbia, was to be called "Platinum West," once Heartbreakers closed and moved its operations to the new location.

74. Mr. Heizer's letter of February 28, 2014, informed the named Plaintiffs, through counsel, that they were being terminated from Heartbreakers and would not be allowed to work at Platinum West or any other of Defendants' clubs unless they were willing to agree to new terms of employment as set forth in the letter. The Heizer letter stated, "Your clients will not be permitted under any other terms or conditions, at any Club, except those contained in this letter." (Exhibit 1).

75. The terms of employment offered to Plaintiffs in the Heizer letter were substantially worse than the terms that Plaintiffs had been working under prior to the filing of the lawsuit and

would have resulted in a marked reduction in Plaintiffs' total compensation, because Defendants proposed to retain almost all of the money customers paid to Plaintiffs for dances. Upon information and belief, no other dancers other than the three named Plaintiffs were required to agree to similar terms to continue dancing at Defendants' clubs.

76. The terms and conditions of employment set forth in the Heizer letter were oppressive and coercive and contained provisions that would have required Plaintiffs to forfeit rights they otherwise had prior to filing the lawsuit, including a mandatory arbitration clause regarding an employment-related claims and a waiver of the right to file or join a collective or class action against Defendants.

77. Plaintiffs did not accept the employment terms set forth in the Heizer letter.

78. On or about March 8, 2014, Plaintiffs Dittus and Tabler traveled to Greenville, SC to try to work at the Platinum Plus Greenville location, where they had both previously worked on several occasions prior to the filing of the Complaint in this matter. Shortly after they arrived at the club, Plaintiffs were approached by one of the club's bouncers and called into the office. The manager of the club told them that they could not work at the club and that they needed to call Kenwood Gaines and Kevin Ford (who Plaintiffs believe is Defendant David Henson), the individual owners or operators of Defendants' clubs.

79. Plaintiffs Dittus, Snyder, and Tabler all met with Defendants Gaines and Henson on Sunday, March 9, 2014, at Defendants' corporate headquarters in Columbia. The meeting lasted approximately three hours. During the meeting, with no counsel present, Defendants Gaines and Henson tried to convince Plaintiffs to drop their lawsuit. Defendants Gaines and Henson acknowledged that the terms and conditions of employment offered in the Heizer letter were very

unfavorable to Plaintiffs. Defendants Gaines and Henson also told Plaintiffs that they could return to work at any of Defendants' clubs under the same arrangement as all other dancers, if they dismissed the lawsuit. Defendants Gaines and Henson also offered Plaintiffs $12,000-$15,000 to be split between them if they agreed to drop the lawsuit.

80. On March 25, 2014, Defendants filed their Answer and Counterclaims in this matter. Defendants have asserted Counterclaims against all named Plaintiffs and against any prospective member of the Plaintiff class who joins the case as an opt-in Plaintiff.

81. Defendants' Counterclaims were filed with a retaliatory motive against Plaintiffs and the members of the Plaintiff class. Furthermore, the Counterclaims and have no reasonable legal or factual basis.

82. Defendants have also taken measures to intimidate and discourage potential members of the Plaintiff class from joining this lawsuit. Defendants have begun requiring dancers (at least at the newly opened "Platinum West" club, which is owned by Defendant KWON and replaced Defendants' Heartbreakers club in Richland County) to sign a new "Entertainer Agreement," which contains numerous oppressive, coercive, and unconscionable terms. Among its other terms, the Agreement, which was attached as Exhibit A to Defendants' Answer and Counterclaims, would require any dancer who successfully challenged her misclassification as a tenant or independent contractor to return all monies she received from customers for performing dances at the clubs.

83. All of the foregoing actions by Defendants constitute unlawful retaliation under the Fair Labor Standards Act.

84. Defendants Gaines and Henson are also individually liable for the retaliatory acts of Defendants because they are "employers" under the FLSA and directed or condoned such unlawful

retaliation, or they knew or should have known about the unlawful retaliation, but failed to take any steps to correct or remedy the unlawful conduct.

