

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Jose A. Rivera, On Behalf of Himself and
other Similarly Situated Employees

Plaintiff,

vs.

WVVA Properties, LLC.; D/B/A Club
Fantasy Gentleman's Club and Jeffrey R
White, individually,

Defendants.

Case No. 2:14-cv-04138-DCN
COLLECTIVE ACTION COMPLAINT
(Jury Trial Requested)

Plaintiff Jose A. Rivera individually and on behalf of all others similarly situated individuals, by way of his Complaint in the above-captioned matter, would allege and show unto this Honorable Court the following:

NATURE OF CLAIM

1. This is an action for violations of the minimum wage and overtime compensation provisions of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §201, et seq., and the South Carolina Payment of Wages Act ("SCPWA"), S.C. Code Ann. § 41-10-10, et seq. Plaintiff is former employee of the Defendants.

2. Plaintiff brings this lawsuit against Defendants as a collective action, pursuant to the collective action provisions of 29 U.S.C. § 216(b), on behalf of himself and all other similarly situated employees who suffered damages as a result of Defendants' violations of the minimum wage and overtime compensation provisions of the FLSA.

PARTIES, JURISDICTION AND VENUE

3. Plaintiff Jose A. Rivera is over the age of nineteen (19) and is a resident of Berkeley County, South Carolina. Mr. Rivera worked for the Defendants under the titles bouncer and assistant manger from approximately February 2014 until August 2014.

4. Defendant, WVVA Properties, LLC., is a for-profit business, organized under the laws of South Carolina.

5. Defendant Jeffrey R. White is a citizen and resident of the State of South Carolina and is the owner and operator of WVVA Properties, LLC.

6. Plaintiff brings this action, individually and as an opt-in collective action pursuant to 29 U.S.C. § 216(b), on behalf of a class of all similarly situated assistant mangers and bouncers employed by Defendants within the three years prior to joining this lawsuit, who were non-exempt employees and who worked over 40 hours a week, and did not receive time and half compensation for such hours.

7. Venue is proper in this District because, Defendants are located in Charleston County. Presently and at all times, Defendants have conducted substantial, continuous and systematic commercial activities in this County and the unlawful labor practices giving rise to Plaintiff's claims were committed in the Charleston Division of this Court.

8. This Court has jurisdiction of the state claims alleged herein, and of the FLSA claim per 28 U.S.C. § 1331, and 29 U.S.C. § 216 (b).

9. In addition, this Court has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367 over Plaintiff's pendent claims, which are brought pursuant to the statutory and common law of the State of South Carolina, because those claims arise out of the same transaction or occurrence as the federal claims alleged herein.

10. At all times material hereto Defendants managed, owned and/or operated an enterprise, and regularly exercised the authority to hire and fire employees, determine the work schedules of employees, set the rate of pay of employees, and control the finances and operations of such business. By virtue of such control and authority, Defendants were employers of Plaintiff as such term is defined by the Act. 29 U.S.C. §201 et seq.

11. At all times pertinent to this Complaint, Defendants owned operations that are engaged in interstate commerce or in the production of interstate commerce as defined by the Act, 29 U.S.C. §203(r) and 203(s).

12. Based upon information and belief, the annual gross sales volume of the Defendants' business was in excess of \$500,000.00 per annum at all times material hereto. Alternatively, the Plaintiff and those similarly situated employees worked in interstate commerce so as to fall within the protections of the FLSA.

FACTS

13. Defendant, WVVA Properties, LLC., upon information and belief owns, operates and manages Club Fantasy Gentleman's Club (The Club) which "is Charleston's BEST & ONLY 'full nude' Gentlemen's Club, SINCE 2003" located at 7240 Peppermill Pkwy North Charleston, SC 29418. (See. <http://www.clubfantasysc.com/>).

14. At all times relevant herein, Jeffrey R. White regularly exercised the authority to hire and fire employees, determine the work schedules of employees, set the rate of pay of employees, and control the finances and operations of the business.

15. The Defendants employ more than five (5) employees.

16. The Plaintiff worked for the Defendants as a assistant manger and a bouncer. His primary responsibilities included cleaning the club at opening and closing, searching customers

before they entered the club, collecting money from customers at the door, cleaning the bathrooms and providing security for the dancers.

17. Plaintiff was a non-exempt employee and was entitled to overtime pay when he worked more than 40 hours a week.

18. Plaintiff's job duties did **not** include, hiring or firing employees, disciplining employees, or setting and adjusting employee rates of pay.

19. Plaintiff was paid \$12.00 an hour.

20. Plaintiff regularly worked over forty (40) hours a week and was not paid time and half compensation.

21. Plaintiff worked on the days and times The Club was open. In addition, Plaintiff regularly worked one hour prior to opening and 2 hours after closing. The Club's hours are Wednesday, Thursday & Sunday 8pm - 4am, Friday & Saturday 8pm - 6am. (See. <http://www.clubfantasysc.com/>).

22. Plaintiff was not paid for all the hours that he worked.

23. There was no practical administrative difficulty that prohibited Defendants from accurately recording Plaintiff's time and paying Plaintiff for all time that he worked.

24. Defendants engaged in a pattern and practice of not paying Plaintiff for all hours worked and not paying Plaintiff the overtime rate for all hours worked in excess of forty hours per week.

25. Defendants made deductions from Plaintiff's paycheck for cash shortages, inventory shortages or other losses. These deductions reduced Plaintiff's hourly rate below the minimum wage.

26. At all times relevant to this Complaint, Plaintiff was a good and faithful employee of Defendants and consistently performed all of the essential functions of his job in an acceptable and competent manner.

