

Exhibit “A”

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No.: 1:14-CV-21244-GOODMAN**

JASZMANN ESPINOZA, SELETA
STANTON, TIFFANY THOMPSON,
DOUGANNA BALLARD, JANICE
BAILEY, *and all persons similarly
situated,*

Plaintiffs,

CONSENT CASE

v.

GALARDI SOUTH ENTERPRISES, INC.;
GALARDI SOUTH ENTERPRISE
CONSULTING, INC.; FLY LOW, INC.;
TERI GALARDI, AS TRUSTEE OF
THE JEG FAMILY TRUST u/a/d
11/1/06, MBJG INVESTMENT CORP.; LVA
MANAGEMENT & CONSULTING, INC.,
JACK E. GALARDI, LLC, TERI GALARDI,
INDIVIDUALLY; NITTY 'N AK CORP.,
AKINYELE ADAMS, INDIVIDUALLY,
AK 'N ELI, LLC; KODRENYC, LLC.,
AQFC, LLC., DENNIS WILLIAMS,
INDIVIDUALLY, and RICK TAYLOR,
INDIVIDUALLY,

CLASS ACTION

Defendants.

SUBSTITUTED SECOND AMENDED AND SUPPLEMENTAL COMPLAINT

NOW COME Jaszmann Espinoza, Seleta Stanton, Tiffany Thompson, Douganna Ballard, and Janice Bailey, on behalf of themselves and all persons similarly situated (hereinafter referred to as "Plaintiffs"), and pursuant to this Court's Orders of January 8 and 20, 2015 [ECF 131 and 133], hereby submit this Second Amended and Supplemental

Complaint asserting collective action claims under the Fair Labor Standards Act, 29 U.S.C. Sec. 216(b), et seq. ("FLSA") and Fed. R. Civ. P. 23 class action claims under Article X, Section 24 of the Florida Constitution ("Article X") and, alternatively, under Fla. Stat. 448.110 [Sec. 448.110] against Defendants Galardi South Enterprises, Inc., Galardi South Enterprise Consulting, Inc., Fly Low, Inc.; Teri Galardi, as Trustee of the JEG Family Trust u/a/d 11/1/06, MBJG Corp., LVA Management & Consulting Inc., Teri Galardi, Individually, Nitty 'N AK Corp., Akinyele Adams, Individually, AK 'N Eli LLC, KODRENYC, LLC, AQFC, LLC, Dennis William, Individually, and Rick Taylor (collectively referred to herein as "Defendants") and respectfully show the Court the following:

JURISDICTION AND VENUE

1.

This Court possesses subject matter jurisdiction over claims arising under the FLSA pursuant to 28 U.S.C. §§ 1331.

2.

This Court possesses subject matter jurisdiction over the class action claims arising under Florida law (Article X, Section 24 of the Florida Constitution and/or Fl. Stat. Sec. 448.110) because the matter in controversy exceeds the value of \$5,000,000, exclusive of interest and costs pursuant to 28 U.S.C. Sec. 1332.

3.

This Court possesses supplemental jurisdiction over the state law claims arising under Article X, Section 24 of the Florida Constitution and Fl. Stat. Sec. 448.110 pursuant to 28 U.S.C. 1367.

4.

This Court possesses subject matter jurisdiction, to entertain and decide, pursuant to 28 U.S.C. Sec. 2201, Plaintiffs' contention that Fla. Stat. Sec. 448.110 is unconstitutional. Pursuant to Local Rule 24.1(b) shall promptly serve a copy of this complaint on the Attorney General of Florida or the state attorney of the appropriate judicial circuit.

5.

Venue is proper in the Southern District of Florida, under 28 U.S.C. §1391(b), because Defendants reside in this judicial district and/or because they do substantial business in this judicial district, and the court possesses personal jurisdiction over all Defendants. Venue in the Southern District of Florida is also proper because a substantial part of the events or omissions giving rise to the claim occurred in the Southern District of Florida.

PARTIES AND SERVICE

6.

Each Plaintiff and each member of the putative class was previously (during the five year period preceding the filing of this action on April 8, 2014) and/or is currently employed by the Defendants as dancers-entertainers at the nightclub known as "King of Diamonds" located at 17800 NE Fifth Avenue, Miami, Fla., 33160. Plaintiffs have previously and/or herewith submit their written consents to participate as a Plaintiff in this action.¹

¹The named Plaintiffs' consent forms were previously submitted to the Court. as Exhibit "1" to the initial complaint [ECF 1-1] However, each of the named plaintiffs previously "opted in" to another action currently pending in the Northern District of Georgia, but withdrew from that action effective March 8, 2014. The consent forms previously filed by the Plaintiffs in that action previously submitted as Exhibit "2" to the initial complaint. [ECF 1-2]

7.

Prior to the death of Jack E. Galardi in December of 2012, he was the sole Trustee of the JEG Family Trust, u/a/d 11/1/06 ("JEG Family Trust") Upon the death of Jack E. Galardi, Defendant Teri Galardi became the sole Trustee of the JEG Trust. Teri Galardi is a natural person and a resident of the State of Florida, residing at 15820 SW 53rd Court, Southwest Ranches, Fla., 33331. In her role as Trustee of the JEG Trust, Teri Galardi is referred to herein as "Trustee Galardi".

8.

Since November of 2006 the JEG Trust, through its Trustees Jack and Teri Galardi, has frequently been, and currently is, present in, and has done and is doing substantial business in the State of Florida, has gross revenues in excess of \$500,000 annually, and is an "employer" or "joint employer" within the meaning of the Fair Labor Standards Act and Article X and/or Sec. 448.110. The JEG Trust may be served with process via service on Trustee Galardi at her residence located at 15820 SW 53rd Court, Southwest Ranches, Fla., 33331.

9.

Upon information and belief, the JEG Trust, currently through Trustee Galardi, currently owns, operates, manages, directs and controls numerous other Galardi-affiliated entities including but not limited those named as Defendants herein.² In the alternative, within the four years preceding the filing of this action (April 8, 2014), with

²The term "Galardi-affiliated entities" includes the JEG Trust and all corporations directly or indirectly controlled by it, including but not limited to Galardi South Enterprises, Inc., Galardi South Enterprise Consulting, Inc., Fly Low, Inc., MBGJ Corporation and LVA Management & Consulting, Inc., and Jack E. Galardi, LLC.

knowledge of pending FLSA litigation against Galardi-affiliated entities owned, operated, and controlled by it, JEG Trust fraudulently conveyed ownership of one or more Galardi-affiliated entities, including some or all of the named Galardi-affiliated Defendants, to other persons/entities, for purposes of defrauding creditors and/or judgment lien holders.

10.

Defendant Galardi South Enterprises, Inc. ("GSE") is a Georgia for profit Corporation. GSE is present in and either directly or through its agents, does substantial business in the State of Florida. GSE is an "employer" or "joint employer" within the meaning of the Fair Labor Standards Act and Article X and/or Sec. 448.110, and has gross revenues in excess of \$500,000 annually

11.

Upon information and belief, GSE is directly or indirectly owned operated and controlled by the JEG Trust, or has, within the four years preceding the filing of this action, been fraudulently conveyed by the JEG Trust to other persons/entities. GSE has previously been served with the summons and complaint.

12.

