IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EVERITTE QUARLES, Plaintiff. v. **GARRETT HAMLER** a/k/a **SEAN GARRETT,** a/k/a **SEAN BARRETT HAMLER,** Defendant.	**CIVIL ACTION FILE** **NO.** 1:10-cv-1787-HLM **JURY TRIAL DEMANDED**

PLAINTIFF EVERITTE QUARLES' PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW

There three questions reserved for the Court, (a) employment status under the FLSA, *Villareal v. Woodham*, 113 F.3d 202, 205 (11th Cir. 1997); *Russell v. Promove*, LLC, 2007 U.S. Dist. LEXIS 57407 (N.D. Ga. 2007)(Story, J.), (b) liquidated damages, *see e.g. Davila v. Menendez*, 717 F.3d 1179, 1186 (11th Cir. 2013). and (c) Defendant's equitable defenses.

Employer/Employee Status Under the FLSA

1. Defendant Garrett Garrett, is a singer, "rapper," songwriter and record producer. Garrett is commonly known and referred to by his stage name, "Sean Garrett." (Garrett Depo., 5:12-13). Defendant is referred to as "Garrett" in this pleading.

2. Garrett produced 15 "number one" singles in seven years, which puts him in 5th place on the Billboard list of music producers with the most number one hits. (www.billboard.com).

3. Garrett employed Quarles for 5 years, from 2005 until December, 2009, in Atlanta, Georgia as a personal security guard. (Garrett Depo., 30:10-12; 43:4-11).

4. Throughout his 5 year employment, Quarles worked for a regular monthly wage under the direct, sole and exclusive supervision of Garrett. Garrett Depo., 29:10-25 to 30:1-10; 31:8-11; 46:1-14);(Quarles Depo., 86:15-25 to 87:1-16 and 87:11-25 to 88:line 1).

5. For the entire 5 year period of employment, Garrett insisted that Quarles work exclusively for Garrett. Quarles

worked only for Garrett and Garrett was Quarles only source of income. (Quarles Depo., 87:11-25 to 88:line 1).

6. Garrett confirmed under oath that Quarles did not any time during his 5 year employment perform any services for any record labels that had contracts with Garrett. (Garrett Depo., 121:7-14).

7. Quarles never operated a private security company. Because of a conviction when he was in his early 20s, (Quarles Depo., pgs. 6-12), Quarles is not eligible to own or operate a licensed private security business. (Ga. Code Ann. § 43-38-5(b)(4)).

8. Though Quarles has been pardoned for his earlier conviction, the licensing statute for private security agencies does not create an exemption allowing for licensure of individuals who have been pardoned. *Id.* In 2002, 3 years before becoming employed full time with Garrett, Quarles formed a company called "Stonewall Security," which was not operated and used as a trade name and consisted solely of Quarles. (Quarles Depo., 47:4-22).

9. Quarles never issued any business cards for Stonewall Security, did not file tax returns for the company, which was dissolved by the Georgia Secretary of State on July 9, 2005 shortly after Quarles began working for Garrett. (Quarles Depo., 47:4-22; 52:15-17); (Exhibit 6).

10. Quarles does not have a college degree, professional licenses, or any specialized skills. (Quarles Depo., pgs. 6-12 and 15:1-15).

11. Quarles did not perform any executive or managerial tasks during his employment. (Garrett Depo., 47:18-21).

12. Quarles did not at any time have authority to hire, fire or discipline or even create work schedules for persons in Garrett's employ. (Exhibits 1 and 2, Complaint and admission of fact, Answer of Garrett Garrett, ¶ 14); (Exhibit 15, Quarles Decl., ¶ 9).

13. Quarles was not a manager during his employment with Garrett. (Garrett Depo., 47:22-24).

14. Before working for Garrett, Quarles held jobs at Hardees, Super Valu, and a liquor and clothing store and a security guard (Quarles Depo., pgs. 6-12).

15. When asked whether Quarles exercised any discretion or independent judgment, Garrett sarcastically testified, "What going in and out of doors, securing doors, securing —is that what you're asking me? (Garrett Depo., 48:12-14).

16. Quarles brought nothing to the relationship with Garrett except for labor. (Garrett Depo., 48:12-14; *see also* 33:2-12).

