

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

ASIA O. CLARK,	)	
CHARLENE A. BEATTY-BELL,	)	
EBONY N. BEYAH,	)	
PRINCESS N. FOWLER,	)	
and	)	
NIKKI J. ST. JOHN,	)	
individually and on behalf of others	)	
similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CIVIL ACTION FILE _____
	)	
RCI ENTERTAINMENT (NORTH	)	
CAROLINA), INC.,	)	COLLECTIVE ACTION
TOP SHELF ENTERTAINMENT,	)	
LLC, d/b/a CLUB ONYX	)	
CHARLOTTE,	)	
and	)	
RCI HOSPITALITY HOLDINGS,	)	
INC., f/k/a RICK’S CABARET	)	
INTERNATIONAL, INC.,	)	
	)	
Defendants.	)	JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiffs Asia O. Clark, Charlene A. Beatty-Bell, Ebony N. Beyah, Princess N. Fowler, and Nikki J. St. John (collectively, “Plaintiffs”), by and through their counsel, on behalf of themselves and all others similarly situated, upon personal knowledge as to themselves and information and belief as to other matters, file this lawsuit against Defendants RCI Hospitality Holdings, Inc. (formerly Rick’s

Cabaret International, Inc.); RCI Entertainment (North Carolina), Inc.; and Top Shelf Entertainment, LLC, d/b/a Club Onyx Charlotte (collectively “Defendants”), and show the following:

### **Nature of Complaint**

1.

Plaintiff brings this action to obtain full and complete relief and to redress the unlawful employment practices described herein.

2.

This action seeks declaratory relief, liquidated and actual damages for Defendants’ failure to pay federally mandated minimum and overtime wages to Plaintiffs in violation of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §201 *et seq.* (hereinafter “FLSA”), during Plaintiffs’ employment with Defendants.

### **Jurisdiction and Venue**

3.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1331, because the case involves a federal question under the FLSA.

4.

Venue is appropriate in this Court under 28 U.S.C. §1391, because Defendants RCI Entertainment (North Carolina), Inc. and Top Shelf

Entertainment, Inc. are North Carolina corporations, and a substantial part of the errors and omissions alleged in this Complaint occurred within this District at Plaintiffs' work location, 5300 Old Pineville Road, Charlotte, North Carolina 28217.

### **Parties**

#### **Plaintiffs**

5.

During the three years prior to the filing of this lawsuit, Plaintiffs worked as “entertainers” at Club Onyx-Charlotte (“the Club”), an adult entertainment nightclub located at 5300 Old Pineville Road, Charlotte, North Carolina 28217.

6.

Plaintiffs were residents of the state of North Carolina during the time they worked at Club Onyx-Charlotte.

7.

Plaintiffs have consented in writing to be parties to the FLSA claims in this action pursuant to 29 U.S.C. §216(b). Plaintiffs' signed consent forms are filed with this Court contemporaneously with this Complaint. Should additional plaintiffs join this action, their signed consent forms will be timely filed with this Court.

Proposed Collective Definition

8.

“Plaintiffs and others similarly situated” (the “FLSA Collective”) is defined as all persons who work or have worked as “entertainers” at Club Onyx-Charlotte within the three years prior to the filing of this lawsuit and up to the entry of judgment in this case.

Defendants

9.

Defendant RCI Hospitality Holdings, Inc. (formerly Rick’s Cabaret International, Inc.) is a foreign corporation with its headquarters at 10959 Cutten Road, Houston, Texas, 77066, that owns and operates adult “gentlemen’s clubs,” restaurants, and bars directly or through multiple subsidiaries around the United States.

10.

Defendant RCI Hospitality Holdings, Inc. is the parent company for Defendant RCI Entertainment (North Carolina), Inc. and is or has been the parent company for Defendant Top Shelf Entertainment, LLC.

11.

Eric S. Langan, President and Chief Executive Officer of Defendant RCI Hospitality Holdings, Inc., is, on information and belief, also an officer of RCI

Entertainment (North Carolina), Inc. and Defendant Top Shelf Entertainment, LLC; and the management personnel of Defendants RCI Entertainment (North Carolina), Inc. and Top Shelf Entertainment, LLC during all or part of the period from three years prior to the filing of this Complaint to the present were hired, supervised by, and report directly to, Mr. Langan.

