**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF TEXAS**
**DALLAS DIVISION**

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| **ESTHER SUE ELIAZO on Behalf of Herself and on Behalf of All Others Similarly Situated,** | § | |
| **Plaintiff,** | § | **CIVIL ACTION NO. 3:12-cv-03605** |
| **V.** | § | **JURY TRIAL DEMANDED** |
| **BABY DOLLS TOPLESS SALOONS, INC., DB ENTERTAINMENT, INC., BDS RESTAURANT, INC., BABY DOLLS OF DALLAS, INC., and STEVEN CRAFT,** | § | |
| **Defendants.** | § | |

**PLAINTIFF'S ORIGINAL COLLECTIVE ACTION**
**COMPLAINT & JURY DEMAND**

**SUMMARY**

1. Defendants Baby Dolls Topless Saloons, Inc., DB Entertainment, Inc., BDS Restaurant, Inc., Baby Dolls of Dallas, Inc., and Steven Craft (hereinafter "Defendants") required and/or permitted Plaintiff Esther Sue Eliazo to work as a dancer at their adult entertainment clubs in excess of forty (40) hours per week, but refused to compensate her at the applicable minimum wage and overtime rate. In fact, Defendants refused to compensate Plaintiff at all for the hours she worked. Plaintiff's only compensation was in the form of tips from club patrons.

2. Defendants' conduct violates the Fair Labor Standards Act (FLSA), which requires non-exempt employees to be compensated for their overtime work at a rate of one and one-half times their regular rate of pay. *See* 29 U.S.C. § 207(a).

3. Furthermore, Defendants' practice of failing to pay tipped employees pursuant to 29 U.S.C. § 203(m), violates the FLSA's minimum wage provision. *See* 29 U.S.C. §§ 203, 206.

4. Plaintiff brings a collective action to recover the unpaid wages owed to her and all other similarly situated employees, current and former, of Defendants throughout Texas. Members of the Collective Action are hereinafter referred to as "Class Members."

## SUBJECT MATTER JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action under 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

6. Venue is proper in the Northern District of Texas because a substantial portion of the events forming the basis of this suit occurred in this District, and Defendants are located and conduct business in this District.

## PARTIES AND PERSONAL JURISDICTION

7. Plaintiff Esther Sue Eliazo is an individual residing in Tarrant County, Texas. Plaintiff's written consent to this action is attached as "Exhibit A."

8. The Class Members are all current and former dancers who worked throughout Texas at one or more of Defendants' clubs at any time during the three year period before the filing of this Complaint.

9. Defendant Baby Dolls Topless Saloons, Inc. is a domestic corporation doing business in Texas for the purpose of accumulating monetary profit. Service of process can be effectuated upon Defendant's registered agent: Steven W. Craft, 10723 Composite Dr., Dallas, Texas 75354.

10. Defendant DB Entertainment, Inc. is a domestic corporation doing business in Texas for the purpose of accumulating monetary profit. Service of process

can be effectuated upon Defendant's registered agent: Steven W. Craft, 10723 Composite Dr., Dallas, Texas 75220.

11. Defendant BDS Restaurant, Inc. is a domestic corporation doing business in Texas for the purpose of accumulating monetary profit. Service of process can be effectuated upon Defendant's registered agent: Steven W. Craft, 10723 Composite Dr., Dallas, Texas 75354.

12. Defendant Baby Dolls of Dallas, Inc. is a domestic corporation doing business in Texas for the purpose of accumulating monetary profit. Service of process can be effectuated upon Defendant's registered agent: Mike Murphy, 5952 Royal Lane, Suite 156, Dallas, Texas 75230.

13. Defendant Steven Craft is an individual residing in Texas. Service of process can be effectuated on Defendant at the following address: 10723 Composite Dr., Dallas, Texas 75354.

**FLSA COVERAGE**

14. At all material times, Defendants have been employers within the meaning of 3(d) of the FLSA. 29 U.S.C. § 203(d).

15. At all material times, Defendants have operated as a "single enterprise" within the meaning of 3(r)(1) of the FLSA. 29 U.S.C. § 203(r)(1). That is, Defendants perform related activities through unified operation and common control for a common business purpose. *See Brennan v. Arnheim and Neely, Inc.*, 410 U.S. 512, 515 (1973); *Reich v. Bay, Inc.*, 23 F.3d 110, 113 (5th Cir. 1994).