17. For the entire 5 year period of employment (2005 to 2009), Garrett —and only Garrett —decided Quarles' work schedule. (Garrett Depo., 53:9-25 to 54:1-19; 31:8-11);(Quarles Depo. 85:13-25 to 86:1-25 to 87:1-25 to 88:line 1).

18. Garrett paid for Quarles' cell telephone and those cell phone records establish that Garrett called Quarles daily throughout the week and weekends. (Garrett Depo., 53:11-12); (Exhibit 2, Garrett's Response to Interrogatory Number 13, Garrett's admission and stipulation that he communicated with Quarles on a "regular basis" throughout Quarles' 5 year employment); (Exhibit 3); (Exhibit 15, Quarles Decl., ¶¶ 5, 6).

19. Quarles was subject to and required to respond to Garrett's directives from 2005 to 2009. For example, Garrett interrupted Quarles' honeymoon in Savannah in 2005 because Garrett claimed he had been robbed. (Quarles Depo., 79:11-25 to 81:1-11). Garrett retained and exercised authority to discipline Quarles. (Garrett Depo., 179:6-8).

20. Garrett also had and exercised authority to fire Quarles when Quarles complained about the overtime. (Garrett Depo., 127:17-25);(Exhibit 1, ¶¶ 25-29).

21. In 2007, Garrett allowed Quarles only 13 days off. (Quarles Depo., 91:4-9).

22. In Atlanta, Garrett records and rehearses for long hours in studios such as Silent Sound, Patchworks, Zax and Doppler. (Exhibit 5). Garrett testified that he "work[s] a lot," "works hard," and is "really, really, really busy, "always all over the place doing a lot of things." (Garrett Depo., 34:20-25 – 35:1-2).

23. Garrett testified to long hours, stating, "I work all the time. I'm a business period so I work." (Garrett Depo., 35:21-22).

24. Garrett testified that Quarles' work required him to accompany Garrett while the latter worked in the studio. (Garrett Depo., 58:6-10); *see also* (Exhibit 7, Declaration of Miles Walker, ¶¶ 3-6); (Exhibit 15, Quarles Decl., ¶ 5).

25. Miles Walker, Garrett's recording engineer, recording artists, such as Enrique Iglesias, and individuals employed by the record label would were also present while Garrett recorded and produced music in the studio. (Garrett Depo., 61:5-25 to 62:1-6;

119:line 25 to 120:1-6); (Exhibit 7, Declaration of Miles Walker, ¶¶ 3-6).

26. Garrett required Quarles to accompany him from 2:00 p.m. until 2:00 or 3:00 a.m. the next morning, 7 days per week. (Quarles Depo., 81:14-25 to 82:1-2 and 86:15-25); (Exhibit 7, Declaration of Miles Walker, ¶¶ 3-6).

27. Even after working until 3 or 4:00 a.m., Garrett would often call Quarles at 10 or 11:00 a.m. the next day and require him to start working. (Quarles Depo., 81:14-25); (Exhibit 15, Quarles Decl., ¶ 5).

28. During all of these sessions, Garrett required Quarles to accompany and remain at with him to provide protection. (Quarles Depo., 81:14-25 to 82:1-2);(Exhibit 7, Declaration of Miles Walker, ¶¶ 3-6); (Exhibit 15, Quarles Decl., ¶ 5).

29. In 2007, Garrett allowed Quarles only 13 days off, and worked similar hours in 2008 and 2009. (Quarles Depo., 91:6-25 to 92:1-6); (Exhibit 14).

30. When Garrett wasn't in the studio rehearsing, recording or trying to establish new music, he required Quarles to accompany him to meetings, nightclubs, shopping, errands, car repair shops, car shows, grocery stores, meetings with counsel, bank, courtroom meetings, television and video taping sessions, etc. This includes Lenox Mall, Phipps Plaza (especially Gucci store and Saks Fifth Avenue) dinners, meetings with record label executives, meetings with Brittany Spears, Beyonce, Jay-z, Usher, Chris Brown, Jamie Foxx, Pussy Cat Dolls, Enrique Iglesias, etc., conferences with his attorneys in New York, and such benign places as Pet Smart, Apple store, and Office Depot or Office Max, jewelers, video taping (e.g. Ludicrious, Beyonce, Sean Garrett personal video entitled "Grippin' on the Bed"). Quarles accompanied him at recording sessions at his home (e.g. song entitled "Breakup" for singer named Mario), and, importantly, the video shoot for superstar Akon. (Exhibit 15, Quarles Decl., ¶ 6);(Exhibit 7, Declaration of Miles Walker, ¶¶ 5, 6).