12.

Defendant RCI Entertainment (North Carolina), Inc., is a domestic corporation registered in North Carolina with a principal office address listed with the North Carolina Department of State as 10959 Cutten Road, Houston, Texas, 77066, the same address as that of Defendant RCI Hospitality Holdings, Inc.

13.

During all or part of the time that Plaintiffs worked at Club Onyx-Charlotte, Defendant RCI Entertainment (North Carolina), Inc. has owned and/or operated the Club.

14.

Defendant Top Shelf Entertainment, LLC, is a domestic corporation registered in North Carolina with a principal office address listed with the North Carolina Department of State as 5300 Old Pineville Road, #120, Charlotte, North Carolina 28217.

15.

During all or part of the time that Plaintiffs worked at Club Onyx-Charlotte, Defendant Top Shelf Entertainment, LLC has owned and/or operated the Club.

16.

Defendant RCI Entertainment (North Carolina), Inc. is a wholly-owned subsidiary of Defendant RCI Hospitality Holdings, Inc. (formerly Rick's Cabaret International, Inc.) that owns or operates adult entertainment venues.

17.

Defendant Top Shelf Entertainment, LLC, is or has been a wholly-owned subsidiary of Defendant RCI Hospitality Holdings, Inc. (formerly Rick's Cabaret International, Inc.) that owns or operates adult entertainment venues.

18.

Defendant RCI International (North Carolina), Inc., and Defendant Top Shelf Entertainment, LLC, may be served with process by delivering a copy of the summons and complaint to their common registered agent, Dennis Guthrie, 719 East Boulevard, Charlotte, North Carolina 28203.

19.

Defendant RCI Hospitality Holdings, Inc. (formerly Rick's Cabaret International, Inc.) may be served with process by delivering a copy of the summons and complaint to its registered agent, Robert Axelrod, 5300 Memorial

Drive, Suite 700, Houston, Texas 77007.

**Factual Allegations**

20.

At all times material hereto, Club Onyx-Charlotte has been an “enterprise engaged in commerce or in the production of goods for commerce” as defined in the FLSA § 6(a), 29 U.S.C. §§ 203(s)(1) and 206 (a).

21.

At all times material hereto, Club Onyx-Charlotte had two or more “employees engaged in commerce” as defined by 29 U.S.C. § 203(s)(1)(A).

22.

At all times material hereto, Club Onyx-Charlotte had two or more “employees” engaged in the “production of goods for commerce” as defined in 29 U.S.C. § 203(s)(1)(A).

23.

At all times material hereto, Club Onyx-Charlotte had two or more “employees handling, selling or otherwise working on goods or materials that have been moved in or produced for commerce by any person.” as defined in 29 U.S.C. § 203(s)(1)(A).

24.

The “goods” referenced in the previous paragraph include, but are not

limited to, food, liquor, beer, wine, non-alcoholic beverages, credit card terminals, telephones, Internet, and facsimile.

25.

In all relevant years, Club Onyx-Charlotte 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 that are separately stated) within the meaning of 29 U.S.C. § 203(s)(1)(A).

26.

Plaintiffs worked as entertainers at Club Onyx-Charlotte from approximately November 2011 through February 2013 (Beatty-Bell); 2007 through November 2012 (Beyah); October 2007 through early 2015 (Clark); 2007 through September 2013 (Fowler); and February 2009 through March 2014 (St. John).

27.

Plaintiffs' work hours per work week at Club Onyx-Charlotte during the time they worked at the Club averaged a minimum of approximately 40 (Beatty-Bell); 35 (Beyah); 22 (Clark); 40 (Fowler) and 22 (St. John).

28.

The primary job duties of Plaintiffs and other Club Onyx-Charlotte entertainers were performing dances on stage during stage rotation, on tables, and in semi-private ("VIP") rooms, and performing personal or "lap" dances.



29.