16. Baby Dolls is a family of gentlemen's clubs. Indeed, they advertise themselves as such.[1] The fact that they run each club identically and their customers can expect the same kind of entertainment service regardless of the location is Defendants' main advertising selling point. In fact, Defendants use one website to provide their clubs' information, events and specials for all club locations.

17. Defendants represent themselves to the general public as one club—Baby Dolls —operating at multiple locations in Texas: Dallas, Fort Worth and Arlington. They share employees, have a common management, pool their resources, operate from the same headquarters, have common ownership, and have the same operating name. They share many of the same exotic dancers to draw in customers. "Baby Dolls" family of clubs exists under the control and direction of Defendants. This family of clubs provides the same service product to its customers by using a set formula when conducting its entertainment business. Part of that set formula is the wage violation alleged in this complaint. These facts represent a classic example of "corporate fragmentation."

18. Thus, the Defendants formed a "single enterprise" and are each liable for the violations of the other.

19. At all material times, Defendants have been an enterprise in commerce or in the production of goods for commerce within the meaning of 3(s)(1) of the FLSA because they have had employees engaged in commerce. 29 U.S.C. § 203(s)(1).

20. Furthermore, Defendants have had, and continue to have, an annual gross business volume in excess of the statutory standard.

21. At all material times, Plaintiff was an individual employee who engaged in commerce or in the production of goods for commerce as required by 29 USC § 206-207.

[1] http://www.babydolls.com/.

22. Defendant Steven Craft is the owner and manager of the Baby Dolls Clubs.

23. Defendant Steven Craft controlled the nature, pay structure, and employment relationship of the Plaintiff and Class Members.

24. Further, Defendant Steven Craft had, at all times relevant to this lawsuit, the authority to hire and fire employees, the authority to direct and supervise the work of employees, the authority to sign on the business's checking accounts, including payroll accounts, and the authority to make decisions regarding employee compensation and capital expenditures. Additionally, he was responsible for the day-to-day affairs of the clubs. In particular, he was responsible for determining whether the clubs complied with the Fair Labor Standards Act.

25. As such, pursuant to 29 U.S.C. § 203(d), Defendant Steven Craft acted directly or indirectly in the interest of Plaintiff's and Class Members' employment as their employer, which makes him individually liable under the FLSA.

**FACTS**

26. Defendants operate various adult entertainment clubs throughout the Texas under the name of Baby Dolls. Said locations include, but are not limited to Fort Worth, Dallas and Arlington.

27. Defendants employ dancers at all of the aforementioned locations.

28. Plaintiff Esther Sue Eliazo is a former dancer at Defendants' adult entertainment clubs.

29. Plaintiff worked on a regular basis for Defendants' gentlemen establishments from approximately October 2010 through January 2012.

30. The dancers, like the Plaintiff, are compensated exclusively through tips

from Defendants' customers. That is, Defendants do not pay the dancers whatsoever for any hours worked at their establishments.

31. Furthermore, Defendants charge the dancers a "house fee" per shift worked. Defendants also require the dancers to share their tips with non-service employees who do not customarily and regularly receive tips, including the disc jockeys and the managers.

32. Finally, Defendants encourage their customers to tip the dancers using house certificates rather than cash. These certificates, which are redeemable at any of the Baby Dolls locations, are referred to as "BabyDolls Bucks." Under this system, customers purchase certificates from the club. Customers then redeem the certificates for dances. When the dancers turn in the certificates to the clubs for cash, Defendants do not return the full value to them. Instead, Defendants retain a portion of the tips. This resulted in Defendants taking a portion of the tips that should have been paid to the dancer.

33. Defendants illegally classified the dancers as independent contractors. However, at all times, the dancers were employees of Defendants as that term is defined by the FLSA and relevant case law.

34. Defendants hired/fired, issued pay, supervised, directed, disciplined, scheduled and performed all other duties generally associated with that of an employer with regard to the dancers.

35. In addition, Defendants instructed the dancers about when, where, and how they were to perform their work.

36. The following facts further demonstrate the dancers' status as employees:

a) Defendants have the sole right to hire and fire the dancers;

b) Defendants required dancers to complete an employee application as a prerequisite to working at their clubs;

c) Defendants provided the dancers with music equipment and a performing stage;

d) Defendants supervised the dancers;

e) Defendants scheduled dancers and as such had sole control over their opportunity for profit;

f) Defendants set and advertised special events and prices at its clubs and as such had sole control over their opportunity for profit;

g) Defendants apply fines to the dancers if they failed to follow Defendants' schedule; and

h) The dancers were hired as permanent employees and have worked for Defendants for years.

