UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA CASE NO.:

JOALIE MARTINEZ, on her own behalf and on behalf of other similarly situated,

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COLLECTIVE ACTION COMPLAINT

vs.

G5IVE, LLC, a Florida limited liability company, and ANTONIO BRYANT, an individual,

Defendants.	
	/

COLLECTIVE ACTION COMPLAINT

COMES NOW Plaintiff JOALIE MARTINEZ ("Plaintiff" or "Martinez"), on behalf of herself and others similarly situated, who was an employee of Defendants G5IVE, LLC, a Florida limited liability company, and ANTONIO BRYANT, an individual (together, "Defendants"), and by and through undersigned counsel files this Collective Action Complaint for unpaid minimum wage compensation and unpaid overtime wage compensation, free and clear; liquidated damages; and other relief under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, et seq. (hereinafter, the "Act" or "FLSA") and 29 U.S.C. § 531.55, and for a declaration of rights.

1. This action is brought pursuant to the FLSA for unpaid minimum wage compensation, free and clear; unpaid overtime wage compensation, free and clear; liquidated damages; and other relief, over the three years preceding filing of this suit ("Relevant Time Period").

- 2. Plaintiff and the proposed collective action members were employed as adult entertainers and subjected to similar violations of the FLSA by Defendants. They were:
 - a. Employed by Defendants but paid no minimum or overtime wage;
 - b. Required to share tips with non-tipped employees; and
 - c. Required to pay house fees for the right to work.
- 3. The class of similarly situated employees or potential collective action members sought to be certified under 29 U.S.C. § 216(b) is defined as:

All persons who worked for Defendants as adult entertainers at their club G5IVE during the three (3) years preceding this lawsuit.

- 4. Additionally, Plaintiff and those similarly situated seek a declaration of rights pursuant to Rule 57 of the Federal Rules of Civil Procedure and the Federal Declaratory Judgment Act ("DJA"), 28 U.S.C. § 2201.
- 5. The precise size and identity of the class can be ascertained from the business records, tax records, and/or employee or personnel records of Defendants and its related and affiliated entities.

I. JURISDICTION AND VENUE

- 6. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because Defendants transact business in this District; because all wages were earned and due to be paid in this District; because Defendants' club operation is situated in this District; and because most, if not all, of the operational decisions were made in this District.
- 7. This Court has original jurisdiction over Plaintiff's federal question claims.

II. PARTIES

- 8. Plaintiff JOALIE MARTINEZ ("Martinez") is over 18 years old and was a *sui juris* resident of Miami-Dade County, Florida, at all times material. She was an hourly, non-exempt employee of Defendants, as the term "employee" is defined by 29 U.S.C. § 203(e).
- 9. Defendant G5IVE, LLC is a Florida limited liability company that has owned and operated the club G5IVE ("G5IVE"), located at 337 Northwest 170th Street, North Miami Beach, Miami-Dade County, Florida.
- 10. Defendant ANTONIO BRYANT ("BRYANT"), an individual and *sui juris*, was the owner and manager of, and employer at, G5IVE, the club at which Plaintiff was employed. BRYANT acted directly and indirectly in the interest of G5IVE. BRYANT managed G5IVE and had the power to direct employees' actions. BRYANT had management responsibilities, degree of control over G5IVE's financial affairs and compensation practices, and was in a position to exert substantial authority over policy relating to employee wages and whether to compensate (or not to compensate) employees at the club in accordance with the FLSA making Defendant ANTONIO BRYANT an employer pursuant to 29 USC § 203(d).

III. COVERAGE

11. During all material times, Defendant G5IVE, LLC was an enterprise covered by the FLSA, and as defined by 29 U.S.C. § 203(r) and 203 (s), in that it was engaged in commerce or in the production of goods for commerce within the meaning of § 29 U.S.C. 203(s)(1) of the Act, in that the enterprise had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person.

- 12. During all material times, Defendants were employers as defined by 29 U.S.C. § 203(d).
- 13. During all material times, G5IVE, LLC had an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated).

