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7 **LEAD ATTORNEY IN CHARGE FOR**
 8 **PLAINTIFF AND CLASS MEMBERS**

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 13 **IN THE UNITED STATES DISTRICT COURT**
 14 **FOR THE DISTRICT OF ARIZONA**

15
 16 KWEN BRENNAN, Individually and on
 17 behalf of all others similarly situated,

18 v.

19 NEW 4125 LLC d/b/a
 20 SCORES PHOENIX, 4125 LLC,
 21 CHEETAH OPERATIONS, LLC, and
 MICHAEL TARASKA, Individually,

22 Defendants.
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) Case No. _____

) **PLAINTIFF'S ORIGINAL**
) **COLLECTIVE AND CLASS ACTION**
) **COMPLAINT**

1 Plaintiff Kwen Brennan, on behalf of herself and on behalf of all others similarly
2 situated, allege as follows:

3 **I. SUMMARY**

4 1. NEW 4125 LLC d/b/a SCORES PHOENIX, 4125 LLC, CHEETAH
5 OPERATIONS, LLC, and MICHAEL T. TARASKA, individually, (hereinafter
6 “Defendants”) required and/or permitted Kwen Brennan (hereinafter “Plaintiff”) to work
7 as an exotic dancer at its adult entertainment club in excess of forty hours per week, but
8 refused to compensate her at the applicable minimum wage and overtime rates. In fact,
9 Defendants refused to compensate Plaintiff whatsoever for any hours worked. Plaintiff’s
10 only compensation was in the form of tips from club patrons. Moreover, Plaintiff was
11 required to divide her tips with Defendants and other employees who do not customarily
12 receive tips. Defendants misclassifies dancers as independent contractors. Therefore,
13 Defendants have failed to compensate Plaintiff at the federally-mandated minimum wage
14 rate.

15 2. Defendants’ conduct violates the Fair Labor Standards Act (“FLSA”), which
16 requires non-exempt employees to be compensated for their overtime work at a rate of one
17 and one-half times their regular rate of pay. *See* 29 U.S.C. § 207(a).

18 3. Furthermore, Defendants’ practice of failing to pay tipped employees
19 pursuant to 29 U.S.C. § 203(m), violates the FLSA’s minimum wage provision. *See* 29
20 U.S.C. § 206.

21 4. Plaintiff brings a collective action to recover the unpaid overtime
22 compensation and minimum wage owed to them individually and on behalf of all other
23 similarly situated employees, current and former, of Defendants. Members of the
24 Collective Action are hereinafter referred to as “FLSA Class Members.”

25 5. Additionally, Defendants’ failure to compensate Plaintiff and all other non-
26 exempt employees at a rate equal to or in excess of Arizona’s required minimum wage
27 violates the Arizona Wage Act, ARIZ. REV. STAT. ANN. § 23-350, *et seq.*, and the Arizona
28 Minimum Wage Act, ARIZ. REV. STAT. ANN. § 23-363, *et seq.* Plaintiff, therefore, brings

1 a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure to recover unpaid
2 wages and other damages owed under Arizona wage laws. Members of the Rule 23 Class
3 Action are hereinafter referred to as the “Arizona Class Members.”

4 **II. SUBJECT MATTER JURISDICTION AND VENUE**

5 6. This Court has jurisdiction over the subject matter of this action under 29
6 U.S.C. § 216(b) and 28 U.S.C. § 1331.

7 7. This Court also has supplemental jurisdiction over the state law claims raised
8 herein pursuant to 28 U.S.C. § 1367 because such claims do not raise novel or complex
9 issues of state law, and because those claims derive from a common nucleus of operative
10 facts from which the FLSA claims stated herein derive.

11 8. Venue is proper in the District of Arizona because a substantial portion of
12 the events forming the basis of this suit occurred in this District, and Defendants operate
13 an adult entertainment club that is located in this District.

14 **III. PARTIES AND PERSONAL JURISDICTION**

15 9. Plaintiff KWEN BRENNAN is an individual residing in Boulder, Colorado.
16 Her consent to this action is attached hereto as Exhibit A.

17 10. Putative opt-in Plaintiffs are current or former exotic dancers who have
18 worked at Defendants’ adult entertainment club within the applicable limitations period
19 and have filed a valid consent to join this suit with the Court.