37. Defendants misclassified the Plaintiff and Class Members as independent contractors to avoid their obligations to pay them pursuant to the FLSA.

38. Plaintiff and Class Members are not exempt from the overtime and minimum wage requirements under the FLSA.

39. Although Plaintiff and Class Members are required to and do in fact frequently work more than forty (40) hours per workweek, they are not compensated at the FLSA mandated time-and-a-half rate for hours in excess of forty (40) per workweek. In fact, they receive no compensation whatsoever from Defendants and thus, Defendants violate the minimum wage requirement of the FLSA. *See* 29 U.S.C. § 206.

40. Defendants' method of paying Plaintiff in violation of the FLSA was willful and was not based on a good faith and reasonable belief that its conduct complied with the FLSA. Defendants misclassified Plaintiff with the sole intent to avoid paying her in accordance to the FLSA.

## EQUITABLE TOLLING

41. The doctrine of equitable tolling preserves a plaintiff's full claim when a strict application of the statute of limitations would be inequitable. *See Davis v. Johnson*, 158 F.3d 806, 811. (5th Cir. 1998).

42. Equitable tolling is proper when an employer has engaged in misleading conduct. Defendants intentionally misled the Plaintiff into believing that it was not required to pay her minimum wage and/or overtime for hours worked in excess of forty (40) hours per workweek. Additionally, Defendants failed to place the necessary and required Department of Labor posters which inform workers of their rights. Consequently, the Plaintiff and Class Members were victims of fraud and unable to ascertain any violation taking place.

43. Thus, the statute of limitations for the Plaintiff and Class Members should be equitably tolled due to Defendants' fraudulent concealment of the Plaintiff's and Class Members' rights. Plaintiff therefore seeks to have the limitations period extended from the first date that Defendants used this covert payroll practice up to the time each Class Member joins this lawsuit.

## VIOLATION OF 29 U.S.C. § 207

44. Plaintiff incorporates all allegations contained in the foregoing paragraphs.

45. Defendants' practice of failing to pay Plaintiff and Class Members time-and-a-half rate for hours in excess of forty (40) per workweek violates the FLSA. 29 U.S.C. § 207.

46. None of the exemptions provided by the FLSA regulating the duty of employers to pay overtime at a rate not less than one and one-half times the regular rate at which its employees are employed are applicable to the Defendants or the Plaintiff.

**VIOLATION OF 29 U.S.C. § 206**

47. Plaintiff incorporates all allegations contained in the foregoing paragraphs.

48. Defendants' practice of failing to pay Plaintiff and Class Members at the required minimum wage rate violates the FLSA. 29 U.S.C. § 206. Defendants do not compensate them whatsoever for any hours worked.

49. None of the exemptions provided by the FLSA regulating the duty of employers to pay employees for all hours worked at the required minimum wage rate are applicable to the Defendants or the Plaintiff.

**VIOLATION OF 29 U.S.C § 211(c)**

50. Plaintiff incorporates all allegations contained in the foregoing paragraphs.

51. Defendants failed to keep adequate records of Plaintiff's and Class Members' work hours and pay in violation of section 211(c) of the Fair Labor Standards Act. *See* 29 U.S.C. § 211(c).

52. Federal law mandates that an employer is required to keep for three (3) years all payroll records and other records containing, among other things, the following information:

a) The time of day and day of week on which the employees' work week begins;

b) The regular hourly rate of pay for any workweek in which overtime compensation is due under section 7(a) of the FLSA;

c) An explanation of the basis of pay by indicating the monetary amount paid on a per hour, per day, per week, or other basis;

d) The amount and nature of each payment which, pursuant to section 7(e) of the FLSA, is excluded from the "regular rate";

e) The hours worked each workday and total hours worked each workweek;

f) The total daily or weekly straight time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation;

g) The total premium for overtime hours. This amount excludes the straight-time earnings for overtime hours recorded under this section;

h) The total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments;

i) The dates, amounts, and nature of the items which make up the total additions and deductions;

j) The total wages paid each pay period; and

k) The date of payment and the pay period covered by payment.