At all times during the three years prior to the filing of this Complaint, one or more Defendants have categorized entertainers working at Club Onyx-Charlotte, including Plaintiffs, as “independent contractors” or “licensees.”

30.

Plaintiffs, and all other entertainers working at Club Onyx-Charlotte, were required each year to sign agreements, drafted entirely by Defendants.

31.

These agreements were usually presented to the entertainers either at the end of a shift (between 2am and 5am) or at the start of a shift when the entertainer was signing in. Despite the wording of one such version of the agreement stating that the “licensee has had an opportunity to consult with an attorney of her choice, prior to entering into this agreement,” the entertainers were told explicitly that they could not work at the club at all until the agreement was signed.

32.

The agreement contained a binding arbitration clause limiting the legal rights of each entertainer who signed such an agreement.

33.

The entertainers were not provided any consideration for signing these agreements.

34.

During the three years prior to the filing of this Complaint, Club Onyx-Charlotte's entertainers, including Plaintiffs, were not required to have any specialized training, education, or background.

35.

During the three years prior to the filing of this Complaint, Club Onyx-Charlotte entertainers, including Plaintiffs, were required to abide by written and verbal "House Rules" established by one or more Defendants, the violation of which has subjected entertainers to consequences including penalty fees; being sent home without being able to work, and/or being discharged.

36.

During the three years prior to the filing of this Complaint, Club Onyx-Charlotte entertainers, including Plaintiffs, were required to clock in and out when arriving at and leaving the Club and were subject to disciplinary action for arriving late or leaving early.

37.

During the three years prior to the filing of this Complaint, Club Onyx-Charlotte entertainers, including Plaintiffs, were required to dance on stage at specified times to music selected by the Club disc jockey or face fines as high as one hundred dollars.

38.

During the three years prior to the filing of this Complaint, Club Onyx-Charlotte entertainers, including Plaintiffs, were required to work one weekday or else be prohibited from working on weekends.

39.

During the three years prior to the filing of this Complaint, Club Onyx-Charlotte entertainers, including Plaintiffs, were required to work a minimum number of hours on weekend days, and entertainers who wanted to leave early were required to obtain written permission or face disciplinary consequences including having their access cards deactivated.

40.

During the three years prior to the filing of this Complaint, Club Onyx-Charlotte entertainers, including Plaintiffs, were required to go to meetings before opening or after closing as many as three times weekly, for which they were not compensated, a primary purpose of the which was to go over House Rules.

41.

During the three years prior to the filing of this Complaint, Club Onyx-Charlotte paid for marketing flyers that entertainers, including Plaintiffs, were asked to distribute without any compensation for doing so.

42.

During the three years prior to the filing of this Complaint, the amount Club Onyx-Charlotte customers were asked to pay for table, personal (“lap”), and private or semi-private (“VIP”) dances was set by RCI Hospitality Holdings, Inc. (or its predecessor, Rick’s Cabaret International, Inc.) or its agent.

43.

During the three years prior to the filing of this Complaint, Defendants have regulated the attire and interactions with customers of entertainers, including Plaintiffs.

44.

During the three years prior to the filing of this Complaint, Club Onyx-Charlotte entertainers, including Plaintiffs, have been required to pay a specific amount to the Club in order to work on any given shift.

45.

The specific amount entertainers, including Plaintiffs, were required to pay Club Onyx-Charlotte has been as much as \$120 per shift, depending on the arrival time of the entertainer. The amount of these payments, sometimes called “house fees” or “tip outs,” has been established by Defendant RCI Hospitality Holdings, Inc. (or its predecessor, Rick’s Cabaret International, Inc.) or its agent.

46.

In addition to paying house fees, Club Onyx-Charlotte entertainers, including Plaintiffs, were required to pay specified amounts to the disc jockey and the House Mom as well as a monthly locker fee.

47.

One or more Plaintiffs worked over forty hours in some weeks worked at Club Onyx-Charlotte.

48.

During the past three years, Defendants never paid Club Onyx-Charlotte entertainers any amount as wages. Instead, entertainers' sole source of work-related income has been "tips or gratuities" they have received from Defendants' customers for dances, the amount of which is determined by the Club. In addition, as of at least 2014, the Club did not consider fees attributable to personal dances or performances in semi-private rooms to be "tips or gratuities," and as such entertainers were not entitled to receive compensation for lap or VIP dances.