20 11. The FLSA Class Members and Arizona Class Members are all current and
21 former exotic dancers who worked at Defendants’ adult entertainment club at any time
22 starting three years before this Complaint was filed, up to the present.

23 12. NEW 4125 LLC, is a domestic for-profit company doing business in
24 Phoenix, Arizona. This Defendant may be served with process by serving its registered
25 agent: Peter Homenick, 4125 North 7th Street, Phoenix, Arizona 85014.

26 13. 4125 LLC is a domestic for-profit company doing business in Phoenix,
27 Arizona. This Defendant may be served with process by serving its registered agent: Peter
28 Homenick, 4125 North 7th Street, Phoenix, Arizona 85014.

1 14. CHEETAH OPERATIONS, LLC is a domestic for-profit company doing
2 business in Phoenix, Arizona. This Defendant may be served with process by serving its
3 registered agent: Peter D. Homenick, 4125 North 7th Street, Phoenix, Arizona 85014.

4 15. Defendant MICHAEL TARASKA is an individual who resides in Illinois. He
5 is an owner of the corporate Defendants. He may be served with process individually at his
6 usual place of business and Defendants' corporate office: 4125 North 7th Street, Phoenix,
7 Arizona 85014.

8 16. This Court has personal jurisdiction over Defendants because Defendants
9 purposefully availed themselves of the privileges of conducting activities in the State of
10 Arizona and established minimum contacts sufficient to confer jurisdiction over said
11 Defendants, and the assumption of jurisdiction over Defendants will not offend traditional
12 notions of fair play and substantial justice and is consistent with the constitutional
13 requirements of due process.

14 17. Defendants have and continue to have systematic contacts with the State of
15 Arizona sufficient to establish general jurisdiction over them. Specifically, Defendants
16 conduct and/or conducted business in Arizona by operating a club in Phoenix, Arizona.
17 Defendants also employ workers and contract with residents and business in Arizona.

18 18. This cause of action arose from or relates to the contacts of Defendants with
19 Arizona residents, thereby conferring specific jurisdiction over Defendants.

20 **IV. FLSA COVERAGE**

21 19. At all material times, Defendants have been an employer within the meaning
22 of 3(d) of the FLSA. 29 U.S.C. § 203(d).

23 20. At all material times, Defendants have been an employer within the meaning
24 of ARIZ. REV. STAT. ANN. § 23-350(3) and ARIZ. REV. STAT. ANN. § 23-362(B).

25 21. The Fair Labor Standards Act ("FLSA") defines the term "employer"
26 broadly to include "any person acting directly or indirectly in the interest of an employer"
27 in relation to any employee." 29 U.S.C. § 203(d).

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1 22. At all material times, Defendants have been an enterprise in commerce or in
2 the production of goods for commerce within the meaning of 3(s)(1) of the FLSA because
3 they have had employees engaged in commerce. 29 U.S.C. § 203(s)(1).

4 23. Furthermore, Defendants have had, and continue to have, an annual gross
5 business volume in excess of \$500,000.

6 24. At all material times, Plaintiff and FLSA Class Members were individual
7 employees who engaged in commerce or in the production of goods for commerce as
8 required by 29 USC § 206-207.

9 25. At all material times, Plaintiff and the Arizona Class Members were
10 employees of Defendants within the meaning of ARIZ. REV. STAT. ANN. § 23-350(2) and
11 ARIZ. REV. STAT. ANN. § 23-362(A).

12 26. Further, at all material times, Defendants have operated as a “single
13 enterprise” within the meaning of 3(r)(1) of the FLSA. 29 U.S.C. § 203(r)(1). That is,
14 Defendants perform related activities through unified operation and common control for a
15 common business purpose. *See Brennan v. Arnheim and Neely, Inc.*, 410 U.S. 512, 515
16 (1973); *Chao v. A-One Med. Servs., Inc.*, 346 F.3d 908, 914–15 (9th Cir. 2003).

17 27. Defendant MICHAEL TARASKA is the owner of the corporate Defendants
18 d/b/a Scores Phoenix. Defendant TARASKA is involved in the day-to-day business
19 operations of the corporate Defendants. As the owner of Scores Phoenix, Defendant
20 TARASKA employed the Plaintiff, FLSA Class Members, and Arizona Class Members as
21 employees who danced for and entertained customers.