31. In addition to accompanying Garrett wherever he went locally, Quarles accompanied Garrett on numerous extended trips

and concert tours, both nationally and internationally. These trips included, without limitation, New York, New York; Philadelphia, Pennsylvania; Norfolk, Virginia; Los Angeles, California; Miami, Florida; St. Louis, Missouri; Tokyo, Japan; North Carolina; Memphis, Tennessee; Columbia, South Carolina; Cleveland, Ohio; Savannah, Georgia; Paris, France, Columbus, Ohio; Washington, D.C., Ft. Lauderdale, Florida; Orlando, Florida; Indianapolis, Indiana; Chicago, Illinois; Chattanooga, Tennessee; Houston, Texas. (Exhibit 8) Lauderdale, Florida; Orlando, Florida; Indianapolis, Indiana; Chicago, Illinois; Chattanooga, Tennessee; Houston, Texas. (Exhibit 8) Lauderdale, Florida; Orlando, Florida; Indianapolis, Indiana; Chicago, Illinois; Chattanooga, Tennessee; Houston, Texas. (Exhibit 8)

32. Garrett personally paid Quarles' air travel, ground travel, and hotel bills during the out of state trips. (Garrett Depo., 163:13-17; 169:line 25 to 170:1-2; *see also* 110: line 25 to 111:3-20).

33. Not only did Garrett personally pay Quarles' air travel and hotel bills. it was Garrett or his personal assistant who made

the flight and hotel arrangements for Quarles. (Garrett Depo., 168:9-20);(Quarles Depo., 68:15-23).

34. Garrett paid money toward Quarles' car (an Escalade) (Garrett Depo., 124:19-24);

35. Garrett purchased clothes for Quarles, (Garrett Depo.,124:1-18), (Quarles Depo., 76:6-25);

36. Garrett purchased Quarles' computer (Garrett Depo., 123:17-23);

37. Garrett paid at least part of Quarles' taxes. (Garrett Depo., 125:8-14 and 126:17-25).

38. By his own admission, Garrett paid out of pocket expenses incurred by Quarles. (Garrett Depo., 76:1-25 to 77:1-4).

39. Garrett testified that he paid Quarles through a solely-owned company called "The Practice: Team S. Dot, Inc." (Garrett Depo., 158:7-9).

40. In his interrogatory responses, however, Garrett stated that he was the person who had a business relationship with Quarles and that Quarles only had a "potential association" with Garrett's company. (Exhibit 5, Response to Interrogatories ¶¶ 1-12).

41. Though he concedes paying Quarles a regular salary for 5 years, Garrett has refused, without justification, to produce any records of salary payments to Quarles. (Exhibits 9, 10, and 11).

42. In fact, to date, Garrett has few documents despite good faith efforts at securing compliance. Garrett emailed some, but not all documents he was required to produce over 60 days after Quarles served document requests. (Exhibits 9, 10, and 11).

43. The record is undisputed that Garrett personally paid considerable sums to or for Quarles for bonuses, air travel, hotel, clothing, cell phone bills, bonuses, etc. (Garrett Depo., 52:8-25 to 53:1-12; 111:3-7; 114:16-17; 119:14-24; 120:7-12 and 21-23; 125:8-18; 163:13-17).

44. The record establishes that Quarles consistently worked in excess of 70 hours per week and quite often as much as 80-90 hours per week for Garrett, working 7 days per week. (Exhibit 7, Declaration of Miles Walker, ¶¶ 3-6); *see also* (Exhibit 14);((Exhibit 15, Quarles Decl., ¶ 5).