Defendant Galardi South Enterprises Consulting, Inc. ("GSEC") is a Georgia for profit Corporation. GSEC is present in and either directly or through its agents, does substantial business in the State of Florida. GSEC is an "employer" or "joint employer" within the meaning of the Fair Labor Standards Act and Article X and/or Sec. 448.110, and has gross revenues in excess of \$500,000 annually

13.

Upon information and belief, GSEC is directly indirectly owned, operated and controlled by the JEG Trust, or has, within the four years preceding the filing of this action, been fraudulently conveyed by the JEG Trust to other persons/entities. GSEC has previously been served with the summons and complaint.

14.

Defendant MBJG Investment Corp. ("MBJG") is a Florida Corporation doing business in the State of State of Florida. MBJG is an "employer" or "joint employer" within the meaning of the Fair Labor Standards Act and Article X and/or Sec. 448.110, and has gross revenues in excess of \$500,000 annually.

15.

Upon information and belief, MBJG is directly or indirectly owned, operated and controlled by the JEG Trust, or has, within the four years preceding the filing of this action, been fraudulently conveyed by the JEG Trust to other persons/entities. MBJG may be served with process via its registered agent for service, Patricia Burnside, at 2455 Hollywood Boulevard Suite 311, Hollywood, Fla., 30020.

16.

Defendant LVA Management & Consulting, Inc., ("LVA") is a Nevada Corporation registered and authorized to conduct business in the State of Florida. LVA is an "employer" or "joint employer" within the meaning of the Fair Labor Standards Act and Article X and/or Sec. 448.110, and has gross revenues in excess of \$500,000 annually.

17.

Upon information and belief, LVA is directly or indirectly owned, operated and controlled by the JEG Trust, or has, within the four years preceding the filing of this action, been fraudulently conveyed by the JEG Trust to other persons/entities. LVA may be served with process via its registered agent for service, Patricia Burnside, at 2455 Hollywood Boulevard Suite 311, Hollywood, Fla., 30020.

18.

Defendant Jack E. Galardi, LLC ("Galardi LLC") is a Florida limited liability company, is an "employer" or "joint employer" within the meaning of the Fair Labor Standards Act and Article X and/or Sec. 448.110, and has gross revenues in excess of \$500,000 annually .

19.

Upon information and belief, Galardi LLC is directly or indirectly owned, operated and controlled by the JEG Trust, or has, within the four years preceding the filing of this action, been fraudulently conveyed by the JEG Trust to other persons/entities. Galardi LLC may be served with process via its registered agent for service, Patricia Burnside, at 2455 Hollywood Boulevard Suite 311, Hollywood, Fla., 30020.

20.

Defendant Fly Low, Inc., ("Fly Low") is a Florida Corporation doing business in the State of State of Florida. Prior to August of 2014, Fly Low was the shell corporation through which the JEG Trust and other Galardi-affiliated entities/persons, including those named as Defendants herein, owned, directed, controlled and managed operations at the

King of Diamonds. Prior to August of 2014, Fly Low was an "employer" or "joint employer" within the meaning of the Fair Labor Standards Act and/or Sec. 448.110. and had gross revenues in excess of \$500,000 annually.

21.

Upon information and belief, Fly Low is directly or indirectly owned, operated and controlled by the JEG Trust and/or its constituent subsidiaries, including but not limited to LVA, or has, within the four years preceding the filing of this action, been fraudulently conveyed by the JEG Trust to other persons/entities. Fly Low has previously been served with the summons and complaint.

22.

Defendant Terri Galardi, Individually, ("Galardi) is a natural person. Upon information and belief, through the JEG Trust and its constituent subsidiaries, including but not limited to Defendant LVA, Galardi exerts day to day operational and management control over all of the other Galardi-affiliated entities/persons, including Fly Low, including the terms and conditions of Plaintiffs' employment. Galardi is frequently present in, and does substantial business in the State of Florida.

23.

Galardi is an "employer" or "joint employer" within the meaning of the Fair Labor Standards Act and/or Sec. 448.110, and has gross revenues in excess of \$500,000 annually. Galardi has previously been served with the summons and complaint.

24.

Defendant Alinyele Adams ("Adams) is a natural person. Beginning at some as yet undetermined date in 2013, Adams became the general manager at the King of Diamonds, and in that capacity exercised direct control over day to day operations at the King of Diamonds, including the terms and conditions of Plaintiffs' employment.

25.

Adams is an "employer" or "joint employer" within the meaning of the Fair Labor Standards Act and/or Sec. 448.110, and has gross revenues in excess of \$500,000 annually. Adams may be served with process at his home address of 530 Ocean Drive, No. 203, Miami, Fla. 33319.

26.

Defendant Nitty 'N AK Corporation ("Nitty") is a Florida for profit corporation., formed on or about November 1, 2013, which, according to Adams, was his "employer" while he was the General Manager of King of Diamonds (prior to August of 2014). Nitty is "employer" or "joint employer" within the meaning of the Fair Labor Standards Act and/or Sec. 448.110, and has gross revenues in excess of \$500,000 annually.

27.

Defendant AK 'N Eli, LLC ("AK 'N ELI") is a Florida Limited Liability company which was formed on June 25, 2014. AK 'N ELI is an "employer" or "joint employer" within the meaning of the Fair Labor Standards Act, and/or Sec. 448.110, and has gross revenues in excess of \$500,000 annually. AK 'N ELI may be served with

process through its registered agent for service, Joshua Kon, 18851 NE 29 Ave., Suite 1005, Aventura, Fla., 33180.

28.

Subsequent to the sale of KOD in or about July of 2014, AK 'N ELI operated and managed King of Diamonds, including exercising direct control over the terms and conditions of Plaintiffs' employment.

29.

Defendant AQFC, LLC ("AQFC") is a Florida Limited Liability company which was formed on May 5, 2014. AQFC is an "employer" or "joint employer" within the meaning of the Fair Labor Standards Act, and/or Sec. 448.110, and has gross revenues in excess of \$500,000 annually. AQFC may be served with process through its registered agent for service, Joshua Kon, 18851 NE 29 Ave., Suite 1005, Aventura, Fla., 33180.

30.

Subsequent to the sale of KOD in or about July of 2014, AQFC operated and managed King of Diamonds, including exercising direct control over the terms and conditions of Plaintiffs' employment.

31.

Defendant KODRENYC, LLC, ("KODRENYC") is a Florida Limited Liability company which was formed on June 26, 2014. KODRENYC is an "employer" or "joint employer" within the meaning of the Fair Labor Standards Act, and/or Sec. 448.110, and has gross revenues in excess of \$500,000 annually. KODRENYC may be served with

process through its registered agent for service, Joshua Kon, 18851 NE 29 Ave., Suite 1005, Aventura, Fla., 33180.

32.

Subsequent to the sale of KOD in or about July of 2014, KODRENYC operated and managed King of Diamonds, including exercising direct control over the terms and conditions of Plaintiffs' employment.

CONDITIONS PRECEDENT

33.

All conditions precedent to this action have been satisfied, waived, and/or are otherwise unlawful or unenforceable.

FACTUAL ALLEGATIONS: INTERRELATIONSHIPS BETWEEN GALARDI-AFFILIATED ENTITIES/PERSONS

34.

Since 11/1/2006, the only Trustees of the JEG Trust have been Jack Galardi and Teri Galardi.

35.