22 28. Defendant TARASKA has the authority to hire and fire employees, the
23 authority to direct and supervise work of the employees, the authority to sign on the
24 business’s checking accounts, including payroll accounts, and the authority to make
25 decisions regarding employee compensation and capital expenditures.

26 29. Defendant TARASKA controlled the nature, pay structure, and employment
27 relationship of Plaintiff, FLSA Class Members, and Arizona Class Members.
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1 30. As such, pursuant to 29 U.S.C. § 203(d), ARIZ. REV. STAT. ANN. §23-350(3)
2 and ARIZ. REV. STATE. ANN. § 23-362(B), Defendant TARASKA acted directly or
3 indirectly in the interest of Plaintiff's, FLSA Class Members', and Arizona Class
4 Members' employment as their employer, which makes him individually liable under the
5 FLSA and Arizona State Law.

6 **V. FACTS**

7 31. Defendants operate an adult entertainment club in Phoenix, Arizona under
8 the name of "Scores Phoenix Gentlemen's Club."

9 32. Defendants employ exotic dancers.

10 33. Plaintiff is employed as an exotic dancer at Defendants' adult entertainment
11 club during the statutory time period.

12 34. Plaintiff worked on a regular basis for Defendants' gentlemen establishment
13 located in Phoenix.

14 35. Plaintiff was compensated exclusively through tips from Defendants'
15 customers. That is, Defendants did not pay Plaintiff whatsoever for any hours worked at
16 its establishment.

17 36. Furthermore, Defendants charged Plaintiff a "house fee" per shift worked.
18 Defendants also required Plaintiff to share their tips with other non-service employees who
19 do not customarily receive tips, including the disc jockeys and the bouncers.

20 37. Finally, Defendants encourage their customers to tip dancers using "Dance
21 Dollars" rather than cash. Under this system, customers purchase Dance Dollars from the
22 club using their credit cards. Customers then redeem the Dance Dollars for dances with
23 Plaintiff and putative Class Members. When Plaintiff, FLSA Class Members, and Arizona
24 Class Members turn in the certificates to the clubs for cash, Defendants do not return the
25 full value to them, but instead retain a portion of the tips. This resulted in Defendants
26 taking a portion of the tips that should have been paid to the dancers. This portion grossly
27 exceeds the fee paid by the club as a merchant fee to the credit card companies.

28 38. Plaintiff, FLSA Class Members, and Arizona Class Members received tips

1 and/or dance fees from Defendants' customers.

2 39. The tips and/or dance fees received by Plaintiff, FLSA Class Members, and
3 Arizona Class Members were not included in Defendants' gross sales receipts.

4 40. Defendants illegally classified the dancers as independent contractors.
5 However, at all times, Plaintiff, FLSA Class Members, and Arizona Class Members were
6 employees of Defendants.

7 41. Defendants hired/fired, issued pay, supervised, directed, disciplined,
8 scheduled and performed all other duties generally associated with that of an employer
9 with regard to the dancers.

10 42. In addition, Defendants instructed the dancers about when, where, and how
11 they were to perform their work.

12 43. The following further demonstrates the dancers' status as employees:

- 13 a. Defendants have the sole right to hire and fire the dancers;
- 14 b. Defendants require dancers to complete an employee application
15 as a prerequisite to their employment;
- 16 c. Defendants made the decision not to pay wages or overtime;
- 17 d. Defendants provide the dancers with music equipment and a
18 performing stage;
- 19 e. Defendants supervise the dancers;
- 20 f. Defendants require that dancers purchase their uniforms;
- 21 g. The dancers have made no financial investment with Defendants'
22 business;
- 23 h. Defendants schedule dancers and as such have sole control over
24 their opportunity for profit;
- 25 i. Defendants apply fines/fees to the dancers if they fail to follow
26 Defendants' guidelines or directions; and
- 27 j. The dancers were hired as permanent employees and have worked
28 for Defendants for years.

1 44. Defendants misclassified Plaintiff, FLSA Class Members, and Arizona Class
2 Members as independent contractors to avoid Defendants' obligation to pay them pursuant
3 to the FLSA.