Liquidated Damages

45. Quarles developed health problems ("syncope and collapse") directly as a result of Garrett's requirement that Quarles work long hours. (Exhibit 12). Richard B. Goodjoin, M.D., Quarles' physician, spoke directly and Garrett and advised him that Quarles' syncope and collapse were a direct result of the long hours that Garrett made him work. (Exhibit 13, Quarles Decl., ¶ 1).

46. Garrett's response was to tell Quarles, "This is not a bank," or "You are not working bankers hours," and "I think you are confused, those are bankers hours," and words to the same effect. (Exhibit 1, Complaint, ¶ 27); (Exhibit 15, Quarles Decl., ¶ 4).

47. Garrett fired Quarles immediately after a complaint by Quarles about overtime. (Exhibit 1, Complaint, ¶ 28). Garrett acknowledged Quarles' health problems, but falsely contends that they were due to "diabetes." (Garrett Depo., 182:10-14).

48. The medical records establish that Quarles' syncope and collapse was not caused by "antidepressants use, antihypertensives use, diabetes mellitus, digitalis use, or hematemis." (Exhibit 12).

49. Garrett did not assert "exemption" as an affirmative defense in his Answer. (Exhibit 2, Answer of Garrett Garrett, pgs. 1-5).

50. Garrett has never entered into a written settlement agreement with Quarles, much less had one approved by a U.S. District Court or the United States Department of Labor. (Exhibit 15, Quarles Declaration, ¶ 1).

51. Garrett has not at any time identified or placed Quarles on notice of any written administrative regulation, order, ruling,

approval, interpretation, and/or administrative practice or enforcement policy of the Wage and Hour Division of the Department of Labor on which Garrett relied to determine compliance with the FLSA. (Defendant's Initial Disclosures, filed January 3, 2011, Dkt. Entry 24, and, more particularly, question 4, pgs. 3–4); (Exhibits 4 and 5, Interrogatories and Defendant Garrett's Response to Quarles' First Interrogatories); (Garrett Depo., 74:11-25 to 75:1-7);(Exhibit 15, Quarles Decl., ¶ 2).

Garrett's Equitable Defenses

52. In his Answer, Garrett asserted the defense of "set–off," "fraud," "waiver," "release," "accord and satisfaction," and "consent."

CONCLUSIONS OF LAW

Employment Status Under the FLSA

1. The FLSA defines an "employer" as "any person acting directly or indirectly in the interest of an employer in relation to an employee . . ." 29 U.S.C. § 203(d).

2. "Employee" means "any individual employed by an employer." 29 U.S.C. § 203(e). The term "employ" means "to suffer or permit work." 29 U.S.C. § 203(g).

3. "An entity 'suffers or permits' an individual to work if, as a matter of economic reality, the individual is dependent on the entity." *Antenor v. Osnel*, 88 F.3d 925, 929 (11th Cir. 1996).[1]

4. The definitions of "employee" and "employer" under the FLSA are significantly broader than the common-law standard for an employee/employer relationship. *See e.g. Nationwide Mutual Ins. Co. vs. Darden*, 503 U.S. 318, 112 S.Ct. 1344, 117 L.Ed.2d 581 (1992)(noting the "striking breadth" of the definition of employee); *see also Wolf vs. The Coca-Cola Co.*, 200 F.3d 1337, 1343 n.4 (11th Cir. 2000); *Cf. Cobb v. Sun Papers, Inc.*, 673 F.2d 337, 340 (11th Cir. 1982)(Noting that the FLSA's standard for an employment

[1] *Antenor* is a case decided under the Agricultural Worker Protection Act. (AWPA). The standard for the employee/employer relationship is identical for the FLSA and AWPA is identical and case law is cited interchangeably when dealing with the employee/employer relationship. *Antenor*, 88 F.3d at 929. In addition, it should be noted that the test for employee/employer relationship governs definitions of both "employ" (29 U.S.C. § 203(g)) and "employer" (29 U.S.C. § 203(d)). *Morales-Arcadio v. Shannon Produce Farms, Inc.*, 2007 U.S. Dist. LEXIS 51950 at *69, n.16 (S.D. Ga. 2007).

relationship is significantly broader than even Title VII's definition).