IV. FACTUAL ALLEGATIONS

- 14. Defendants operated a club known as G5IVE, located at 337 Northwest 170th Street, North Miami Beach, Miami-Dade County, Florida.
- 15. Martinez worked as an adult entertainer for Defendants from October, 2015, approximately, through July, 2017, approximately.
- 16. During the Relevant Time Period, the applicable Florida minimum wage was \$8.05 per hour in 2015 and 2016 and \$8.10 per hour in 2017.
- 17. During the Relevant Time Period, the applicable Florida minimum overtime wage was \$12.075 per hour in 2015 and 2016 and \$12.15 in 2017.
- 18. Throughout the Relevant Time Period, Plaintiff and those similarly situated ("Class Members") were not paid an hourly wage but instead were only paid a share of the tips collected.
- 19. Throughout the Relevant Time Period, Plaintiff and Class Members were required to share their tips with non-tipped employees, such as management and owners.
- 20. Throughout the Relevant Time Period, Plaintiff and Class Members were required to kick-back impermissible house fees, reducing their actual wages, free and clear, below \$0.00.
- 21. Throughout the Relevant Time Period, Plaintiff and those similarly situated regularly worked in excess of forty (40) hours per seven-day week.

22. As the result of the above violations, Defendants did not satisfy the requirements of the FLSA during the Relevant Time Period and must therefore pay Plaintiff and those similarly situated the full minimum wage for each hour worked up to forty per workweek and the full overtime wage for each hour worked in excess of forty per workweek.

23. As the result of the above violations, Defendants willfully engaged in practices that denied Plaintiff and those similarly situated their applicable minimum and overtimes wages under the FLSA.

24. Plaintiff retained the undersigned counsel and agreed to pay a reasonable fee for all services rendered.

FLSA COLLECTIVE ACTION ALLEGATIONS

- 25. Plaintiff seeks certification of collective action from this court, for herself and those similarly situated, pursuant to 29 U.S.C. 216(b).
- 26. Plaintiff and those similarly situated performed the same or similar jobs as one another in that they were employed as adult entertainers in Defendants' club G5IVE.
- 27. Plaintiff and those similarly situated were subjected to similar policies in that Defendants suffered or permitted Class Members to work without paying them wages.
- 28. Plaintiff and those similarly situated were subjected to similar policies in that Defendants required Class Members to share their tips with non-tipped employees.
- 29. Plaintiff and those similarly situated were subjected to similar policies in that Defendants required Class Members to kick-back house fees for the right to work, thereby reducing their actual wages, free and clear, below \$0.00.
- 30. These policies or practices were applicable to Plaintiff and members of the collective action.

 Application of these policies or practices does not depend on the personal circumstances of

Plaintiff or those joining this lawsuit. Rather, the same policies or practices apply to all members of the collective action. Accordingly, members of the collective action are properly

defined as:

All persons who worked for Defendants as adult entertainers at their club G5IVE during the three (3) years preceding this lawsuit.

31. Defendants did not act in good faith or reliance upon any of the following in formulating its

pay practices: (a) case law, (b) the FLSA, 29 U.S.C. § 201, et seq., (c) Department of Labor

Wage & Hour Opinion Letters or (d) the Code of Federal Regulations.

32. Defendants knowingly, willfully, or with reckless disregard carried out their illegal pattern or

practice of suffering or permitting Plaintiff and those similarly situated to work without

compensation, to participate in an illegal tip-sharing scheme in which their tips were shared

with non-tipped employees, and to kick-back a portion of their tips directly or indirectly to

Defendants, or to others for Defendants' benefit, through payment of house fees.

33. Defendants violated § 207(a)(1) and § 215(a)(2), by employing Plaintiff and those similarly

situated within the meaning of the FLSA for one or more workweeks without compensating

them for all hours worked at the minimum wage rate for all hours worked up to forty in a

week and at the overtime rate of time-and-one-half for all hours worked in excess of forty

hours in a work week. Thus, Defendants acted willfully by failing to pay Plaintiff, and those

similarly situated, in accordance with the law.

COUNT I
FAILURE TO PAY MINIMUM WAGE IN
VIOLATION OF THE FLSA, 29 U.S.C. § 201, et seq

34. Plaintiff, on behalf of herself and others similarly situated, reincorporates and re-alleges

paragraphs 1 through 33 as though set forth fully herein and further alleges as follows:

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35. Defendants willfully and intentionally suffered or permitted Plaintiff, and those similarly

situated, to work without being paid an hourly wage.

36. Defendants required Plaintiff, and those similarly situated, to pay a portion of her tips to non-

tipped employees.

37. Defendants required Plaintiff, and those similarly situated, to kick-back a portion of their tips

directly or indirectly to Defendants, or to others for Defendants' benefit, through payment of

house fees.