4 45. Plaintiff is not exempt from the overtime and minimum wage requirements
5 under the FLSA.

6 46. Although Plaintiff and FLSA Class Members are required to and do in fact
7 frequently work more than forty hours per workweek, they are not compensated at the
8 FLSA mandated time-and-a-half rate for hours in excess of forty per workweek. In fact,
9 they receive no compensation whatsoever from Defendants and thus, Defendants violate
10 the minimum wage requirement of the FLSA. *See* 29 U.S.C. § 206.

11 47. Defendants' method of paying Plaintiff and Class Members in violation of
12 the FLSA was willful and was not based on a good faith and reasonable belief that its
13 conduct complied with the FLSA. Defendants misclassified Plaintiff and Class Members
14 with the sole intent to avoid paying them in accordance to the FLSA. There are multiple
15 federal court opinions finding that this method of compensation is in violation of the FLSA,
16 and therefore, Defendants' conduct is willful.

17 48. Defendants' method of paying Plaintiff and the Arizona Class Members was
18 in violation of the Arizona Minimum Wage Act and Arizona Wage Law and was willful
19 and not based on a good faith and reasonable belief that its conduct complied with Arizona
20 Law.

21 49. Further, Defendants failed to keep adequate records of Plaintiff's and FLSA
22 Class Members' work hours and pay in violation of section 211(c) of the Fair Labor
23 Standards Act. *See* 29 U.S.C. § 211(c).

24 50. Federal law mandates that an employer is required to keep for three years all
25 payroll records and other records containing, among other things, the following
26 information:

- 27 a. The time of day and day of week on which the employees' work week
28 begins;

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- b. The regular hourly rate of pay for any workweek in which overtime compensation is due under section 7(a) of the FLSA;
- c. An explanation of the basis of pay by indicating the monetary amount paid on a per hour, per day, per week, or other basis;
- d. The amount and nature of each payment which, pursuant to section 7(e) of the FLSA, is excluded from the “regular rate”;
- e. The hours worked each workday and total hours worked each workweek;
- f. The total daily or weekly straight time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation;
- g. The total premium for overtime hours. This amount excludes the straight-time earnings for overtime hours recorded under this section;
- h. The total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments;
- i. The dates, amounts, and nature of the items which make up the total additions and deductions;
- j. The total wages paid each pay period; and
- k. The date of payment and the pay period covered by payment.

29 C.F.R. 516.2, 516.5.

51. Defendants have not complied with federal law and have failed to maintain such records with respect to the Plaintiff and FLSA Class Members. Because Defendants’ records are inaccurate and/or inadequate, Plaintiff and FLSA Class Members can meet their burden under the FLSA by proving that they, in fact, performed work for which they were improperly compensated, and produce sufficient evidence to show the amount and extent of the work “as a matter of a just and reasonable inference.” *See, Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687 (1946).

1 **VI. EQUITABLE TOLLING**

2 52. The doctrine of equitable tolling preserves a plaintiff’s full claim when a
3 strict application of the statute of limitations would be inequitable. *See Partlow v. Jewish*
4 *Orphans’ Home of S. Cal., Inc.*, 645 F.2d 757, 760–61 (9th Cir. 1981), *abrogated on other*
5 *grounds by Hoffman-LaRoche Inc. v. Sperling*, 493 U.S. 165 (1989).

6 53. Equitable tolling is proper when an employer has engaged in misleading
7 conduct. Defendants intentionally misled Plaintiff and Class Members into believing that
8 Defendants were not required to pay them minimum wage and/or overtime for hours
9 worked in excess of forty hours per workweek. Defendants coerced the Plaintiff, FLSA
10 Class Members, and Arizona Class Members into believing that they were independent
11 contractors. Additionally, Defendants failed to place the necessary and required
12 Department of Labor posters which inform workers of their rights. Consequently, Plaintiff,
13 FLSA Class Members, and Arizona Class Members were victims of fraud and unable to
14 ascertain any violation taking place.

15 54. Thus, the statute of limitations for the Plaintiff, FLSA Class Members, and
16 Arizona Class Members should be equitably tolled due to Defendants’ fraudulent
17 concealment of the Plaintiff’s, FLSA Class Members’ and Arizona Class Members’ rights.
18 Plaintiff therefore seeks to have the limitations period extended from the first date that
19 Defendants used this covert payroll practice up to the time each Plaintiff joins this lawsuit.