5. Indeed, the FLSA contains the broadest definition of "employee" of any legislation ever enacted in the United States. *Patel v. Quality Inn South*, 846 F.2d 700, 702 (11th Cir. 1988)("The remarks of then Senator Hugo Black, the FLSA's chief legislative sponsor, are even more instructive. During debate over the act Senator Black declared that its "definition of employee ... is the broadest definition that has ever been included in any one act...." 81 Cong.Rec. 7656-57 (1937)"); *Cobb*, 673 F.2d at 340. [2]

6. To determine whether an individual is an employer under the FLSA, courts examine the facts "in light of the 'economic reality' of the relationship between the parties. *Villarreal v. Woodham*, 113 F. 3d 202, 205 (11th Cir. 1997) (*quoting Goldberg v.*

[2] Because the FLSA's standard for the employee/employer relationship is significantly broader than the common-law standard, the standard for an "independent contractor" under the FLSA is substantially narrower than the common-law standard for an independent contractor. *Secretary of Labor v. Lauritzen*, 835 F.2d 1529, 1543 (7th Cir. 1987)(Easterbrook, J., concurring)(Examining the definition of employee under FLSA and stating, "[n]o wonder the common law definition of 'independent contractor' does not govern." [cits. omitted]); *see also Walling v. Portland Terminal Co.*, 330 U.S. 148, 67 S.Ct. 639, 91 L.Ed. 809 (1947)(common-law definitions of employee/employer relationship inapplicable to the FLSA).

Whitaker House Co-op, Inc., 366 U.S. 28, 33, 81 S. Ct. 933, 6 L. Ed 2d 100 (1961)); *Antenor*, 88 F.3d at 929-931; *de Leon-Grandos v. Elder & Sons Trees*, Inc., 581 F.Supp.2d 1295, 1303-1307 (N.D. Ga. 2008).

7. Because the FLSA's definition of employ and employer is significantly broader than the common law definition, "economic reality" is based on the employer's economic power and the worker's economic dependence, not the daily exercise of control.

8. The Eleventh Circuit considers four factors to determine whether a person is an employer under the FLSA, a question of law. These four factors are whether the alleged employer (1) had the power to hire and fire employees, (2) supervised and controlled employee work schedules or conditions of employment, (3) determined the rate and method of payment, and (4) maintained employment records. *Villareal*, 113 F.3d at 205.

9. Where, as here, an individual defendant hires and fires employees, supervises employees, determines employees rates of pay and method of payment, and maintains employment records, summary judgment for the plaintiff on the question of employer/employee is appropriate. *Fuentes v. CAI International,*

Inc., 728 F.Supp.2d 1347, 1355 (S.D. Fla. 2010); *Eller & Sons*, 581 F.Supp.2d at 1307.

10.Garrett's own testimony conclusively establishes each part of the test for "employ" and "employer" under the FLSA.

11.The Court therefore holds that Garrett was an employer under the FLSA, 29 U.S.C. § 203.

Liquidated Damages

12. Two issues are important here. First, the burden of proof on the liquidated damages issue falls on the employer, not the employee. *Perez v. Sanford-Orlando Kennel Club, Inc.*, 515 F.3d 1150, 1163 (11th Cir.), *r'hng denied* 518 F.3d 1302 (11th Cir. 2008)("The employer bears the burden of establishing both the subjective and objective components of that good faith defense against liquidated damages.")(citations omitted).

13. Second, the law is clear that liquidated damages are the rule, not exception. *Spires v. Ben Hill County*, 980 F.2d 683, 689 (11th Cir. 1993)("In other words, liquidated damages are mandatory

absent a showing of good faith."); *Avitia v. Metropolitan Club.*, 49 F.3d 1219, 1223 (7th Cir. 1995)(*Posner, J.*)("Double damages are the norm, single damages the exception."); *Perez*, 515 F.3d at (11th Cir. 2008); *Castro v. Chicago Housing Auth.*, 360 F.3d 721, 730 (7th Cir. 2004)("An employer seeking to avoid imposition of liquidated damages under the FLSA "bears a *substantial burden* in showing that it acted reasonably and in good faith.").

14. The Court holds that Garrett has failed to sustain his burden of establishing both the subjective and objective components of that good faith defense against liquidated damages.