85. As a direct and proximate result of Defendants' unlawful retaliation, Plaintiffs and the members of the Plaintiff class have suffered actual damages, including lost pay and benefits. Plaintiffs are entitled to an award of back pay and benefits to compensate them for their economic damages.

86. In addition, Plaintiffs request an order requiring Defendants to reinstate the named Plaintiffs to their positions, under the same terms and conditions as they held with Defendants prior to their terminations, with back pay and no loss of seniority or other benefits. In the alternative, Plaintiffs are entitled to an award of front pay to compensate them for their future losses of pay and employment benefits.

87. Plaintiffs also request an order enjoining Defendants from taking any other action to retaliate against any individual who opts into this case as a Plaintiff or to intimidate, harass, or interfere with any potential member of the Plaintiff class's rights under the Fair Labor Standards Act.

88. Defendants' retaliation against Plaintiffs in violation of the FLSA was knowing, willful, intentional, and done in bad faith. Plaintiffs are, therefore, also entitled to liquidated damages equal to the amount of back pay and benefits due to them under the FLSA, pursuant to section 16(b) of the FLSA, 29 U.S.C. § 216(b).

89. Plaintiffs are also entitled to an award of reasonable attorneys' fees and costs incurred in prosecuting this action, pursuant to 29 U.S.C. § 216(b).

WHEREFORE, having fully set forth their allegations against Defendants, Plaintiffs respectfully request that the Court enter judgment for the following relief:

a. An order authorizing the sending of appropriate notice to current and former employees of Defendants who are potential members of the collective action under the Fair Labor Standards Act;

b. A declaratory judgment that Defendants have willfully and in bad faith violated the minimum wage and overtime compensation provisions of the FLSA, and have deprived Plaintiffs and the members of the Plaintiff class of their rights to such compensation;

c. An order requiring Defendants to provide a complete and accurate accounting of all the minimum wages and overtime compensation to which Plaintiffs and the members of the Plaintiff class are entitled;

d. An award of monetary damages to Plaintiffs and the members of the Plaintiff class in the form of back pay for unpaid minimum wages and overtime compensation due, together with liquidated damages in an equal amount;

e. An award of monetary damages to Plaintiffs and the members of the Plaintiff class for any and all unlawful kick-backs paid to Defendants, together with liquidated damages in an equal amount;

f. Injunctive relief ordering Defendants to amend their wage and hour policies to comply with applicable laws;

g. Pre-judgment interest;

h. An order certifying a class action under Rule 23 of the Federal Rules of Civil Procedure to remedy the class-wide violations of the South Carolina Payment of Wages Act;

i. Treble damages pursuant to the South Carolina Payment of Wages Act;

j. An award of monetary damages to the named Plaintiffs for back pay and benefits, together with liquidated damages in an equal amount, under the Fair Labor Standards Act, to remedy the unlawful retaliation against her;

k. Injunctive relief ordering Defendants immediately to reinstate Plaintiffs to their previous positions, with no loss in service credit, seniority, or other employment benefits;

l. Injunctive relief ordering Defendants not to retaliate against any individual who opts into this case as a Plaintiff or to intimidate, harass, or interfere with any potential member of the Plaintiff class's rights under the Fair Labor Standards Act;

m. Attorneys' fees and costs; and

n. Such further relief as the Court deems just and proper.

* * *

Respectfully submitted,

s/ David E. Rothstein
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Attorneys for Plaintiffs

April 18, 2014

Greenville, South Carolina.

Exhibit A

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(803) 772-0555 – Fax

February 28, 2014

Mr. David E. Rothstein
Rothstein Law Firm P.A.
514 Pettigru Street
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RE: Dittus v. K.E.G. Inc, et al.