20 **VII. CAUSES OF ACTION**

21 **COUNT I**

22 **VIOLATION OF THE FAIR LABOR STANDARDS ACT**

23 **FAILURE TO PAY OVERTIME**

24 **(COLLECTIVE ACTION)**

25 55. Plaintiff incorporates all allegations contained in the foregoing paragraphs.

26 56. Defendants’ practice of failing to pay Plaintiff and FLSA Class Members
27 time-and-a-half rate for hours in excess of forty per workweek violates the FLSA. 29

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1 U.S.C. § 207. In fact, Defendants do not compensate them whatsoever for any hours
2 worked.

3 57. None of the exemptions provided by the FLSA regulating the duty of
4 employers to pay overtime at a rate not less than one and one-half times the regular rate at
5 which its employees are employed are applicable to the Defendants or Plaintiff.

6 **COUNT II**

7 **VIOLATION OF THE FAIR LABOR STANDARDS ACT**

8 **FAILURE TO PAY THE MINIMUM WAGE**

9 **(COLLECTIVE ACTION)**

10 58. Plaintiff incorporate all allegations contained in the foregoing paragraphs.

11 59. Defendants' practice of failing to pay Plaintiff and FLSA Class Members at
12 the required minimum wage rate violates the FLSA. 29 U.S.C. § 206. In fact, Defendants
13 do not compensate them whatsoever for any hours worked and have violated the tip credit
14 provision under the FLSA as described above.

15 60. None of the exemptions provided by the FLSA regulating the duty of
16 employers to pay employees for all hours worked at the required minimum wage rate are
17 applicable to the Defendants or the Plaintiff.

18 **COUNT III**

19 **VIOLATION OF ARIZONA MINIMUM WAGE ACT**

20 **FAILURE TO PAY MINIMUM WAGE**

21 **(CLASS ACTION)**

22 61. Plaintiff and Arizona Class Members incorporate all allegations contained in
23 the foregoing paragraphs.

24 62. Defendants' practice of willfully failing to pay Plaintiff and Arizona Class
25 Members wages at the rate of the Arizona Minimum Wage violates the Arizona Minimum
26 Wage Act. ARIZ. REV. STAT. ANN. § 23-363(A), (C). In fact, Defendants do not
27 compensate them whatsoever for any hours worked and have violated the tipped-employee
28 compensation provision under Arizona law as described above.

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COUNT IV
VIOLATION OF ARIZONA WAGE LAW
FAILURE TO PAY WAGES DUE
(CLASS ACTION)

63. Plaintiff and Arizona Class Members incorporate all allegations contained in the foregoing paragraphs.

64. Defendants' practice of willfully failing to pay Plaintiff and Arizona Class Members wages for labor performed violates Arizona Wage Law. ARIZ. REV. STAT. ANN. § 23-351(C). In fact, Defendants do not compensate them whatsoever for any hours worked.

VIII. COLLECTIVE ACTION ALLEGATIONS

A. FLSA Class Members

65. Plaintiff brings this action as an FLSA collective action pursuant to 29 U.S.C. § 216(b) on behalf of all persons who were or are employed by Defendants as exotic dancers at any time during the three years prior to the commencement of this action to present.

66. Plaintiff has actual knowledge that FLSA Class Members have also been denied overtime pay for hours worked over forty hours per workweek and have been denied pay at the federally mandated minimum wage rate. That is, Plaintiff worked with other dancers who worked at Scores. As such, Plaintiff has first-hand personal knowledge of the same pay violations at Scores for other dancers. Furthermore, other exotic dancers at Defendants' establishment have shared with Plaintiff similar pay violation experiences as those described in this complaint.

67. Other employees similarly situated to the Plaintiff work or have worked for Defendants' gentlemen's club business, but were not paid overtime at the rate of one and one-half their regular rate when those hours exceeded forty hours per workweek. Furthermore, these same employees were denied pay at the federally mandated minimum wage rate.