15. Garrett is responsible for liquidated damages in an amount equal to the unpaid overtime. 29 U.S.C. § 260.

Equitable Defenses

16. The defense of "set off" is unavailable as a matter of law. *Brennan v. Heard*, 491 F.2d 1, 4 (5th Cir. 1974), and Garrett has not made any argument, much less a non-frivolous argument, for extending, modifying, or reversing existing law or for establishing new law.

17. Garrett has not stated his defense of "fraud" with particularity, much less proven that fraud exists. *Hendley v. American Nat'l Fire Ins. Co.*, 842 F.2d 267, 268 n.1 (11th Cir. 1988)("'In all averments of fraud or mistake, the circumstances constituting fraud shall be stated with particularity.' F.R.C.P. 9(b)."

18. Garrett asserted the defense of "waiver," "release," and "accord and satisfaction," knowing that these defenses were unavailable as a matter of law because FLSA claims cannot be waived or released absent approval of a United States District Court or the United States Department of Labor, and, in addition to the absence of any fact indicating Quarles waived or released his overtime claims, no approval from a District Court or the DOL has been sought, much less obtained. *See Lynn's Food Stores v. United States*, 679 F.2d 1350, 1353 (11th Cir. 1982). (Exhibit 2, Answer of Garrett Garrett, *passim*); (Exhibit 15, Quarles Decl., ¶ 15).

19. Garrett asserted the defense of "consent" knowing it was frivolous as a matter of law. "FLSA rights cannot be abridge by

conduct or otherwise waived because this would "nullify the purposes of the statute and the legislative policies it was designed to effectuate." *See Lee v. Flightsafety Servs. Corp.*, 20 F.3d 428, 432 (11th Cir. 1994)(quoting. *Brooklyn Savings Bank v. O'Neil,* 324 U.S. 697, 707, 65 S. Ct. 895, 902, 89 L. Ed. 1296, (1945); *see D.A. Schulte, Inc. v. Gangi,* 328 U.S. 108, 114-116, 66 S. Ct. 925, 928-29**,** 90 L. Ed. 1114 (1946); *Overnight Motor Transportation Co. v. Missel,* 316 U.S. 572, 577, 62 S. Ct. 1216, 1219, 86 L. Ed. 1682 (1942).

20. Garrett asserted the defenses of " consent, estoppel, illegality, laches, " knowing that these defenses were unavailable as a matter of law, and knowing that there were no facts which would support such defenses even if the law allowed them to be brought. *Wlodynski v. Ryland Homes of Fla. Realty Corp.,* 2008 U.S. Dist. LEXIS 114040 at *3–*4 (M.D. Fla. June 20, 2008)("Defendant's fourth, fifth and sixth affirmative defenses exemplify the meaning of 'conclusory allegations.' Defendant makes blanket assertions that Plaintiff's claims are barred by the doctrine of laches, the doctrines of waiver and estoppel, and by his own misconduct and unclean hands. While Rule 8 requires only a short and plain statement of the facts in support of the affirmative defense,

Defendant fails to allege, much less prove, any facts in support of these defenses.

23 September 2014.

By: /s Stephen M. Katz

Stephen M. Katz
Ga. Bar No. 409065

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CERTIFICATE OF SERVICE

I hereby certify that I have hand delivered

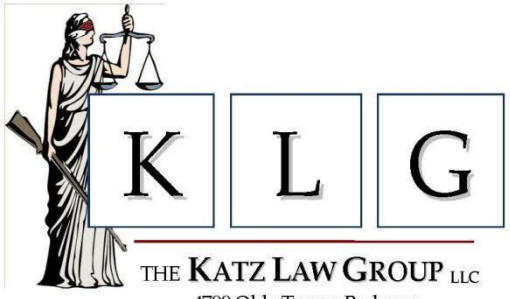
PLAINTIFF EVERITTE QUARLES' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the counsel of record listed below:

Frederick C. Dawkins, Esq.