Until his death in December of 2012, Jack Galardi was the sole Trustee of the JEG Trust, and was simultaneously the CEO/President and a Director of all Galardi-affiliated entities, including, but not limited to: Galardi South Enterprises, Inc., Galardi South Enterprise Consulting, Inc., Fly Low, Inc., MBJG Corporation, LVA Management & Consulting, Inc., and Jack E. Galardi, LLC.

36.

During his lifetime, Jack Galardi (sole Trustee of JEG Family Trust) did not

need anyone's approval on decisions regarding his clubs.

37.

During his lifetime, Jack Galardi (sole Trustee of JEG Family Trust) controlled Fly Low (King of Diamonds) as well as his other clubs through his management company (LVA).

38.

Subsequent to the death of Jack Galardi, Teri Galardi has been the sole Trustee of the JEG Family Trust and has simultaneously been the CEO/President and a Director of all of the Galardi-affiliated entities referenced herein, including but not limited to Galardi South Enterprises, Inc., Galardi South Enterprise Consulting, Inc., Fly Low, Inc., MBJG Corporation, LVA Management & Consulting, Inc., and Jack E. Galardi, LLC.

39.

Subsequent to the death of Jack Galardi, Teri Galardi (Sole Trustee of the JEG Family Trust) did not need anyone's approval on decisions regarding her clubs.

40.

Subsequent to the death of Jack Galardi, Teri Galardi (Sole Trustee of the JEG Family Trust) controlled Fly Low (King of Diamonds) as well as her other clubs through her management company (LVA).

41.

The JEG Trust has, since its formation in 2006, shared office space with Defendant GSEC at the following locations: 1730 N.E. Expressway, Atlanta, Ga., 30329 (until 2012) and 2555 Chantilly Drive, Atlanta, Ga., 30324 (since 2012).

42.

From April of 2008 until at least May 1, 2012, the JEG Trust shared office space with Defendant LVA (1730 Northeast Expressway NE #200, Atlanta, Ga., 30329)

43.

From April of 2008 until 2012, the JEG Trust shared office space with Defendant MBJG (at 1730 Northeast Expressway NE #200, Atlanta, Ga., 30329).

44.

From the date of the formation of Defendant Jack E. Galardi LLC (October of 2007) until at least April of 2012, the JEG Trust shared office space with Defendant Jack E. Galardi LLC (at 1730 Northeast Expressway NE #200, Atlanta, Ga., 30329)

45.

From not later than April of 2008 until at least April of 2012, the JEG Trust shared office space with Defendant Fly Low (at 1730 Northeast Expressway NE #200, Atlanta, Ga., 30329)

46.

Defendant Fly Low shared the same principal place of business (at 1730 Northeast Expressway NE #200, Atlanta, Ga., 30329)) with other Galardi Affiliated entities as follows:

| <u>Company</u> | <u>Years</u> |
|----------------|------------------------------------|
| MBJG | 2008, 2009, 2010, 2011, |
| GALARDI LLC | 2007, 2008, 2009, 2010, 2011, 2012 |

47.

Defendant Fly Low shared the same principal place of business (17800 NE 5th Avenue, Miami, Fla.) with other Galardi Affiliated entities as follows:

| <u>Company</u> | <u>Years</u> |
|----------------|--|
| LVA | 2008, 2009, 2010, 2011, 2012, 2013, 2014 |
| MBJG | 2012, 2013, 2014 |
| GALARDI LLC | 2013, 2014 |

48.

Defendant Fly Low shared office space (1730 Northeast Expressway NE #200, Atlanta, Ga., 30329) with other Galardi affiliated entities as follows:

| <u>Company</u> | <u>Years</u> |
|----------------|------------------------------|
| LVA | 2008, 2009, 2010, 2011, 2012 |
| MBJG | 2008, 2009, 2010, 2011, 2012 |
| GALARDI LLC | 2008, 2009, 2010, 2011, 2012 |

49.

Defendant Fly Low shared office space (17800 NE 5th Avenue, Miami, Fla). with other affiliated Galardi entities as follows:

| <u>Company</u> | <u>Years</u> |
|----------------|--------------|
| LVA | 2013, 2014 |
| MBJG | 2013, 2014 |
| GALARDI LLC | 2013, 2014 |

50.

At all times pertinent to this action, Defendants Fly Low, Inc., MBJG Corporation, LVA Management & Consulting, Inc., and Jack E. Galardi, LLC have utilized the same agent for service of process, Patricia Burnside, 2455 Hollywood Blvd., Suite 311, Hollywood, Fla., 33020.

51.

During the time period January 1, 2012 to November 30, 2012 Fly Low paid co

Defendant MBJG Corporation \$467,763 as rent and paid co-Defendant LVA Management & Consulting, Inc., \$254,451 as “management consulting fees.”

52.

During the time period January 1, 2012 to November 30, 2012, Fly Low paid “salaries” in the amount \$766,700 to persons as yet unknown, but whom, upon information and belief, included Teri Galardi and/or Jack Galardi, and Defendant Williams.

53.

The primary asset of MBJG since its incorporation in 2002 has been the real estate and improvements located at 17800 NE 5th Ave, Miami, Fla., 33162—the location of the King of Diamonds Club.

**FACTUAL ALLEGATIONS—“JOINT ENTERPRISE”
GALARDI-AFFILIATED ENTITIES PRIOR TO KOD SALE**

54.

During the relative time period (prior to the sale of KOD), Defendants JEG Trust, GSEC, GSE, Fly Low, MBJG, LVA, Galardi, LLC, Galardi, and, from a date as yet unknown in 2013 until the sale of KOD (in or about July of 2014), Nitty and Adams:

- (a) performed related activities (to wit: the management, operation, direction, of King of Diamonds);
- (b) through a unified operation (to wit: shared management, personnel, accounting and legal services, internet presence, advertising, office space, principal places of business, mailing addresses, agents for service of process);

- (c) for a common business purpose (to wit: the maximization of profit to be derived from operations at the King of Diamonds, and other strip clubs owned/operated by Galardi-aligned entities, including the JEG Trust)

55.

During the relative time period, Defendants JEG Trust, GSEC, GSE, Fly Low, MBJG, LVA, Galardi, LLC, Galardi, and, until the sale of KOD in or about July of 2014, Nitty and Adams constituted an "enterprise" within the meaning of the FLSA.

**FACTUAL ALLEGATIONS: PRIOR TO THE JULY KOD SALE,
KOD ENTERTAINERS WERE EMPLOYEES,
NOT INDEPENDENT CONTRACTORS.**

56.

At all times during the five years prior to the filing of this action, Defendants JEG Trust, GSEC, GSE, Fly Low, MBJG, LVA, Galardi LLC, Galardi, and, from a date as yet unknown in 2013 until the sale of KOD (in or about July of 2014), Nitty and Adams willfully mischaracterized and categorized all dancers/entertainers employed at KOD as "independent contractors" and have failed and refused to pay any wages or compensation to such dancers/entertainers.

57.

At all times during the five years prior to the filing of this action until the sale of KOD in or about July 2014, Defendants JEG Trust, GSEC, GSE, Fly Low, MBJG, LVA, Galardi LLC, Galardi (and, from a date as yet unknown in 2013 until the sale of KOD, Defendants Nitty and Adams) exercised a great degree of operational and management

control over all Enterprise clubs, particularly in the area of terms and conditions of employment applicable to dancers/entertainers.

58.

The primary job duties of the named Plaintiffs and all persons similarly situated consisted primarily of dancing on stage during the stage rotation, and performing personal dances (also called "lap dances" or "private dances") for customers, and spending time in semi-private rooms.

