

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

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

Plaintiff,

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:

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.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on **July 28, 2017**, 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

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.) NOTICE: Attorneys MUST Indicate All Related Cases Below.

I. (a) PLAINTIFFS JOALIE MARTINEZ, on her own behalf and on behalf of other similarly situated, DEFENDANTS G5IVE, LLC, a Florida limited liability company, and ANTONIO BRYANT, an individual,

(b) County of Residence of First Listed Plaintiff Miami-Dade (EXCEPT IN U.S. PLAINTIFF CASES) County of Residence of First Listed Defendant Miami-Dade (IN U.S. PLAINTIFF CASES ONLY)

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

Robert W. Brock II, Esq., Law Office of Lowell J. Kuvin, LLC 17 E. Flagler St, Suite 223, Miami, FL 33131, (305) 358-6800

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

(d) Check County Where Action Arose: [X] MIAMI-DADE [] MONROE [] BROWARD [] PALM BEACH [] MARTIN [] ST. LUCIE [] INDIAN RIVER [] OKEECHOBEE [] HIGHLANDS

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

- 1 U.S. Government Plaintiff [X] 3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant [] 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)

- Citizen of This State PTF [] DEF [] 1 1 Incorporated or Principal Place of Business in This State PTF [] DEF [] 4 4
Citizen of Another State PTF [] DEF [] 2 2 Incorporated and Principal Place of Business in Another State PTF [] DEF [] 5 5
Citizen or Subject of a Foreign Country PTF [] DEF [] 3 3 Foreign Nation PTF [] DEF [] 6 6

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

Click here for: Nature of Suit Code Descriptions

Grid of suit categories including CONTRACT, TORTS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, REAL PROPERTY, CIVIL RIGHTS, PRISONER/PETITIONS, IMMIGRATION, and OTHER STATUTES.

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding [] 2 Removed from State Court [] 3 Re-filed (See VI below) [] 4 Reinstated or Reopened [] 5 Transferred from another district (specify) [] 6 Multidistrict Litigation Transfer [] 7 Appeal to District Judge from Magistrate Judgment [] 8 Multidistrict Litigation - Direct File [] 9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

(See instructions): a) Re-filed Case [] YES [X] NO

b) Related Cases [] YES [X] NO

JUDGE:

DOCKET NUMBER:

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): Fair Labor Standards Act of 1938, 29 U.S.C. § 201, et seq.

LENGTH OF TRIAL via 4-5 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 [] DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: [X] Yes [] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE July 28, 2017

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY RECEIPT #

AMOUNT

IFP

JUDGE

MAG JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

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,

Defendant(s)

Civil Action No.

SUMMONS IN 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:

Signature of Clerk or Deputy Clerk

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 *(name of individual and title, if any)* _____
was received 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 resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; 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.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

AO 440 (Rev. 06/12) Summons in a Civil Action

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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,

Defendant(s)

Civil Action No.

SUMMONS IN 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

Civil Action No. _____

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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 resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

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I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [North Miami Beach Club G5IVE Hit with FLSA Lawsuit](#)