23 September 2014.

By: /s Stephen M. Katz
Stephen M. Katz
Ga. Bar No. 409065



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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EVERITTE QUARLES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CASE NO. 1:10-cv-01787-RLV**
	)	
GARRETT HAMLER a/k/a SEAN GARRETT, a/k/a SEAN GARRETT HAMLER,	)	
	)	
Defendant.	)	

ANSWER OF GARRETT HAMLER

Defendant Garrett Hamler files his Answer to Plaintiff's Complaint, respectfully showing as follows:

FIRST DEFENSE

Plaintiff's Complaint and each of its causes of action fail, in whole or in part, to state a claim upon which relief can be granted.

SECOND DEFENSE

Plaintiff's Complaint fails, in whole or in part, to state a claim for compensatory damages, liquidated damages, attorney's fees, or costs.

THIRD DEFENSE

Some or all of Plaintiff's claims are barred by the applicable statute of

limitations, including the failure to file the instant lawsuit within the time period required by the Fair Labor Standards Act ("FLSA").

FOURTH DEFENSE

Plaintiff's claims are barred on the basis that Plaintiff was not an employee of Defendant and Defendant was not an employer of Plaintiff within the meaning of the FLSA.

FIFTH DEFENSE

Plaintiff's damages, if any, are limited to those remedies and those amounts provided for by the FLSA.

SIXTH DEFENSE

Defendant's actions were in good faith in conformity with and in reliance on the written administrative regulations, orders, rulings, approvals, interpretations, and/or administrative practice or enforcement policy of the Wage and Hour Division of the Department of Labor.

SEVENTH DEFENSE

Defendant's actions were in good faith, and it had a reasonable ground for believing that it was in compliance with the FLSA.

EIGHTH DEFENSE

Any actions by Defendant taken with respect to Plaintiff, to the extent they

were not in compliance with the FLSA, were not willful or in reckless disregard for Plaintiff's protected rights.

NINTH DEFENSE

Even if Plaintiff was subject to actions that did not comply with FLSA, Defendant exercised reasonable care to prevent and correct the actions which support Plaintiff's claim and Plaintiff unreasonably failed to avail himself of preventive or corrective opportunities or to avoid harm otherwise.

TENTH DEFENSE

Some or all of Plaintiff's claims are barred by the theory of unjust enrichment, and Defendant may be entitled to an offset of damages for any amount by which Plaintiff was unjustly enriched.

ELEVENTH DEFENSE

Some or all of Plaintiff's claims are barred by the doctrines of waiver, consent, release, estoppel, fraud, illegality, laches, and/or payment and/or accord and satisfaction.

TWELFTH DEFENSE

Defendant reserves the right to assert any additional affirmative defenses allowed by Rule 8 depending upon any evidence discovered in pursuit of this litigation.

THIRTEENTH DEFENSE

In answer to the respective paragraphs of the Complaint, this Defendant shows as follows:

NATURE OF THIS ACTION

1.

Defendant admits that this action purports to be one seeking relief under the FLSA, and denies the remaining allegations pled in paragraph 1 of the Complaint.

PARTIES

2.

Defendant is without knowledge or information sufficient to admit or deny the truth of the allegations pled in paragraph 2 of the Complaint.

3.

Defendant admits the allegations pled in paragraph 3 of the Complaint.

4.

Defendant denies the allegations in paragraph 4 of the Complaint as pled.

5.

Defendant denies the allegations in paragraph 5 of the Complaint as pled.

6.

Defendant denies the allegations in paragraph 6 of the Complaint as pled.

7.

Defendant denies the allegations in paragraph 7 of the Complaint as pled.

8.

Defendant denies the allegations in paragraph 8 of the Complaint as pled.

9.

Defendant denies that he took any action towards Plaintiff which violated the FLSA, and denies the remaining allegations in paragraph 9 of the Complaint as pled.

JURISDICTION

10.

Defendant admits that jurisdiction is generally proper as pled in paragraph 10 of the Complaint.

VENUE

11.

Defendant admits that venue is generally proper as pled in paragraph 11 of the Complaint.

FACTS

12.

Defendant denies the allegations pled in paragraph 12 of the Complaint.

13.

Defendant denies the allegations pled in paragraph 13 of the Complaint.

14.

Defendant admits that Plaintiff had no authority to hire, fire or discipline employees in Defendant's employ; nor did Plaintiff have authority to create work schedules for persons employed by Defendant. Defendant denies the remaining allegations pled in paragraph 14 of the Complaint.