59.

Pursuant to the directions of the Galardi affiliate Defendants and/or their agents, Defendants have required entertainers to audition in order to be hired; however, an entertainer's physical appearance and not any level of dance, performance, or sales skill determines here suitability to perform at Defendants' clubs. Indeed, no prior experience or training is required to be hired as a dancer-entertainer.

60.

At all times prior to the KOD sale, Plaintiffs and all persons similarly situated were subject to corporate-wide, uniform rules, written guidelines and policies which were established the Galardi affiliated Defendants and agents acting on their behalves, which rules, guidelines and policies governed all KOD entertainers.

61.

At all times prior to the KOD sale, the Galardi affiliated Defendants, directly and through their agents, required Plaintiffs and those similarly situated to dance on stage and according to a stage rotation established by Defendants or their agents, including the disk

jockey (“DJ”). Pursuant to policies established by the Defendants and/or their agents, Entertainers performed at Defendants’ clubs, using Defendants’ stages and semi-private rooms.

62.

Prior to the KOD sale, pursuant to requirements established by Galardi affiliated Defendants and/or their agents, entertainers were put into the stage rotation and were required to dance at the time their name was called. Each stage dance was required to last for a specified number of songs. Entertainers were told how much clothing to remove during each song, i.e., top only during the first song, and then all clothing, save a G-String, during the second song.

63.

Prior to the KOD sale, Plaintiffs and all persons similarly situated were not allowed by the Galardi affiliated Defendants and/or their agents to choose the songs that were played while they danced.

64.

Prior to the KOD sale, the Galardi affiliated Defendants and/or their agents set the price of personal dances. The price for a personal dance was the same regardless of which entertainer performed the dance. Plaintiffs, and persons similarly situated, were not allowed to charge a different price than the price established by Defendants. Plaintiffs were not allowed to choose the song that played during personal dances.

65.

Pursuant to requirements imposed by the Galardi affiliated Defendants and/or

their agents, Plaintiffs and all other dancers/entertainers at all Enterprise clubs spent time in private rooms with customers. The price paid for time in a private room was set by Defendants and was the same regardless of which entertainer was spending time in the private room with the customer(s).

66.

Pursuant to the direction of the Galardi affiliated Defendants and/or their agents, Plaintiffs and all other dancers/entertainers at all Enterprise clubs were required to show up for work at a specific time, and to make up a schedule in advance. If they came to work late, they were charged a fee.

67.

Prior to the KOD sale, the Galardi affiliated defendants have regulated entertainers' attire and interactions with customers.

68.

Prior to the KOD sale, the Galardi affiliated defendants routinely required entertainers to attend meetings at Defendants' business for which they receive no compensation whatever.

69.

Prior to the KOD sale, the Galardi affiliated defendants required Plaintiffs to pay a "shift" or "house" fee each night they worked.

70.

Prior to the KOD sale, the Galardi affiliated defendants required entertainers to "kick back" to KOD 10% of the tips they received from KOD patrons during their shifts.

71.

In addition to the shift/house fees, and the 10% kickbacks, prior to the KOD sale, the Galardi affiliated defendants required entertainers to pay the Club disc-jockey (DJ) a monetary fee each night that they worked, in addition to "tip

72.

Prior to the KOD sale, pursuant to directions of the Galardi affiliated Defendants, of entertainers are late for work, fail to appear for a scheduled shift, or are deemed to have violated any of the club's rules, they are charged additional fees or fines

73.

Both before and after the KOD same, Plaintiffs and the class of persons they seek to represent have been subject to a variety of these fees and fines during the last five years.

74.

The fees and fines described in ¶¶69-73 constitute unlawful "kickbacks" to the employer within the meaning of the Fair Labor Standards Act, and Plaintiffs are entitled to restitution of all such fees and fines, and/or have such fees and finds counted as negative number in calculating the minimum wages to which they are entitled.

75

Prior to the KOD sale, the Galardi affiliated defendants financed all advertising and marketing efforts undertaken on behalf of the club.

76.

Prior to the KOD sale, the Galardi affiliated defendants made capital investments in the facilities, maintenance, sound system, lights, food, beverage and inventory. Plaintiffs did

not contribute money towards maintaining Defendants' club premises or otherwise provide facilities at the club.

77.

Prior to the KOD sale, the Galardi affiliated defendants made all hiring decisions regarding waitstaff, security, entertainer, managerial and all other employees at all Galardi affiliated night clubs.

78.

Prior to the KOD sale, Plaintiffs and all other KOD dancers/entertainers were dependent on customers' tips, making their opportunity for profit or loss a function of how much money customers have and are willing to spend and how much Defendants required entertainers to pay them in order to work at KOD.

79.

Prior to the KOD sale, the Galardi affiliated defendants' primary business purpose was to make money; they did so by attracting customers who wished to see women nude or in various stages of undress. The services performed by dancers-entertainers were integral to the success of KOD.

80.

Prior to the KOD sale, the Galardi affiliated defendants did not permit entertainers to hire other persons to perform their duties for them. The right to dance as an entertainer at KOD was a personal right, and only people hired by Defendants' managerial staff were allowed to perform at Defendants' clubs.

81.

Prior the KOD sale, the Galardi affiliated defendants required Plaintiffs and persons similarly situated to work more than forty hours in some weeks.

82.

Prior to the KOD sale, the Galardi affiliated defendants never paid Plaintiffs and all others similarly situated any amount as wages whatsoever, and have instead unlawfully required Plaintiffs to pay them for the privilege of working.

83.

The only source of monies received by Plaintiffs (and the class they seek to represent) relative to their employment with Defendants came in the form of gratuities received directly from customers, a portion of which they were required to pay to Defendants.

84.

Because Defendants did not pay Plaintiffs and all other similarly situated any wages whatsoever, Defendants did not pay Plaintiffs and all other similarly situated one-and-a-half times their regular rate of pay when Plaintiffs and others similarly situated worked over forty hours in a given workweek.

85.

This is at least the second suit over FLSA minimum wage and overtime violations against Galardi affiliated entities by entertainers identically situated to the Plaintiffs. The first suit, Clinicy v. Galardi, resulted in a \$1.6 million settlement in 2013. Defendants knew, or showed reckless disregard for the fact that they misclassified these individuals as

independent contractors, and accordingly failed to pay these individuals the minimum wage and failed to pay overtime at the required rate under the FLSA

86.

Both before and after the KOD sale, Defendants failed to maintain records of the number of hours worked by Plaintiffs and others similarly situated as required under the FLSA.

FACTUAL ALLEGATIONS: RETALIATION

87.

Subsequent to the filing of this action, over the weekend of April 19-21, the Galardi affiliated Defendants, in addition to Defendants Adams and Nitty, terminated the employment of named Plaintiffs Tiffany Thompson and Seleta Stanton, and opt-in Plaintiff Shanice Bain when they refused directions from King of Diamonds management to sign arbitration agreements which, by their terms, would have applied to the legal claims they raise in this action. Plaintiffs were told at the time that they were being terminated for refusing to sign such arbitration agreements. As a consequence of their terminations, Plaintiffs have suffered lost tip income.

88.