1 68. Although Defendants permitted and/or required the FLSA Class Members to
2 work in excess of forty hours per workweek, Defendants have denied them full
3 compensation for their hours worked over forty. Defendants have also denied them full
4 compensation at the federally mandated minimum wage rate.

5 69. FLSA Class Members perform or have performed the same or similar work
6 as Plaintiff.

7 70. FLSA Class Members regularly work or have worked in excess of forty hours
8 during a workweek.

9 71. FLSA Class Members are not exempt from receiving overtime and/or pay at
10 the federally mandated minimum wage rate under the FLSA.

11 72. As such, FLSA Class Members are similar to Plaintiff in terms of job duties,
12 pay structure, misclassification as independent contractors and/or the denial of overtime
13 and minimum wage.

14 73. Defendants' failure to pay overtime compensation and hours worked at the
15 minimum wage rate required by the FLSA results from generally applicable policies or
16 practices, and does not depend on the personal circumstances of the FLSA Class Members.

17 74. The experiences of Plaintiff, with respect to her pay, are typical of the
18 experiences of the FLSA Class Members.

19 75. The specific job titles or precise job responsibilities of each FLSA Class
20 Member does not prevent collective treatment.

21 76. All FLSA Class Members, irrespective of their particular job requirements,
22 are entitled to overtime compensation for hours worked in excess of forty during a
23 workweek.

24 77. All FLSA Class Members, irrespective of their particular job requirements,
25 are entitled to compensation for hours worked at the federally mandated minimum wage
26 rate.

27 78. Although the exact amount of damages may vary among FLSA Class
28 Members, the damages for the FLSA Class Members can be easily calculated by a simple

1 formula. The claims of all FLSA Class Members arise from a common nucleus of facts.
2 Liability is based on a systematic course of wrongful conduct by the Defendants that caused
3 harm to all FLSA Class Members.

4 79. As such, Plaintiff bring their FLSA overtime and minimum wage claims as
5 a collective action on behalf of the following class:

6 **The FLSA Class Members are all of Defendants' current
7 and former exotic dancers who worked for Defendants at
8 any time starting three years before this lawsuit was filed
up to the present.**

9 **B. Arizona Class Action**

10 80. Plaintiff and the Arizona Class Members incorporate all preceding paragraphs as though
11 fully set forth herein.

12 81. Plaintiff brings her Arizona wage claims as a Rule 23 class action on behalf
13 of the following class:

14 **The Arizona Class Members are all of Defendants' current
15 and former exotic dancers who worked for Defendants at
16 any time starting three years before this lawsuit was filed
up to the present.**

17 82. Numerosity. The number of members in the Arizona Class is believed to be
18 over forty. This volume makes bringing the claims of each individual member of the class
19 before this Court impracticable. Likewise, joining each individual member of the Arizona
20 Class as a plaintiff in this action is impracticable. Furthermore, the identity of the members
21 of the Arizona Class will be determined from Defendants' records, as will the
22 compensation paid to each of them. As such, a class action is a reasonable and practical
23 means of resolving these claims. To require individual actions would prejudice the Arizona
24 Class and Defendants.

25 83. Typicality. Plaintiff's claims are typical of the Arizona Class because like
26 the members of the Arizona Class, Plaintiff was subject to Defendants' uniform policies
27 and practices and was compensated in the same manner as others in the Arizona Class.
28 Defendants failed to pay non-exempt employees who worked at Scores overtime wages for

1 all of their overtime hours worked. All members of the Arizona Class worked substantially
2 more than eight hours in a day and forty hours in a workweek. Plaintiff and the Arizona
3 Class were likewise not paid minimum wage for all of their hours worked. Plaintiff and
4 the Arizona Class have been uncompensated and/or under-compensated as a result of
5 Defendants' common policies and practices which failed to comply with Arizona law.

6 84. Adequacy. Plaintiff is a representative party who will fairly and adequately
7 protect the interests of the Arizona Class because it is in her interest to effectively prosecute
8 the claims herein alleged in order to obtain the unpaid wages and penalties required under
9 Arizona law. Plaintiff has retained attorneys who are competent in both class actions and
10 wage and hour litigation. Plaintiff does not have any interest which may be contrary to or
11 in conflict with the claims of the Arizona Class she seeks to represent.