Dear Mr. Rothstein;

As you may know, I represent Defendants in the above-entitled action. It is our understanding that your clients, Kaleigh R. Dittus, Courtney A. Snyder and Joanna L. Tabler ("Entertainers") perform at Heartbreakers. As you may know, Heartbreakers is closing on March 1, 2014. All employees and contractors are being terminated as of that date.

In light of the fact your clients allege that they are misclassified, my clients, despite denying same and solely as an interim matter, and without an admission of liability, or any admission that your clients are entitled to any damages, are prepared to offer your clients employment at any of Defendant club that is presently operating and located in South Carolina, as well as club that is planning on opening on/about March 8, 2014. (i.e. "Club") The position with the Company would be as a tipped minimum wage entertainer ("Entertainer"). Your clients will not be permitted under any other terms or conditions, at any Club, except those contained in this letter.

Accordingly, please advise me whether any of your clients wish to be hired as an Entertainer at the Club. If they do, they will need to sign where indicated below and return same to my attention on or before 5:00 pm March 7, 2014. If your clients do not accept this offer, the relationship between our clients will end as of the date that Heartbreaker's closes. The terms of our clients' employment offer are as follows:

1. At Will Employment. The employment "at-will." Any client(s) of yours who accept the offer will be required to execute a "**AT WILL**" employment disclaimer consistent with South Carolina law. As an "at will" employee, Entertainers may terminate their employment for any reason, at any time, with or without notice and without recourse and, similarly, the Club may terminate any Entertainer's employment

for any reason, at any time, with our without notice and without recourse except neither party may terminate the employment relationship for a reason which would otherwise violate the law. *Nothing in this agreement shall be deemed to create a contract of employment, be deemed to alter the "at will" employment relationship between the parties, or create an employment circumstance other than "at will" employment.*

2. Tip Credit Employment. Your clients will be employed as Entertainers. They will be classified as tipped minimum wage employees and paid a tipped wage of $5.00 per hour. The Club will take a tip credit of $2.25 per hour, provided that your clients earn sufficient tips in a workweek – meaning that when their tips are combined with the cash wage, they will have earned at least minimum wage for all hours worked. In the event that they fail to earn minimum wage in combined wages and tips, the Club will pay the difference between the amount of earnings the Entertainer received during a workweek and the amount she would have received as a minimum wage employee.

For purposes of this offer, a tip and/or gratuity means a discretionary payment by a customer. These include, for example, payments the Entertainer may receive from customers during their stage performances, and amounts paid to the Entertainers by customers that ***exceed*** the established price of services provided by you at the Club. As such, the mandatory fees charged for personal dances, etc., and all other charges for services and products sold, will not be considered tips or gratuities, but are, rather, service charges. All tips/gratuities received by you are your sole property. All service charges and mandatory fees are the sole property of the Club.

At the time that the Entertainers are hired, they will have to complete the Club's standard employment paperwork, including an employment application, I-9, and W-4. In addition, she will have to execute a Tip Credit Notice Form. The Club reserves the right to refuse to hire any Entertainer who is ineligible to work at the Club based upon the law, or otherwise is not lawfully entitled to work in the United States.

Entertainers will be expected to perform at the highest level of customer service in the industry.

3. Schedules. Your clients will be scheduled to work on the same shifts that they have worked on during the 30 days prior to filing suit. Should they desire to perform on a different shift, the Club will consider it, but will not guarantee it. From time to time, your client may be assigned to other jobs customarily performed by tipped employees. Your clients will be expected to work all scheduled shifts and perform all assigned tasks.

Each of your clients will be provided a 1-week unpaid vacation (on a use it or lose it basis) after 6 months of employment. After the first year of employment, they will be entitled two weeks of vacation. All vacation time is unpaid.

4. Costumes. The Club will provide each of your clients with one outfit for each shift that she is scheduled to work in a workweek (i.e. if she works 1 shift a week, she will be provided one costume, if she works 2 shifts a week, she will be provided 2

outfits). Your clients will be expected to wear a provided outfit at all times, except when performing topless on stage or providing a private dance for a customer. The outfit(s) shall be maintained in good and serviceable condition and upon termination of her employment with the Company, returned to the Company. The Company may require your clients to wear any other outfit provided to them by the Company.