After being advised that she could return to work, Plaintiff Tiffany Thompson attempted to do so on April 26, 2014, at which time she was once again directed to sign an arbitration agreement which by its terms would have applied to Thompson's claims in this action. Once again, she refused, and once again, she was terminated by Defendants for such refusal. Once again, Plaintiff Thompson was told that she was being terminated for refusing

to sign the arbitration agreement. As a consequence of her second termination, Plaintiff Thompson has suffered lost tip income.

89.

Prior to their terminations, Plaintiffs Thompson, Stanton and Bain had asserted their rights under the FLSA, Article X, Section 24 of the Florida Constitution, and the FMWA by way of filing this action and/or by refusing to arbitrate their pre-existing legal claims under the FLSA, Article X, Section 24 of the Florida Constitution, and the FMWA.

FACTUAL ALLEGATIONS: THE JULY 2014 KOD SALE

90.

After the filing of this lawsuit, in or about July or August of 2014, the Galardi affiliated Defendants, acting in concert with Adams and Nitty and Taylor, negotiated and consummated a sale of Fly Low's and MBJG's lone assets—the going concern known as King of Diamonds and the real estate and improvements in which the going concern was situated.

91.

Ultimately, in July of 2014, the following entities AQFC, LLC, AK 'N ELI, LLC, and KODRENYC, LLC (all of which were formed in late Spring/early Summer of 2014 by and on behalf of EMK Equities, LLC, a New York limited liability corporation, and its principal, Elliott Kunstlinger) purchased KOD (the going concern and the associated real estate).

92.

At the time of the KOD sale, in addition to this lawsuit, a second lawsuit, Geter et al v. Galardi South Enterprises Inc. Et al, was also pending against GSE, GSEC, Fly Low,

Galardi, Adams and others, in which other KOD entertainers also pressed claims for minimum wage compensation under the FLSA (but not under Florida law).

93.

The Galardi affiliated Defendants were aware of the existence of this lawsuit and the Geter litigation at the time they consummated the KOD sale.

94.

During the course of the negotiations leading to the sale, the existence of this lawsuit and/or the Geter lawsuit was communicated by the Galardi affiliated defendants to the would be purchasers of the club (AQFC, LLC, AK 'N ELI, LLC, and KODRENYC, LLC), both verbally and/or in writing.

95.

Upon information and belief, during the due diligence period associated with the KOD sale, the Galardi affiliated Defendants provided written and other documentation to the purchasers of KOD which revealed the existence of this litigation (and/or the Geter litigation).

96.

More specifically, on or about June 19, 2014, the Galardi affiliated defendants received a Report from a CPA firm entitled "Valuation of Fly Low, Inc.", dated June 19, 2014, which explicitly referenced the existence of a pending wage and hour lawsuit.

97.

Upon information and belief, the June 19 report was provided by the Galardi affiliated Defendants to the would be KOD purchasers of KOD (i.e., the purchasers of the

going concern and the associated real estate): AQFC, LLC, AK 'N ELI, LLC, and KODRENYC, LLC (all of which were formed in late Spring/early Summer of 2014 by and on behalf of EMK Equities, LLC, a New York limited liability corporation, and its principal, Elliott Kunstlinger).

98.

The ultimate purchasers of KOD (AQFC, LLC, AK 'N ELI, LLC, and KODRENYC, LLC) had actual notice of the existence of this lawsuit and/or the Geter lawsuit prior to consummating the sale.

99.

Actual notice of the existence of this lawsuit (and/or the Geter litigation) on the part of AQFC, LLC, AK 'N ELI, LLC, and KODRENYC, LLC is also permissibly inferred from the fact this litigation and the Geter litigation would inevitably have been discovered in the course of any competent due diligence review by the Purchasers prior to consummating the sale by way of a simple PACER search using the search term "Fly Low, Inc" or "Galardi" on the Southern District of Florida database.

100.

Notwithstanding the actual knowledge of the Galardi affiliated defendants of the existence of this litigation, and the purchasers' corresponding actual knowledge of same, the Galardi affiliated Defendants signed documents in the course of the purchase-sales transaction which explicitly state that no pertinent litigation was pending against KOD.

101.

In light of the purchasers' actual notice of the pendency of this litigation and

the falsity of the Galardi affiliated defendants' disavowal of same in the sales transaction documents, the purchase-sales transaction constituted a fraudulent effort to avoid liabilities of the predecessor (i.e., the Galardi affiliated defendants).

102.

In the alternative, the Galardi affiliated entities did not provide actual notice to the purchasers of KOD (and that the such purchasers did not otherwise possess actual notice of the pendency of this lawsuit and/or Geter) and thereby perpetrated a fraud on the purchasers, for the purpose of dissipating assets and avoiding responsibility for payment of claims such as those presented in this action.

**FACTUAL ALLEGATIONS: EVENTS SUBSEQUENT
TO THE JULY 2014 KOD SALE**

103.

Subsequent to the July 2014 sale of KOD, the purchasers (AQFC, LLC, AK 'N ELI, LLC, and KODRENYC, LLC) continued to operate KOD in precisely the same fashion as KOD was operated prior to the sale, as set forth in Pars. "56"-"86", and with the same management (including general manager Adams and "Disco Rick" Taylor), the same policies, practices, level of control, employees, entertainers, theme, motif, and trade name as previously utilized prior to the sale, and collectively, they are a mere continuation of the predecessor.

104.

In addition, subsequent to the July KOD sale, the purchasers continued to:

- (a) willfully misclassify and mischaracterize entertainers as "independent contractors";

- (b) not to pay entertainers a penny in wages, including overtime; and
- (c) extracting from entertainers unlawful kickbacks in form of fees and fines entertainers were required to pay.

105.

In light of the Galardi affiliated Defendants' dissipation of assets by way of selling KOD (the going concern and the associated realty), they are no longer able to provide the relief requested herein.

106.

Simultaneously with the filing of this pleading, Plaintiffs are filing "opt-in" forms (Jordan Hargraves; Mary Aldredge; Krysal Wright; and Shavone Moore), who are persons who have worked as Entertainers at KOD subsequent to the sales transaction at issue, who also assert the same minimum wage claims under Florida law as that asserted by the named and existing opt-in Plaintiffs presently

**FACTUAL ALLEGATIONS—AQFC/AK'N ELI, KORDRENYC
"JOINT ENTERPRISE" AFTER KOD SALE**

107.

Subsequent to the sale of KOD, Defendants AQFC, AK'N ELI, and KORDRENYC:

- (a) performed related activities (to wit: the management, operation, direction, of King of Diamonds);
- (b) through a unified operation (to wit: shared management, personnel, accounting and legal services, advertising, office space, principal places of business, mailing addresses, agents for service of process);

- (c) for a common business purpose (to wit: the maximization of profit to be derived from operations at the King of Diamonds)

COLLECTIVE ACTION ALLEGATIONS—29 U.S.C. §216(b)

108.

Both before and after the KOD sale, the named Plaintiffs and all dancers/entertainers who worked at KOD during the 5 years prior to April 8, 2014, performed precisely the same job duties.

109.

Both before and after the KOD sale, the named Plaintiffs and all dancers/entertainers who worked at KOD during the 5 years prior to April 8, 2014 were subject to the same work rules established by the Defendants as identified above.

110.

Both before and after the KOD sale, the named Plaintiffs and all dancers/entertainers who worked at KOD during the 5 years prior to April 8, 2014 were subject to the terms and conditions of employment and the same degree of control, direction, supervision, promotion and investment imposed or performed by Defendants

111.