38. By suffering or permitting Plaintiff, and those similarly situated, to work without being paid

an hourly wage, to pay a portion of their tips to non-tipped employees, and to kick-back a

portion of their tips directly or indirectly to Defendants or to others for Defendants' benefit

through payment of house fees, Defendants owe Plaintiff, and those similarly situated, the

full minimum wage for each hour worked up to forty hours in a week.

39. As a direct and proximate result of the above claims Plaintiff, and those similarly situated,

have been damaged for one or more weeks of work with Defendants.

WHEREFORE, Plaintiff JOALIE MARTINEZ, on behalf of herself and others similarly

situated, demands judgment in her favor and against Defendants G5IVE, LLC and ANTONIO

BRYANT, jointly and severally, as follows:

a) Award to Plaintiff, and those similarly situated, for payment of all hours worked up to

forty per workweek at the full Florida minimum wage, free and clear;

b) Award to Plaintiff, and those similarly situated, liquidated damages equal to the

payment of all hours worked up to forty per workweek at the full Florida minimum

wage, free and clear, or, if liquidated damages are not awarded, then prejudgment

interest;

- c) Award to Plaintiff, and those similarly situated, reasonable attorneys' fees and costs; and
- d) Award such other and further relief as this Court may deem just and proper.

COUNT II FAILURE TO PAY OVERTIME WAGE COMPENSATION IN VIOLATION OF THE FLSA, 29 U.S.C. § 201, et seq

- 40. Plaintiff, on behalf of herself and others similarly situated, reincorporates and re-alleges paragraphs 1 through 33 as though set forth fully herein and further alleges as follows:
- 41. Defendants willfully and intentionally suffered or permitted Plaintiff, and those similarly situated, to work without being paid an hourly wage.
- 42. Defendants required Plaintiff, and those similarly situated, to pay a portion of their tips to non-tipped employees.
- 43. Defendants required Plaintiff, and those similarly situated, to kick-back a portion of their tips directly or indirectly to Defendants, or to others for Defendants' benefit, through payment of house fees.
- 44. By suffering or permitting Plaintiff, and those similarly situated, to work without being paid an hourly wage, to pay a portion of their tips to non-tipped employees, and to kick-back a portion of their tips directly or indirectly to Defendants or to others for Defendants' benefit through payment of house fees, Defendants owe Plaintiff, and those similarly situated, one-and-a-half times their regular wage for each hour worked in excess of forty hours in a week.
- 45. As a direct and proximate result of the above claims Plaintiff, and those similarly situated, have been damaged for one or more weeks of work with Defendants.

WHEREFORE, Plaintiff JOALIE MARTINEZ, on behalf of herself and others similarly situated, demands judgment in her favor and against Defendants G5IVE, LLC and ANTONIO BRYANT, jointly and severally, as follows:

- a) Award to Plaintiff, and those similarly situated, for payment of all hours worked over forty per week at the full overtime wage rate, free and clear;
- b) Award to Plaintiff, and those similarly situated, liquidated damages equal to the payment of all hours at the full overtime wage rate owed under the FLSA, free and clear, or, if liquidated damages are not awarded, then prejudgment interest;
- c) Award to Plaintiff, and those similarly situated, reasonable attorneys' fees and costs; and
- d) Award such other and further relief as this Court may deem just and proper.

COUNT III DECLARATION OF RIGHTS

- 46. Plaintiff reincorporates and re-alleges paragraphs 1 through 33 as though set forth fully herein, and further alleges as follows:
- 47. Plaintiff, and those similarly situated, and Defendants have a pending dispute under the FLSA, which this Court has jurisdiction to decide pursuant to 29 U.S.C. § 1331. The Court also has jurisdiction over Plaintiff's, and those similarly situated, request for a declaration of rights pursuant to 29 U.S.C. §§ 2201, 2202.
- 48. Defendants did not rely on a good faith defense in suffering or permitting Plaintiff, and those similarly situated, to work without being paid an hourly wage, to share tips with non-tipped employees, or to kick-back tips directly or indirectly to Defendants or to others for Defendants' benefit through the payment of house fees, under the FLSA.

49. A declaration of rights would serve the useful purpose of clarifying and settling the legal relations at issue.

50. Many Class Members are believed to be currently employed by Defendants.

51. The entry of a declaration of the rights of the parties herein would afford relief from uncertainty, insecurity, and controversy giving rise to this proceeding as affecting Plaintiff, and those similarly situated, from Defendants, now and in the future.