29 C.F.R. 516.2, 516.5.

53. Defendants have not complied with federal law and have failed to maintain such records with respect to the Plaintiff and Class Members. Because Defendants' records are inaccurate and/or inadequate, Plaintiff and Class Members can meet their burden under the FLSA by proving that they, in fact, performed work for which they were improperly compensated, and produce sufficient evidence to show the amount and extent of the work "as a matter of a just and reasonable inference." *See, e.g.*, *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687 (1946).

## COLLECTIVE ACTION ALLEGATIONS

54. Plaintiff has actual knowledge that Class Members have also been denied overtime pay for hours worked over forty hours per workweek and have been denied pay at the federally mandated minimum wage rate. That is, Plaintiff worked with other dancers, many who also worked at Defendants' multiple locations. As such, she has first-hand personal knowledge of the same pay violations throughout Defendants' multiple establishments. Furthermore, other dancers at Defendants' various establishments have shared with her similar pay violation experiences as those described in this complaint.

55. Defendants' website states that it employs over 175 exotic dancers at each of its three locations. *See* http://www.babydolls.com/.

56. Other employees similarly situated to the Plaintiff work or have worked for Defendants' gentlemen's club businesses, but were not paid overtime at the rate of one and one-half their regular rate when those hours exceeded forty hours per workweek. Furthermore, these same employees were denied pay at the federally mandated minimum wage rate.

57. Although Defendants permitted and/or required the Class Members to work in excess of forty hours per workweek, Defendants have denied them full compensation for their hours worked over forty. Defendants have also denied them full compensation at the federally mandated minimum wage rate.

58. The Class Members perform or have performed the same or similar work as the Plaintiff.

59. At each of the Baby Dolls locations (Dallas, Ft. Worth, and Arlington), the clubs employ women who provide dances for the clubs' customers.

60. Class Members regularly work or have worked in excess of forty hours during a workweek.

61. Class Members are not exempt from receiving overtime and/or pay at the federally mandated minimum wage rate under the FLSA.

62. As such, Class Members are similar to Plaintiff in terms of job duties, pay structure, misclassification as independent contractors and/or the denial of overtime and minimum wage.

63. Defendants' failure to pay overtime compensation and hours worked at the minimum wage rate required by the FLSA results from generally applicable policies or practices, and does not depend on the personal circumstances of the Class Members.

64. The experiences of the Plaintiff, with respect to her pay, are typical of the experiences of the Class Members.

65. The specific job titles or precise job responsibilities of each Class Member does not prevent collective treatment.

66. All Class Members, irrespective of their particular job requirements, are entitled to overtime compensation for hours worked in excess of forty during a workweek.

67. All Class Members, irrespective of their particular job requirements, are entitled to compensation for hours worked at the federally mandated minimum wage rate.

68. Although the exact amount of damages may vary among Class Members, the damages for the Class Members can be easily calculated by a simple formula. The claims of all Class Members arise from a common nucleus of facts. Liability is based on a systematic course of wrongful conduct by the Defendant that caused harm to all Class Members.

69. As such, the class of similarly situated Plaintiffs is properly defined as follows:

> **The Class Members are all of Defendants' current and former dancers who worked at any of the Baby Dolls locations at any time during the three year period before this Complaint was filed up to the present.**

## DAMAGES SOUGHT

70. Plaintiff and Class Members are entitled to recover compensation for the hours they worked for which they were not paid at the federally mandated minimum wage rate.

71. Additionally, Plaintiff and Class Members are entitled to recover their unpaid overtime compensation.

72. Plaintiff and Class Members are also entitled to all of the misappropriated funds.

73. Plaintiff and Class members are also entitled to an amount equal to all of their unpaid wages as liquidated damages. 29 U.S.C. § 216(b).

74. Plaintiff and Class Members are entitled to recover their attorney's fees and costs as required by the FLSA. 29 U.S.C. § 216(b).

## JURY DEMAND

75. Plaintiff and Class Members hereby demand trial by jury.

## PRAYER

76. For these reasons, Plaintiff and Class Members respectfully request that judgment be entered in their favor awarding the following relief:

a. Overtime compensation for all hours worked over forty in a workweek at the applicable time-and-a-half rate;

b. All unpaid wages at the FLSA mandated minimum wage rate;

c. All misappropriated funds;

d. An equal amount of all owed wages as liquidated damages as allowed under the FLSA;

e. tolling of the statute of limitations;

f. Reasonable attorney's fees, costs and expenses of this action as provided by the FLSA; and

g. Such other relief to which Plaintiff and Class Members may be entitled, at law or in equity.

Respectfully submitted,

KENNEDY HODGES, L.L.P.

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