Both before and after the KOD sale, the named Plaintiffs and all dancers/entertainers who worked at KOD during the 5 years prior to April 8, 2014 were subject to the same across-the-board, uniformly applied corporate policy mandated by the Galardi affiliated Defendants and the July 2014 purchasers of KOD.

112.

Both before and after the KOD sale, the named Plaintiffs and all dancers/entertainers who worked at KOD during the 5 years prior to April 8, 2014 were subject to the same fees and fines.

113.

As a result of Defendants' across-the-board, standard operating procedure of mischaracterizing dancers/entertainers as "independent contractors" and their consequent failure to pay any wages or compensation whatever, numerous other current and former dancers and entertainers who worked at King of Diamonds during the applicable limitations period would, if notified of the existence of this action, elect to participate in this action if provided notice of same.

114.

Upon information and belief, more than 1000 dancers and entertainers have worked at King of Diamonds during the five years prior to the filing of this action, including hundreds who have worked at KOD since the July 2014 sale.

115.

Named Plaintiffs are "similarly situated" to the §216(b) class of persons they seek to represent, and will adequately represent the interests of the class.

116.

Named Plaintiffs have hired Counsel experienced in collective actions under 29 U.S.C. §216(b) who will adequately represent the class.

RULE 23 CLASS ACTION ALLEGATIONS

117.

With regards, to Plaintiffs' claims under Article X, Section 24 of the Florida Constitution and/or Fl. Stat. 448.100, Plaintiffs seek certification of a class comprised of all persons who, during the five year period prior to the filing of this action, were employed as dancers or entertainers at King of Diamonds, including such persons who were so employed after the July 2014 sale of KOD.

118.

Upon information and belief, the number of persons who comprise the class exceeds 1000.

119.

All questions of law and fact implicated in this action are common to the named Plaintiffs and the classes of persons she seeks to represent.

120.

The claims of the named Plaintiffs are typical of—identical to—the claims of the classes of persons they seek to represent.

121.

The named representative Plaintiffs will fairly and adequately represent the interests of the classes of persons they seeks to represent and they have engaged capable counsel experienced in litigating class claims, multiple plaintiff claims, and litigating complex civil actions.

122.

The prosecution of separate actions by individual members of the proposed Subclasses would create a risk of adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of other class members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

123.

Defendants have acted or refused to act---via application of an across-the-board unlawful policy of failing to pay minimum wage---on grounds generally applicable to the proposed Subclasses (i.e., misclassifying each and every dancer at all Enterprise clubs as “independent contractors”, thereby making appropriate final injunctive relief and/or corresponding declaratory relief with respect to the class as a whole.

124.

The interests of individual members of the class in individually controlling the prosecution of potential individual claims are minimal, particularly in light of statute of limitations and exhaustion of administrative remedies defenses that would or might be interposed in any such action, and which would not be applicable should this action be certified as a class action.

125.

No particular difficulties are likely to be encountered in the management of this case due to it being afforded class action status.

126.

All questions presented in this case---of law and fact—are common to the members of the proposed class and predominate over any questions affecting only individual members of the class.

127.

The relief necessary to remedy the wrongs visited upon the named Plaintiffs is the same as that necessary to remedy the claims of the class each class member. Plaintiffs seek, on behalf of themselves and the members of proposed class the following relief:

- (a) a declaratory judgment that Defendants have unlawfully misclassified dancers/entertainers who worked at King of Diamonds as independent contractors and have thereby denied them the minimum wages to which they are entitled under the Article X, Section 24 of the Florida Constitution and/or the FMWA, and a Declaration that the FMWA (Fl. Stat. 448.110) is unconstitutional;
- (b) payment of the minimum wages due under Florida Law for all hours dancers/entertainers worked at King of Diamonds into a common fund;
- (c) payment of an amount equal to item(b) as liquidated damages into a common fund;
- (d) mandatory injunctive relief requiring defendants to pay dancers/entertainers employed at King of Diamonds the minimum wages specified in the FMWA;
- (e) costs of this litigation and an award of attorney's fees.
- (f) restitution of all fees and fines exacted by the Defendants;

128.

A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

COUNT I
DECLARATORY JUDGMENT

129.

Plaintiffs repeat and reallege the allegations in the preceding paragraphs of this Complaint, and incorporate the same herein by this specific reference as though set forth herein in full.

130.

This claim is an action for Declaratory Judgment brought pursuant to the provisions of 28 U.S.C. § 2201 et seq.

131.

An actual controversy exists between the parties in this case in regard to the employment status of the named Plaintiffs and all others similarly situated (though Plaintiffs deny that there exists legal or factual support for the “independent contractor” policy/practice employed by the Defendants before and after the July 2014 KOD sale).

132.

Plaintiffs and all others similarly situated seek declaratory relief with respect to the legal relations of the parties arising from this controversy and their respective rights and responsibilities under the FLSA, to wit, whether Plaintiffs and all others similarly situated are or were the employees of Defendants.

133.

Plaintiffs and all others similarly situated seek declaratory relief to the effect to Fl. Stat. 448.110 violates Article X, Sec. 24 of the Florida constitution in the following particulars (among others):

- (a) Sec. 448.110(10), which provides that the FMWA is the "exclusive remedy" for violations of the Amendment;
- (b) Sec. 448.110(6)(a) and (b), which, propelled via the "exclusivity" provision, purport to impose an "exhaustion" requirement not expressly or implicitly authorized by the Amendment and are contrary to Article I, Section 24 of the Florida Constitution, which exhaustion requirement would vitiate the class action mechanism explicitly approved in Article X, Sec. 24 of the Florida constitution;
- (c) Sec. 448.110(6)(a) and (b) and 448.110(9), which, propelled via the "exclusivity" provision, would likely operate to eliminate the possibility litigating Florida minimum wage claims as Rule 23 style class actions by effectively transforming the Rule 23 proceeding into an FLSA-style "opt-in" style proceeding, despite the fact that Rule 23 class actions are explicitly authorized by the Amendment; and
- (4) Sec. 448.110(6)(c)(1) and (2), which restrict the remedies available for violations of the Amendment.

COUNT II
FLSA MINIMUM WAGE CLAIMS
(Violations of 29 U.S.C. §206)

134.

Plaintiffs repeat and reallege the allegations contained in paragraphs 1-128 of this Complaint, and incorporate the same herein by this specific reference as though set forth herein in full.

135.

Both before and after the July 2014 KOD sale, Defendants are or were the "employers" of the Plaintiffs and all others similarly situated within the meaning of the FLSA, 29 U.S.C. § 203(d).

136.

Both before and after the July 2014 KOD sale, Defendants are or were engaged in

“commerce” and/or in the production of “goods” for “commerce.”

137.

Both before and after the July 2014 KOD sale, Defendants operated enterprises engaged in commerce within the meaning of the FLSA, 29 U.S.C. § 203(s)(1), because they have employees engaged in commerce, and because their annual gross revenues are more than \$500,000.

138.

Plaintiffs (named and “opt-in”) have previously explicitly consented to sue in this action pursuant to 29 U.S.C. § 216(b).

139.

Both before and after the July 2014 KOD sale, Defendants misclassified Plaintiffs and all others similarly situated persons as independent contractors.

140.

Both before and after the July 2014 KOD sale, Defendants failed to pay Plaintiffs and all others similarly situated the minimum wage in violation of 29 U.S.C. § 206.

141.