WHEREFORE, Plaintiff JOALIE MARTINEZ, on behalf of herself and those similarly situated, demands judgment in her favor and against Defendants G5IVE, LLC and ANTONIO BRYANT, jointly and severally, as follows:

a) Issue declaratory judgment that Defendants' acts, policies, practices and procedures complained of herein violated provisions of the FLSA;

b) Enjoin Defendants from further violations of the FLSA;

c) Award Plaintiff reasonable attorneys' fees and costs;

d) Award such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues so triable.

Respectfully submitted this 28th day of July, 2017.

By: s/Robert W. Brock II

Robert W. Brock II, Esq. Florida Bar No. 75320

robert@kuvinlaw.com legal@kuvinlaw.com

Law Office of Lowell J. Kuvin 17 East Flagler Street, Suite 223

Miami, Florida 33131

Tel.: 305.358.6800

Fax: 305.358.6808

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on <u>July 28, 2017</u>, I electronically filed the foregoing document via CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified in the attached Service in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF, or in some other manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

By: s/Robert W. Brock II

Robert W. Brock II, Esq.

Florida Bar No. 75320

MARTINEZ v. G5IVE, LLC and BRYANT Case No.:

JS 44 (Rev. 06/17) FLSD Revised 06/01/2017

RECEIPT #

AMOUNT

CIVIL COVER SHEET

The IS 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.) NOTICE: Attorneys MUST Indicate All Resided Cases Bellow.

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JUDGE

MAG JUDGE

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

JOALIE MARTINEZ, on her own behalf and on behalf of other similarly situated,)))				
Plaintiff(s))				
V.	Civil Action No.				
G5IVE, LLC, a Florida limited liability company, and ANTONIO BRYANT, an individual,)))				
Defendant(s)	,)				
SUMMONS I	N A CIVIL ACTION				
To: (Defendant's name and address) G5IVE, LLC c/o Registered Agent, STEPHEN H. JOHNSON 1221 BRICKELL AVENUE, 19TH FLOOR MIAMI, FL 331318					
A lawsuit has been filed against you. Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Robert W. Brock II, Esq. The Law Office of Lowell J. Kuvin, LLC 17 East Flagler, Street, Suite 223 Miami, Florida 33131 Tel: 305.358.6800 Fax: 305358.6808 If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.					
	CLERK OF COURT				
Date					
Date:	Signature of Clerk or Deputy Clerk				
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AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Additional information regarding attempted service, etc:

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

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UNITED STATES DISTRICT COURT

for the

Southern District of Florida

JOALIE MARTINEZ, on her own behalf and on behalf of other similarly situated, Plaintiff(s) V. G5IVE, LLC, a Florida limited liability company, and ANTONIO BRYANT, an individual,))))) Civil Action No.)				
Defendant(s))))				
SUMMONS IN	N A CIVIL ACTION				
To: (Defendant's name and address) ANTONIO BRYANT 337 NW 170 STREET NORTH MIAMI BEACH, FL 33169					
A lawsuit has been filed against you. Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Robert W. Brock II, Esq. The Law Office of Lowell J. Kuvin, LLC 17 East Flagler, Street, Suite 223 Miami, Florida 33131 Tel: 305.358.6800 Fax: 305358.6808					
If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.					
	CLERK OF COURT				
Date:	Signature of Clerk or Deputy Clerk				

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Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

	This summons for (na	me of individual and title, if a	any)			
was rec	ceived by me on (date)		·			
	☐ I personally served the summons on the individual at (place)					
			on (date)	; or		
	☐ I left the summons at the individual's residence or usual place of abode with (name)					
			, a person of suitable age and discretion who res	sides there,		
	on (date)	, and mailed a	copy to the individual's last known address; or			
	☐ I served the summons on (name of individual)					
	designated by law to	accept service of proces	s on behalf of (name of organization)			
			on (date)	; or		
	☐ I returned the sum	mons unexecuted because	se	; or		
	☐ Other (specify):					
	My fees are \$	for travel and	\$ for services, for a total of \$	0.00		
	I declare under penalty of perjury that this information is true.					
ъ.						
Date:		-	Server's signature			
		-	Printed name and title			
		_	Server's address			

Additional information regarding attempted service, etc:

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