5. Dances and Related Matters. During a shift, your clients will be expected to perform on stage a minimum of 3 times (but perhaps as many as 5) (a 1 or more song topless and/or nude (if permissible) set) per hour. All stage tips received by the Entertainers shall be reported to the Club along with their other tips. Entertainers will be expected to perform, as requested by management, topless and or nude (if permissible) and in accordance with the standards of the Club. Entertainers will be expected to average the performance of at least one private dance for each hour they are scheduled to perform. Failure to meet these expectations will be grounds for discipline, up to and including termination. All dances performed by Entertainers on the premise of the Club are services being performed by and for the benefit of the Club.

The price for dances that Entertainers shall charge is $20.00 per song. Entertainers shall be entitled to any tip/gratuity received by the Entertainer from a customer (i.e. an amount in excess of the cost of the dance). All funds derived from the sale of dances are the sole and exclusive property of the Club and no portion of the price paid by a customer for the sale of dances is the property of the Entertainer. Entertainers will not misrepresent this fact to any person.

Entertainers will be responsible for accurately reporting all dances and other goods and services sold by them, along with reporting all tips and/or gratuities received by the Entertainer to the Club on a nightly basis. The Entertainer will also complete an IRS Form 4070 (Employees Report of Tips to Employer) at the conclusion of each pay period. The Club will withhold all taxes and other deductions required by law. This may result in a net zero paycheck. Should payroll be insufficient to meet an Entertainer's withholding obligations, the Entertainer is responsible for paying any additional withholding. Failure to accurately report dances or other sales, or to meet the dance quota, is cause for discipline, up to and including termination.

As an employee of the Club, Entertainers will have possession of funds from the sale of dances and other services and items, which at all times shall remain the property of the Club. These fees will at all times be the property of the Club and Entertainers will not be entitled to the receipt of any funds from the sale of dances or other items. Rather, each one will be required to acknowledge the legal and fiduciary obligation to accurately account and surrender all funds received by the Entertainer from sales activities by the Entertainer on behalf of the Club and acknowledges the obligation to accurately account for all sales activities to the Club. Entertainers will account for all such sales at least nightly and turn over any funds from the sale of dances and other services prior to leaving the Club. The Club may request that the Entertainer turn over the Club's fees after the performance of each dance. The failure by the Entertainer to accurately report and account for all funds received and to accurately report all sales made will be treated as a

breach of the Entertainer's fiduciary obligation and will be grounds for immediate termination of employment, in addition to any other legal remedy's the Club may have.

6. Tip Pooling. The Club does not have mandatory tip pooling and your clients will not be required to pay any tip or gratuity to any employee or contractor of Club, including management. Any violations of this policy shall be reported immediately to the Club manager.

7. Shift Reporting. Your clients will be expected to report to work fully prepared for work and shall clock in *immediately* upon reporting for their scheduled shift and shall clock out immediately upon the completion of the shift. Following a shift, Entertainers must leave the public areas of the Club and leave the club within 15 minute of the conclusion of her shift. Your clients will be provided a 15-minute time period prior to the start of her scheduled shift to change into her work clothing. Your clients will also be provided 15 minutes following the end of her shift to change out of her work cloths. This time will be counted as working time and she will be paid accordingly. Your clients will include the actual time they spend completing these tasks in their daily time card. Your clients will not be permitted, either on or off site, to perform any work for the Club unless they have first clocked into work; nor may they perform any work after clocking out.