Based upon the conduct alleged herein, both before and after the July 2014 KOD sale, Defendants knowingly, intentionally and willfully violated the FLSA by not paying Plaintiffs and all others similarly situated the minimum wage under the FLSA

142.

Defendants' actions complained of herein were not done in good faith reliance on any ruling or determination made by the U.S. Department of Labor.

143.

Due to Defendants' FLSA violations, Plaintiffs and all others similarly situated are entitled to recover from Defendants all unlawfully unpaid minimum wages, all fees, fines and other payments made by the Plaintiffs to the Defendants, and an equal amount in the form of liquidated damages (because Defendants' conduct was "willful"), as well as reasonable attorneys' fees and costs of the action, including interest, pursuant to 29 U.S.C. § 216(b), all in an amount to be determined at trial.

144.

In addition to their direct liability for acts which occurred after the KOD sale, the KOD purchasers (Defendants AQFC, LLC, AK 'N ELI, LLC, and KODRENYC) are liable to Plaintiffs under the doctrine of successor liability for all FLSA violations which occurred prior to the July 2014 KOD sale. Cuervo v. Airport Services, Inc, 984 F.Supp.2d 1333 (S.D. Fl. 2013)(Goodman, Magistrate Judge).

COUNT III
ARTICLE 10, SECTION 24 OF THE FLORIDA CONSTITUTION

145.

Plaintiffs repeat and reallege the allegations contained in paragraphs 1-128 of this Complaint, and incorporate the same herein by this specific reference as though set forth herein in full.

146.

Defendants' failure and refusal to pay the Plaintiffs and all persons similarly situated any wages whatsoever constitutes a willful violation of Article X, Section 24 of the Florida Constitution.

147.

Plaintiffs and the class they seek to represent are therefore entitled to recover the applicable minimum hourly rate specified under Florida law for each hour worked during the five years preceding the filing of this action, restitution of fees and fines unlawfully exacted from them by the Defendants, plus liquidated damages and attorney's fees and costs of litigation.

148.

In addition to their direct liability for acts which occurred after the KOD sale, the KOD purchasers (AQFC, LLC, AK 'N ELI, LLC, and KODRENYC) are liable to Plaintiffs under the doctrine of successor liability for all Florida law minimum wage violations which occurred prior to the July 2014 KOD sale. Cuervo v. Airport Services, Inc, 984 F.Supp.2d 1333 (S.D. Fl. 2013)(Goodman, Magistrate Judge).

COUNT IV
FLORIDA MINIMUM WAGE ACT (FMWA) MINIMUM WAGE CLAIMS

149.

Plaintiffs repeat and reallege the allegations contained in paragraphs 1-128 of this Complaint, and incorporate the same herein by this specific reference as though set forth herein in full.

150.

Defendants failure and refusal to pay the minimum wages required under Fla. Stat. 448.110 to the Plaintiff and all persons similarly situated represents a willful violation of FMWA, Fl. Stat. §448.110. Plaintiffs have satisfied all conditions precedent to the filing of this claim.

151.

Plaintiffs and the class they seek to represent are therefore entitled to recover the applicable minimum hourly rate specified under Florida law for each hour worked during the five years preceding the filing of this action, restitution of fees and fines unlawfully exacted from them by the Defendants, plus liquidated damages and attorney's fees and costs of litigation.

152.

In addition to their direct liability for acts which occurred after the KOD sale, The KOD purchasers (AQFC, LLC, AK 'N ELI, LLC, and KODRENYC) are liable to Plaintiffs under the doctrine of successor liability for all FLSA violations which occurred prior to the July 2014 KOD sale. Cuervo v. Airport Services, Inc, 984 F.Supp.2d 1333 (S.D. Fl. 2013)(Goodman, Magistrate Judge)

COUNT V
OVERTIME CLAIMS (Violation of 29 U.S.C. § 207)

153.

Plaintiffs repeat and reallege the allegations contained in paragraphs 1-128 of this Complaint, and incorporate the same herein by this specific reference as though set forth herein in full.

154.

Defendants are or were the "employer" or joint-employers and employ(ed), and Plaintiffs were the "employees" of those "employers" within the meaning of the FLSA, 29 U.S.C. § 203(d).

155.

Defendants are engaged in “commerce” and/or in the production of “goods” for “commerce.”

156.

Defendants are an enterprise engaged in commerce within the meaning of the FLSA, 29 U.S.C. § 203(s)(1), because they have employees engaged in commerce, and because their annual gross volume of sales made is more than \$500,000.

157.

Defendants failed to pay Plaintiffs and all others similarly situated wages at a rate of one and one-half (1 ½) times her regular rate, for hours worked in excess of forty (40) hours per week, in violation of 29 U.S.C. § 207, and are liable to Plaintiffs for same.

158.

Defendants knowingly, intentionally and willfully violated the FLSA by failing to pay Plaintiffs required overtime compensation.

159.

he KOD purchasers (AQFC, LLC, AK ‘N ELI, LLC, and KODRENYC) are liable to Plaintiffs under the doctrine of successor liability for all FLSA violations which occurred prior to the July 2014 KOD sale. Cuervo v. Airport Services, Inc, 984 F.Supp.2d 1333 (S.D. Fl. 2013)(Goodman, Magistrate Judge).

COUNT VI--FLSA RETALIATION

160.

Plaintiffs repeat and reallege the allegations contained in paragraphs 1-128 of this Complaint, and incorporate the same herein by this specific reference as though set forth

herein in full.

161.

Defendants' termination of Plaintiffs' Thompsons's and Stanton's employment on April 19-21 and 26 was substantially motivated by Plaintiffs' assertion of their rights under the FLSA by way of participating in this action, and/or by refusing to waive their rights under the FLSA (to a judicial forum, trial by jury, and to proceed by way of collective action) as to pre-existing legal claims under the FLSA of which Defendants had notice.

162.

Defendants' terminations of Plaintiffs' employment constitutes a violation of the anti-retaliation provision of the FLSA, 29 U.S.C. Sec. 215(a)(3).

163.

In addition to their direct liability for acts after the KOD sale, the KOD purchasers (AQFC, LLC, AK 'N ELI, LLC, and KODRENYC) are liable to Plaintiffs under the doctrine of successor liability for all FLSA violations which occurred prior to the July 2014 KOD sale. Cuervo v. Airport Services, Inc, 984 F.Supp.2d 1333 (S.D. Fl. 2013)(Goodman, Magistrate Judge).

**COUNT VII: RETALIATION: ARTICLE X, SECTION 24(D)
OF THE FLORIDA CONSTITUTION**

164.

Plaintiffs repeat and reallege the allegations contained in paragraphs 1-128 of this Complaint, and incorporate the same herein by this specific reference as though set forth herein in full.

165.

Defendants' termination of Plaintiffs' employment on April 19-21 and 26 was substantially motivated by Plaintiffs' assertion of their rights under Article 10 Section 24(d) of the Florida Constitution by way of participating in this action, and/or by refusing to waive their rights under Article 10 Section 24 (to a judicial forum, trial by jury, and to proceed by way of class action) as to their pre-existing legal claims under the Article I Section 10 of the Florida Constitution of which Defendants had notice.

166.

Defendants' terminations of Plaintiffs' employment constitutes a violation of Article 10, Section 24(D) of the Florida Constitution.

167.