12 85. Commonality. Common issues of fact and law predominate over any
13 individual questions in this matter. The common issues of fact include, but are not limited
14 to:

- 15 a. Whether Plaintiff and the Arizona Class worked more than forty hours
16 in a workweek;
- 17 b. Whether Defendants failed to pay Plaintiff and the Arizona Class
18 overtime wages for all hours worked over forty hours in a workweek;
and
- 19 c. Whether Defendants failed to pay Plaintiff and Arizona Class the
20 minimum wage for all hours worked.

21 86. The common issues of law include, but are not limited to:

- 22 a. Whether Defendants improperly classified Plaintiff and the Arizona
23 Class as independent contractors;
- 24 b. Whether Plaintiff and the Arizona Class are entitled to compensatory
25 damages;
- 26 c. The proper measure of damages sustained by Plaintiff and the Arizona
27 Class; and
- 28 d. Whether Defendants' actions were "willful."

1 87. Superiority. A class action is superior to other available means for the fair
2 and efficient adjudication of this lawsuit. Even in the event any member of the Arizona
3 Class could afford to pursue individual litigation against a company the size of Defendants,
4 doing so would unduly burden the court system. Individual litigation would magnify the
5 delay and expense to all parties and flood the court system with duplicative lawsuits.
6 Prosecution of separate actions by individual members of the Arizona Class would create
7 the risk of inconsistent or varying judicial results and establish incompatible standards of
8 conduct for Defendants.

9 88. A class action, by contrast, presents far fewer management difficulties and
10 affords the benefits of uniform adjudication of the claims, financial economy for the
11 parties, and comprehensive supervision by a single court. By concentrating this litigation
12 in one forum, judicial economy and parity among the claims of individual Arizona Class
13 Members are promoted. Additionally, class treatment in this matter will provide for judicial
14 consistency. The identity of members of the Arizona Class is readily identifiable from
15 Defendants' records.

16 89. This type of case is well-suited for class action treatment because: (1)
17 Defendants' practices, policies, and/or procedures were uniform; (2) the burden is on the
18 Defendants to prove it properly compensated its employees; and (3) the burden is on the
19 Defendants to accurately record hours worked by employees.

20 90. Ultimately, a class action is a superior forum to resolve the Arizona claims
21 detailed herein because of the common nucleus of operative facts centered on the continued
22 failure of Defendants to pay Plaintiff and the Arizona Class according to applicable
23 Arizona laws.

24 91. Nature of notice to be proposed. As to the Rule 23 Class, it is contemplated
25 that notice would be issued giving putative class members an opportunity to opt out of the
26 class if they so desire, *i.e.* "opt-out notice." Notice of the pendency and resolution of the
27 action can be provided to the Arizona class by mail, electronic mail, print, broadcast,
28 internet and/or multimedia publication.

1 **IX. DAMAGES SOUGHT**

2 92. Plaintiff, FLSA Class Members, and Arizona Class Members are entitled to recover
3 compensation for the hours they worked for which they were not paid at the federally
4 mandated minimum wage rate.

5 93. Additionally, Plaintiff, FLSA Class Members, and Arizona Class Members
6 are entitled to recover their unpaid overtime compensation.

7 94. Plaintiff, FLSA Class Members, and Arizona Class Members are also
8 entitled to all of the misappropriated funds.

9 95. Plaintiff and FLSA Class Members are also entitled to an amount equal to all
10 of their unpaid wages as liquidated damages. 29 U.S.C. § 216(b).

11 96. Plaintiff and FLSA Class Members are entitled to recover their attorney's
12 fees and costs as required by the FLSA. 29 U.S.C. § 216(b).

13 97. Plaintiff and Arizona Class Members are entitled to an amount equal to
14 wages owed, interest thereon, and an additional amount equal to twice the underpaid
15 wages. ARIZ. REV. STAT. ANN. § 23-364(G).

16 98. Plaintiff and Arizona Class Members are entitled to treble the amount of
17 wages unpaid under Arizona Wage Law. ARIZ. REV. STAT. ANN. § 23-355(A).

18 99. As the District of Arizona has previously concluded, the treble damages
19 provision set forth in ARIZ. REV. STAT. ANN. § 23-355(A) may be applied to treble a
20 liquidated damages award received under the FLSA pursuant to this Court's supplemental
21 jurisdiction. *Davis v. Jobs for Progress*, 427 F. Supp. 479, 483 (D. Ariz. 1976).