49.

During the past three years, Defendants did not pay Plaintiffs one-and-a-half times their regular rate of pay when Plaintiffs worked over forty hours in a given workweek.

50.

Due to Defendants' violations of the FLSA, Plaintiffs and the FLSA Collective have suffered damages including loss of compensation of, at least, minimum wage for all hours worked at Club Onyx-Charlotte and/or one and one-half times the regular rate of pay for all hours worked in excess of forty (40) hours per work week.

### **CAUSES OF ACTION**

#### **Claim 1: Violation of the Minimum Wage Requirement of the Fair Labor Standards Act.**

51.

Defendants are governed by and subject to the FLSA, including 29 U.S.C. §§ 204 and 29 U.S.C. §§206-207.

52.

Due to, *inter alia*, the interrelationships and mutual interests described in paragraphs 9 to 19, 42, and 45 of this Complaint, Defendants are Plaintiffs' "joint employer" or an "integrated enterprise" under the FLSA.

53.

Due, *inter alia*, to the factual circumstances described above in paragraphs 28 through 43 of this Complaint, Plaintiffs and others who work or have worked as adult entertainers at Club Onyx-Charlotte within the three years prior to the filing of this Complaint are "employees" within the meaning of the FLSA, 29 U.S.C. §

203(e)(1).

54.

The minimum wage and overtime provisions of the FLSA, 29 U.S.C. §201 *et seq.*, apply to Defendants and protect Plaintiffs.

55.

The fees described in Paragraphs 45 and 46 of this Complaint constitute unlawful “kickbacks” to the employer within the meaning of the Fair Labor Standards Act.

56.

Due to Defendants’ violations of the FLSA, 29 U.S.C. §206, by failing to pay minimum wage for time that Plaintiffs and the FLSA Collective worked at the Club Onyx-Charlotte and withholding unlawful “kickback” fees, Plaintiffs and the FLSA Collective have suffered damages including loss of compensation at, at least, minimum wage for hours worked at Club Onyx-Charlotte, for which they received no wages.

57.

Plaintiffs have consented in writing to be parties to the FLSA claims in this action pursuant to the FLSA, 29 U.S.C. §216(b). Plaintiffs’ signed consent forms are filed with this Court contemporaneously with this Complaint. Should additional plaintiffs join this action, their signed consent forms will be timely filed

with this Court.

58.

Defendants knew, or showed reckless disregard for the fact, that they misclassified these individuals as independent contractors or licensees, and accordingly failed to pay these individuals the minimum wage and failed to pay overtime at the required rate under the FLSA. In particular, Defendants have been aware of multiple lawsuits in which “entertainers” similarly situated to Plaintiffs have been found to be “employees” entitled to the protections of the FLSA, including a 2008 lawsuit by an entertainer against Rick’s Cabaret International, Inc. that was resolved through an offer of judgment in the plaintiff’s favor as well as the classification of entertainers at Rick’s Cabaret in Minnesota as employees, but have persisted in misclassifying its entertainers as non-employees in willful violation of the FLSA, 29 U.S.C. §255(a).

59.

Pursuant to the FLSA, 29 U.S.C. §216, Plaintiffs bring this lawsuit on behalf of themselves and the FLSA Collective to recover unpaid wages, liquidated damages in an equal amount, attorneys’ fees, interest, the costs of this litigation, and any other relief to which they are legally entitled.

60.

At all times material hereto, Defendants required Plaintiffs to pay a portion



of their tips to Defendants' agents and employees who did not work in positions that are customarily and regularly tipped, in violation of 29 U.S.C. § 203(m).

61.

Defendants' requirement that fees be paid by Plaintiffs to Defendants and their agents and employees violated the "free and clear" requirement of 29 C.F.R. §531.35.

**Claim 2: Violation of the Overtime Wage Requirement  
of the Fair Labor Standards Act.**

62.

Defendants are governed by and subject to the FLSA, including 29 U.S.C. §204 and 29 U.S.C. §§206-207.