8. Meal and Rest Breaks. Your clients will be required to follow all meal and rest break policies in place at Club as modified from time to time. Meal breaks are at least 30 minutes and are unpaid time. Your clients shall clock out immediately before taking a meal and shall clock in immediately following conclusion of the break. During a meal break, Entertainers shall not perform any work for or on behalf of Club. Work breaks are freely available as needed to use the restroom, are considered work time, and do not require Entertainers to clock out of work. ***It is the Club's strict policy not to permit off the clock work and a violation of this policy will be grounds for discipline, up to an including termination.***

9. Maximum Hours and Overtime. Entertainers will not be permitted to work in excess of 40 hours in a workweek unless they receive approval to do so. In addition, no hours are guaranteed for them in the future, and their hours are subject to change at the discretion of Club Management based upon business needs. No benefits, including health care, will be paid to them. If the Club is required to offer them health care in the future and they decide to accept such coverage, they will, if legally permissible, be required to pay the premiums for such insurance up to 9.5% of their total income (wages and tips).

In no event shall Entertainers work overtime, unless a manager has first approved such overtime in writing. Overtime will be calculated at the rate of one and one half (1.5) the Entertainer's regular rate of pay earned during the workweek that the overtime was worked by the Entertainer. For purposes of calculating overtime, Entertainers' workweek will start on Thursday at 12:00 a.m. (i.e. midnight) and will conclude the following Wednesday at 11:59 p.m.

10. Dispute Resolution. The following provision regarding arbitration and class/collective actions shall apply to any dispute arising out of your clients' employment with the Club. This provision shall not apply to the claims presently before the Court relating to claims that your clients, were, in the past misclassified as non-employees. In other words, the provisions of this section shall only apply to their prospective employment with the company and commence on each employees prospective start date as an employee under the terms of this offer:

A.

A. Binding Arbitration. Any and all claims and/or controversies between the Entertainer and Club (and any other persons or entities associated with the Club, including but not limited to related corporations, parent corporations, subsidiaries, affiliates, officers, directors, shareholders, members, managers, employees, and/or agents), and regardless of whether such claims sound in contract, tort, are based upon a federal or state statute such as the Fair Labor Standards Act or other state law, a local regulation or arise from any other source, (except for an administrative charge before an administrative agency) which arise out of the Entertainer's employment with the Club shall be exclusively decided by binding arbitration held pursuant to and in accordance with the Federal Arbitration Act ("FAA") and shall be decided by a single neutral arbitrator agreed upon by the parties, who shall be permitted to award, any relief available in a court. **All parties will waive any right to litigate such controversies, disputes, or claims in a court of law, and waive the right to trial by jury**.

The arbitrator shall only have the authority to hear a claim brought on behalf of a single individual against the Club; and has no authority to hear a claim brought by multiple individuals, or a class, or to consolidate the claims of multiple individuals into a single proceeding, except with the signed consent of all parties to the proceeding. In the event an action is brought in arbitration on behalf of multiple individuals or a class, then in the absence of an agreement to proceed on behalf of multiple individuals or on behalf of a class that is signed by all parties, the arbitrator shall have only the authority to divide the action into individual proceedings, each then to be heard by a separate individual arbitrator.

In the event that the parties are unable to mutually agree upon an arbitrator, either party may apply to the American Arbitration Association ("AAA") for the selection of an arbitrator. Any arbitration shall be conducted consistent with the rules of the AAA, except as expressly or implicitly modified by this

agreement. In the event that the dispute relates to an "Employment Related Claim" (i.e., one arising under an actual or asserted employment law, statute, or regulation, and/or one which would otherwise be administered by AAA under its Employment Rules) then the AAA Employment Rules shall apply. All other disputes shall be governed by the AAA Commercial Rules.