The KOD purchasers (AQFC, LLC, AK 'N ELI, LLC, and KODRENYC) are liable to Plaintiffs under the doctrine of successor liability for all FLSA violations which occurred prior to the July 2014 KOD sale. Cuervo v. Airport Services, Inc, 984 F.Supp.2d 1333 (S.D. Fl. 2013)(Goodman, Magistrate Judge)

COUNT VIII: RETALIATION: FL STAT. SEC. 448.110(5)

168.

Plaintiffs repeat and reallege the allegations contained in paragraphs 1-128 of this Complaint, and incorporate the same herein by this specific reference as though set forth herein in full.

169.

Defendants' termination of Plaintiffs' employment on April 19-21 and 26 was

substantially motivated by Plaintiffs' assertion of their rights under Fl. State 448.100 by way of participating in this action, and/or by refusing to waive their rights under the Sec. 448.100 (to a judicial forum, trial by jury, and to proceed by way of collective action) as to pre-existing legal claims under Sec. 448.110 of which Defendants had notice.

170.

Defendants' terminations of Plaintiffs' employment constitutes a violation of Fl. Stat. Sec. 448.110(5).

171.

The KOD purchasers (AQFC, LLC, AK 'N ELI, LLC, and KODRENYC) are liable to Plaintiffs under the doctrine of successor liability for all FLSA violations which occurred prior to the July 2014 KOD sale. Cuervo v. Airport Services, Inc, 984 F.Supp.2d 1333 (S.D. Fl. 2013)(Goodman, Magistrate Judge).

COUNT NINE: FRAUDULENT TRANSFER

172.

Plaintiffs repeat and reallege the allegations contained in paragraphs 1-128 of this Complaint, and incorporate the same herein by this specific reference as though set forth herein in full.

173.

Plaintiffs bring this claim for fraudulent conveyance pursuant to the Florida Uniform Fraudulent Transfer Act ("UFTA"), providing creditors with the means to void fraudulent transfers, codified in law at F.S. §§ 726.101 through 726.112.

174.

Pursuant to the UFTA Plaintiff's seek to cancel all the transfers of transfers of assets out of the JEG Trust made for inadequate consideration during the last four years for the purpose of avoiding the claims of creditors (including any such transfers to Teri Galardi individually), and specifically including alienated assets previously owned by Fly Low, Inc., and/or MBJG, and/or LVA, and/or Jack E. Galardi, LLC.

175.

The transfers referenced above should be judicially rescinded and all money/property transferred out of the Trust should be returned to Defendant Teri Gilardi *as Trustee for the JEG Family Trust* so that it may be levied upon at the proper time to satisfy any future judgment that may be obtained in this litigation.

176.

Plaintiffs are "creditors" as defined in the UFTA.

177.

On or about May 19, 2014, Fly Low, MBJG, Galardi and AQFC, LLC, a Florida limited liability company, entered into the Agreement for Purchase and Sale ("Purchase Agreement"), to purchase the business ("Business") of the King of Diamonds Club ("KOD Club") and the property upon which it was located at 17800 NE 5th Ave, Miami Florida 33162 ("Property")

178.

On or about July 17, 2014, KODRENYC entered into an Assignment and Assumption Agreement with AQFC, LLC, whereby KODRENYC was assigned the rights under the Purchase Agreement to purchase the Property from MBJG. Also effective on or

about July 17, 2014, AK entered into an Assignment and Assumption Agreement with AQFC, LLC, whereby AK was assigned the rights under the APS to purchase the Business of the KOD Club from Fly Low.

179.

The above transfers were made by Fly Low, MBJG and Galardi without adequate consideration because, upon information and belief, the initial Purchaser (AQFC, LLC) and its Principal, Elliott Kuntslinger have never paid a single penny to KOD.

180.

The above transfer was also made, at least in part, with the intent to hinder, delay or defraud the Plaintiffs by means of the fraudulent transfer because no Gilardi Defendant ever disclosed the existence of this lawsuit and other litigations during the negotiations leading up to and the actual sale of KOD.

181.

The transfer was all of or substantially all of Fly Low's and MBJG's assets such that they likely could never pay a judgment in this case in excess of \$100,000 (one hundred thousand dollars) thereby rendering it insolvent.

182.

Since the buyers have not performed under the Purchase Agreement due to the alleged fraud committed by Galardi, the value of the consideration received by the debtor was not reasonably equivalent to the value of the assets transferred.

183.

For the same reasons identified above, to the extent that assets of the JEG Family Trust was transferred to other persons/entities for inadequate consideration for the purpose

of avoiding claims of creditors against the Trust, such transactions should be judicially rescinded and the parties to such transactions restored to the prior positions.

DEMAND FOR JURY TRIAL

184.

Plaintiffs, on behalf of themselves and all others similarly situated individuals, demand a trial by jury on all their claims so triable.

WHEREFORE, Plaintiff respectfully prays that this Court grant relief as follows:

- 1) trial by jury as to all issues of fact;
- 2) that Plaintiffs' State law claims under Article X, Section 24 of the Florida Constitution and/or Fl. Stat. Sec. 448.110, be certified as a class action pursuant to Fed. R. Civ. P. 23;
- 3) A declaratory judgment that for purposes of the FLSA, Article X, Section 24 of Florida Constitution and the FMWA to the effect that: (I) Plaintiffs and all others similarly situated are or were "employees" and were not "independent contracts"; (ii) Defendants are or were Plaintiffs' "employers" or "joint employer"; and (iii) the practices complained of herein are unlawful under the FLSA, Article X, Section 24 of the Florida Constitution and the FMWA; and (iv) The FMWA is unconstitutional because it violates the letter, spirit, and intent of Article X;
- 4) An award to the Plaintiffs and all others similarly situated for the minimum wage specified under the FLSA for all hours worked by the Plaintiffs during the three years preceding their having "opted-in" until the date of judgment, as well as restitution of all fees, fines, and charges paid to the Defendants by the Plaintiffs, liquidated damages, interest and attorney's fees as provided for under the FLSA;
- 5) An award to the Plaintiffs and all others similarly situated for the minimum wage specified under Florida law for all hours worked by the Plaintiffs during the last five years, as well restitution of all fees, fines, and charges paid to the Defendants by the Plaintiffs, liquidated damages, interest and attorney's fees as provided for in Article X, Section 24 of the Florida Constitution and the FMWA;

- 6) An award to the Plaintiffs and all others similarly situated judgment for lost overtime compensation calculated at one-half times the regular rate that Plaintiffs would have received for each hour worked in excess of forty (40) in any given work week but for Defendants unlawful conduct, as well as liquidated damages, interest and attorney's fees as provided for under the FLSA;
- 7) An award to Plaintiffs Stanton and Thompson to fully compensate for their retaliatory terminations of employment in April of 2014;
- 8) Liquidated damages in an amount equal to the minimum wages and overtime which Plaintiffs have been denied in violation of the FLSA and/or Article X and/or the FMWA;
- 9) Prejudgment Interest;
- 10) An award of attorney's fees and expenses as authorized by the FLSA, Article X, and the FMWA;
- 11) Such other and further relief as warranted by the facts and the law.

Respectfully submitted this 29th day of January 2015.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 29, 2015, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: /s/ Dana M. Gallup
DANA M. GALLUP

SERVICE LIST

*Jaszmann Espinoza et al v.
Galardi South Enterprises, Inc. et al*
CASE NO. 1:14-cv-21244—GOODMAN
Consent Case

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