22 100. Plaintiff and Arizona Class Members are entitled to recover attorney's fees
23 and costs under ARIZ. REV. STAT. ANN. §§ 12-341, 12-341.01, 23-364(G).

24 **PRAYER FOR RELIEF**

25 101. For these reasons, Plaintiff, FLSA Class Members, and Arizona Class
26 Members respectfully request that judgment be entered in their favor awarding the
27 following relief:
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- a. Overtime compensation for all hours worked over forty in a workweek at the applicable time-and-a-half rate;
- b. All unpaid wages at the FLSA mandated minimum wage rate;
- c. All misappropriated funds;
- d. An equal amount of all owed wages as liquidated damages as allowed under the FLSA;
- e. An amount equal to wages owed, interest thereon, and an additional amount equal to twice the underpaid wages pursuant to ARIZ. REV. STAT. ANN. § 23-364(G);
- f. An amount equal to treble the amount of wages unpaid under Arizona Wage Law and liquidated damages pursuant to ARIZ. REV. STAT. ANN. § 23-355(A);
- g. Prejudgment and post-judgment interest on unpaid back wages pursuant to the FLSA and/or ARIZ. REV. STAT. ANN. § 23-364(G);
- h. Tolling of the statute of limitations;
- i. Reasonable attorney’s fees, costs and expenses of this action as provided by the FLSA and ARIZ. REV. STAT. ANN. §§ 12-341, 12-341.01, 23-364(G);
- j. In the event Defendants fail to satisfy any judgment for Plaintiff with respect to the Arizona wage claims, an award that Defendants shall pay Plaintiff an amount which is treble the amount of the outstanding judgment with interest thereon at the then legal rate in accordance with ARIZ. REV. STAT. ANN. § 23-360; and
- k. Such other and further relief to which Plaintiff and Class Members may be entitled, at law or in equity.

Dated this 5th day of June, 2018.

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KENNEDY HODGES, L.L.P.

/s/ Galvin B. Kennedy

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**Lead Attorney in Charge for Plaintiff
and Class Members**

OF COUNSEL:

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Kwen Brennan, Individually and On Behalf of All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff Maricopa (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Galvin B. Kennedy; Kennedy Hodges, LLP
4409 Montrose Blvd., Ste. 200 Houston, TX 77006 (713) 523-0001

DEFENDANTS

New 4125 LLC d/b/a Scores Phoenix, et al.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, PERSONAL INJURY, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 U.S.C. § 206
Brief description of cause: Defendant violated FLSA and Arizona Wage and Hour statute

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 06/05/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Galvin B. Kennedy

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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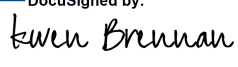
Reset

CONSENT TO JOINT COLLECTIVE ACTION AND BE REPRESENTED BY KENNEDY HODGES, LLP

- I, Kwen Brennan (print name), consent and agree to pursue my claims for unpaid overtime and/or minimum wage through a lawsuit brought under the Fair Labor Standards Act and any state wage and hour law.
- I intend to pursue my claim individually, unless and until the court certifies this case as a collective or class action. I agree to serve as the class representative if I am selected by counsel.
- If I am not the class representative, I authorize the named Plaintiff to file and prosecute my claim for unpaid wages in my name, and on my behalf, and designate the named Plaintiff to make decisions on my behalf concerning the litigation, including negotiating a resolution of my claims, entering into an agreement with the lawyers in this case, and I understand I will be bound by such decisions.
- I agree to be represented by Kennedy Hodges, LLP.
- If my consent form is stricken or if I am for any reason not allowed to participate in this case, I authorize Plaintiff's counsel to use this Consent Form to re-file my claims in a separate or related action against my employer.

Date 4/25/2018

Signature _____

DocuSigned by:

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The information provided below is intended for my attorney and will not be filed with the court:

My signature above means I agree to the terms of the Attorney Client Fee Agreement enclosed with the letter I received or on the electronic form on line.

(street)

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Scores Phoenix Among Defendants in Exotic Dancer's Wage and Hour Lawsuit](#)