In arbitration, all parties shall have the right to be represented by legal counsel, the arbitrator shall permit *only* that minimal discovery which is necessary to prosecute/defend the actual claim then pending before the arbitrator and all discovery, including responses and documents produced shall be deemed confidential and shall only be used and/or disclosed in relationship to the then pending proceeding. The parties shall have the right to subpoena witnesses in order to compel their attendance at hearing and to cross-examine witnesses, the proceedings shall be conducted in accordance with the requirements of rudimentary due process required of arbitrations, and the arbitrator's decision shall be in writing and shall contain findings of fact and conclusions of law. The arbitrator's decision shall be final, subject only to review under standards set forth in the FAA. For any claims based upon an employment related statute, such as the Fair Labor Standards Act or other similar federal or state statute, the Club shall pay all fees that the Entertainer would not have had to pay in a court proceeding. The arbitrator shall have the exclusive authority to resolve any and all disputes over the validity of any part of this agreement and any award by the arbitrator may be entered as a judgment in any court having jurisdiction.

B. Costs and Fees. Any judgment, order, or ruling arising out of a dispute between the parties shall, to the extent permitted by applicable law, award costs incurred for the proceedings and reasonable attorney fees to the prevailing party. This provision shall not, however, apply to an Employment Related Claim prosecuted under a federal or state statute that provides for the award of fees and costs to a prevailing party. In such circumstances, the federal or state statue shall govern the award of fees and/or costs for the statutory claims and this provision shall only govern the award of fees and costs related to any non-statutory claims. Notwithstanding the forging, nothing shall restrict the Arbitrator from awarding the Club costs and/or reasonable attorney fees in the event that the Arbitrator determines that a claim is frivolous, pursued in bad faith, and/or conducted in a manner that multiplies the proceedings unreasonably and/or vexatiously.

In the event that a party files a claim in Court in contravention of this agreement to arbitrate, the Court shall award a party its costs and reasonable attorney's fees incurred by it in successfully moving to compel arbitration.

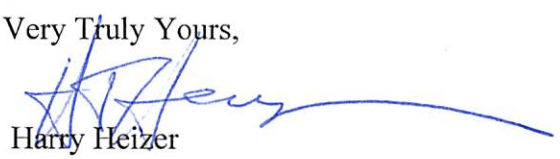
C. Class and Collective Action Waiver. Any and all claims or disputes between the Entertainer and the Club (and any other persons or entities associated with the Club, including but not limited to related corporations, parent corporations, subsidiaries, and affiliates, officers, directors, shareholders, members, managers, employees, and/or agents) will be brought individually; that she will not consolidate her claims with the claims of any other individual; that she will not seek class or collective action treatment for any claim that he/she may have; that she will not participate in any class or collective action against the Club or against any persons or entities associated with the Club. If at any time the Entertainer is made a member of a class in any proceeding, she will "opt out" at the first opportunity, and should any third party pursue any claims on her behalf, the Entertainer shall waive her rights to any monetary recovery from such action. **In other words the Entertainer expressly waives her right to prosecute, participate in, or pursue a class or collective action and/or other joint proceeding against the Club and any other persons or entities associated with the Club, including but not limited to related corporations, parent corporations, subsidiaries, and affiliates, officers, directors, shareholders, members, managers, employees, and/or agents.**

11. General Employment Policies. Except as expressly stated herein, your clients will be subject to the general employment policies of Defendants, not otherwise modified by this agreement.

Please let us know by 5:00 pm on March 7, 2014 whether your clients wish to accept employment with the Club under the terms offered herein. If they do, please have them sign the attached acceptance of the offer of employment, indicating which club they wish to be employed at, and return same to me at the time that you advise me of their desire to accept the position. We can then schedule a time for them to come to the club, obtain their schedule, and complete all necessary employment paperwork.

Thank you for your cooperation in this regard.

Very Truly Yours,



Harry Heizer

ACCEPTANCE OF OFFER OF EMPLOYMENT

I accept the offer of employment conveyed to me in the above letter and agree to be bound by the terms of this letter and the general employment policies of the Club.

Dated: _____, 2014

_____
Signature

_____
Name

_____
Stage Name

_____
Club

Harry T. Heizer, Jr., P.A.
PO Box 3928
Irmo, SC 29063

RECEIVED MAR - 3 2014

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