27. At all times pertinent to this complaint, Defendants failed to comply with Title 29 U.S.C. §§ 201–209 in that Plaintiff and those similarly-situated wait staff and bartenders performed services and labor for Defendants for which Defendants made no provision to pay Plaintiff and other similarly situated employees compensation to which they were lawfully entitled.

FOR A FIRST CAUSE OF ACTION

(Fair Labor Standards Act–Failure to Pay Overtime Wages)
(Individual and Collective Action)

28. Plaintiff, on behalf of himself and all similarly situated employees, realleges and incorporate by reference all preceding paragraphs as if they were set forth herein verbatim.

29. Plaintiff and the members of the Plaintiff’s class were employees of Defendants for purposes of the Fair Labor Standards Act during times relevant to this Complaint. Defendants failed to pay Plaintiff and the members of the Plaintiff’s class at the rate of one-and-a-half times their normal rate of pay for all hours worked in excess of forty (40) hours per work week as required by section 7(a) of the FLSA, 29 U.S.C. § 207(a).

30. Defendants also failed to pay Plaintiff and the members of the Plaintiff’s class for all compensable time for which Plaintiff provided work for the benefit of Defendants.

31. Plaintiff and the members of the Plaintiff’s class are entitled to back wages at the rate of one-and-a-half times their regular rate of pay for all overtime hours worked in excess of forty (40) hours per week, pursuant to section 16(b) of the FLSA, 29 U.S.C. § 216(b).

32. Plaintiff and the members of the Plaintiff's class are also entitled to an award of back pay at their regular hourly rate or their overtime rate, as appropriate, as appropriate compensation for all time spent in working for Defendants, which was wrongfully excluded by Defendants in calculating their compensable time.

33. The failure of Defendants to compensate Plaintiff for overtime worked as required by the FLSA was knowing, willful, intentional, and done in bad faith.

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

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

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

37. As a direct and proximate result of Defendants' deliberate underpayment of wages, Plaintiff, and those similarly situated employees, have been damaged in the loss of minimum wages for one or more weeks of work with Defendants.

FOR A SECOND CAUSE OF ACTION

Violations of the Minimum Wage Provisions of the
Fair Labor Standards Act, 29 U.S.C. §216
(Individual and Collective Action Against All Defendants)

38. Plaintiff, on behalf of himself and all similarly situated employees, reallege and incorporate by reference all preceding paragraphs as if they were set forth again herein.

39. Plaintiff and similarly situated employees were not exempt from the minimum wage requirements of the FLSA, and were entitled to receive the required minimum wage for all hours worked each workweek.

40. Defendants failed to pay Plaintiff and similarly situated employees the required minimum wage for the hours worked during some workweeks.

41. Defendants misclassified and/or mistreated the Plaintiff and similarly situated employees as exempt from the minimum wage requirements of the FLSA.

42. Defendants were aware of the minimum wage requirements of the FLSA, and knew or should have known that Plaintiff and similarly situated employees did not qualify for an exemption to the minimum wage requirements of the FLSA.

43. Defendants' failure to pay Plaintiff and similarly situated employees according to the minimum wage requirements of the FLSA was willful.

44. Defendants did not make a good faith effort to comply with the minimum wage requirements of the FLSA.

45. As a result of Defendants violations of the minimum wage provisions of the FLSA, Plaintiffs and similarly situated employees are entitled to recover:

- a. Damages in the amount of their unpaid minimum wages;
- b. Liquidated damages in an equal amount; and
- c. Reasonable attorneys' fees and costs incurred in bringing this action.

FOR A THIRD CAUSE OF ACTION
(South Carolina Payment of Wages Act)
(Individual and Class Action)

46. Plaintiff, realleges and incorporate by reference all preceding paragraphs as if they were set forth herein verbatim.

47. Defendants are “employer” as defined by the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10(1).

48. Defendants employed Plaintiff within the State of South Carolina.

49. Defendants owes Plaintiff “wages” as defined in Section 41-10-10(2) of the Act, to compensate him for labor rendered to Defendants, as promised to Plaintiff and as required by law.

50. Defendants required Plaintiff to work “off the clock,” and did not pay them for all service rendered for the benefit of Defendants.

51. Defendants have failed to pay Plaintiff all wages due, as required by Sections 41-10-40 and -50 of the Act.

52. Defendants’ failure to pay Plaintiff all wages due is willful, without justification, and in violation of the duty of good faith and fair dealing.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Rivera and similarly situated employees who join this action demand:

- a. Designation of this action as a collective action on behalf of the FLSA collective class pursuant to 29 U.S.C. § 216 (b);
- b. Judgment against Defendants for an amount equal to Plaintiffs unpaid back wages at the applicable overtime rates;
- c. Judgment against Defendants that their violation of the FLSA and its implementing regulations were willful;
- d. Liquidated damages in an amount equivalent to the overtime damages owed to Plaintiffs;
- e. Treble damages pursuant to the South Carolina Payment of Wages Act
- f. Leave to add additional plaintiffs by motion, the filing of written consent forms; or any other method approved by the Court;
- g. Leave to amend to add other Defendants who meet the definition of Plaintiffs “employer, 29 U.S.C. § 203(d);
- h. Injunctive relief to require Defendants to record, report and preserve records sufficient to enable Plaintiff and similarly-situated employees to determine their wages, hours and conditions and practices of employment, including practices regarding deductions and payment and nonpayment of overtime as mandated by the FLSA; and
- i. Attorneys’ fees and costs; and
- j. All such further relief as the Court deems just and equitable.

JURY DEMANDED

Plaintiff Rivera on his behalf and on behalf of all other similarly-situated employees hereby demands a trial by jury.

Respectfully submitted,

/s/ Marybeth Mullaney

Marybeth Mullaney, Esq.

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October 14, 2014

Mount Pleasant, South Carolina.