63.

Due to, *inter alia*, the interrelationships and mutual interests described in paragraphs 9 to 19, 42, and 45 of this Complaint, Defendants are Plaintiffs' "joint employer" or an "integrated enterprise" under the FLSA.

64.

Due, *inter alia*, to the factual circumstances described above in paragraphs 28 through 43 of this Complaint, Plaintiffs and others who work or have worked as adult entertainers at Club Onyx-Charlotte within the three years prior to the filing of this Complaint are "employees" within the meaning of the FLSA, 29 U.S.C. § 203(e)(1).

65.

One or more Plaintiffs worked over forty hours in some weeks worked at Club Onyx-Charlotte.

66.

The minimum wage and overtime provisions of the FLSA, 29 U.S.C. §201 *et seq.*, apply to Defendants and protect Plaintiffs.

67.

Due to Defendants' violations of the FLSA, 29 U.S.C. §207, Plaintiffs and the FLSA Collective have suffered damages including loss of compensation at, at least, minimum wage for hours worked at Club Onyx-Charlotte plus time and one-half the regular rate of pay for any hours worked in excess of 40 in a work week, for which they received no compensation.

68.

Plaintiffs have consented in writing to be parties to the FLSA claims in this action pursuant to the FLSA, 29 U.S.C. §216(b). Plaintiffs' signed consent forms are filed with this Court contemporaneously with this Complaint. Should additional plaintiffs join this action, their signed consent forms will be timely filed with this Court.

69.

Defendants knew, or showed reckless disregard for the fact, that they

misclassified these individuals as independent contractors or licensees, and accordingly failed to pay these individuals the minimum wage and failed to pay overtime at the required rate under the FLSA. In particular, Defendants have been aware of multiple lawsuits in which “entertainers” similarly situated to Plaintiffs have been found to be “employees” entitled to the protections of the FLSA, including a 2008 lawsuit by an entertainer against Rick’s Cabaret International, Inc. that was resolved through an offer of judgment entered in the plaintiff’s favor as well as the classification of entertainers at Rick’s Cabaret in Minnesota as employees, but have persisted in misclassifying its entertainers as non-employees in willful violation of the FLSA, 29 U.S.C. §255(a).

70.

Pursuant to the FLSA, 29 U.S.C. §216, Plaintiffs bring this lawsuit on behalf of themselves and the FLSA Collective to recover unpaid wages, liquidated damages in an equal amount, attorneys’ fees, interest, the costs of this litigation, and any other relief to which they are legally entitled.

Because Defendants have failed to “post and keep posted a notice explaining the [FLSA] ... in [a] conspicuous place[],” as required by 29 CFR § 516.4, the FLSA’s statute of limitations for overtime claims should be tolled throughout the entire period of the FLSA Collective’s employment by Defendants.

### **Prayer for Relief**

**WHEREFORE**, Plaintiffs and the FLSA Collective respectfully request that this Court:

- (A) Grant Plaintiffs and the FLSA Collective a trial by jury as to all triable issues of fact;
- (B) Enter judgment awarding Plaintiffs and the FLSA Collective unpaid minimum wages and overtime wages pursuant to the FLSA; 29 U.S.C. §§ 206, 207, liquidated damages as provided by 29 U.S.C. §216, pre-judgment and post-judgment interest on unpaid wages pursuant to 29 U.S.C. §216, and court costs, expert witness fees, reasonable attorneys' fees as provided under 29 U.S.C. §216, and all other remedies allowed under the FLSA, including but not limited to repayment of all illegal "kickbacks" paid by Plaintiffs to Defendants and liquidated damages in an equal amount;
- (C) Grant declaratory judgment declaring that Plaintiffs' rights and the rights of the FLSA Collective have been violated; and
- (D) Award Plaintiffs and the FLSA Collective such further and additional relief as may be just and appropriate.

Respectfully submitted, this 1st day of April, 2015

**NORTHUP, McCONNELL &  
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*Motion for Pro Hac Vice Admission To Be  
Filed According to Local Rule 83.1*

Counsel for Plaintiffs