15.

Defendant denies the allegations pled in paragraph 15 of the Complaint.

16.

Defendant denies that Plaintiff was ever employed with Defendant, and denies the remaining allegations pled in paragraph 16 of the Complaint.

17.

Defendant denies that Plaintiff was ever employed with Defendant, and denies that he took any action towards Plaintiff which violated the FLSA. Defendant denies any remaining allegations pled in paragraph 17 of the Complaint.

CLAIM FOR RELIEF

VIOLATION OF 29 U.S.C. § 216(B)

(Failure to pay overtime compensation)

18.

Defendant incorporates by reference his responses to paragraphs 1 through 17 of the Complaint as though set forth specifically herein.

19.

Defendant denies the allegations pled in paragraph 19 of the Complaint.

20.

Defendant denies the allegations pled in paragraph 20 of the Complaint.

21.

Defendant denies the allegations pled in paragraph 21 of the Complaint.

22.

Defendant denies the allegations pled in paragraph 22 of the Complaint.

23.

Defendant denies the allegations pled in paragraph 23 of the Complaint.

24.

Defendant denies the allegations pled in paragraph 24 of the Complaint.

COUNT II

FLSA Retaliation

25.

Defendant incorporates by reference his responses to paragraphs 1 through 24 of the Complaint as though set forth specifically herein.

26.

Defendant denies the allegations pled in paragraph 26 of the Complaint.

27.

Defendant denies the allegations pled in paragraph 27 of the Complaint.

28.

Defendant denies the allegations pled in paragraph 28 of the Complaint.

29.

Defendant denies the allegations pled in paragraph 29 of the Complaint.

30.

Defendant denies that Plaintiff is entitled to any of the relief set forth in the unnumbered paragraph beginning with the word "WHEREFORE" and following paragraph 29 of the Complaint.

31.

Any allegations in the Complaint not heretofore answered, qualified or denied are here and now denied as though set forth specifically and denied.

WHEREFORE, Defendant in the above-referenced civil action respectfully requests that this Court:

1. Dismiss with prejudice Plaintiff's Complaint;

2. Award Defendant his reasonable attorney's fees, costs, and expenses pursuant to 42 U.S.C. § 1988 or otherwise; and

3. Award any and all other relief to Defendant that this Court may deem necessary and proper.

Respectfully submitted,

FREEMAN MATHIS & GARY, LLP

s/ Frederick C. Dawkins
Frederick C. Dawkins
Georgia Bar No. 213460
David A. Cole
Georgia Bar No. 142383
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EVERITTE QUARLES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CASE NO. 1:10-cv-01787-RLV**
	)	
GARRETT HAMLER a/k/a SEAN GARRETT, a/k/a SEAN GARRETT HAMLER,	)	
	)	
Defendant.	)	

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the within and foregoing **ANSWER OF GARRETT HAMLER** with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following attorneys of record:

Stephen M. Katz
The Katz Law Group, LLC
Suite 130
255 Village Parkway, NE
Marietta, GA 30067-4162
404-848-9658
Fax: 404-848-9904
Email: smkatz@smk-law.com

This 3rd day of December, 2010.

s/ Frederick C. Dawkins
Frederick C. Dawkins
Georgia Bar No. 213460
Attorney for the Defendant

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EVERITTE QUARLES,	:	
	:	
	:	CIVIL ACTION
Plaintiff,	:	FILE NO. 1:10-CV-1787
	:	
	:	**JURY TRIAL DEMANDED**
vs.	:	
	:	
GARRETT HAMLER a/k/a SEAN GARRETT, a/k/a SEAN GARRETT HAMLER,	:	
	:	
Defendant.	:	

COMPLAINT

Plaintiff Everitte Quarles, through his attorney, Stephen M. Katz, THE KATZ LAW GROUP, respectfully shows as follows:

NATURE OF THIS ACTION

1.

This is an action brought under The Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* and 215(a)(3) to recover unpaid overtime compensation, liquidated damages, attorneys fees, and costs.

PARTIES

2.

Quarles, the named Plaintiff in this action, lives in the Northern District of Georgia.

3.

Defendant Garrett Hamler, a music/record producer and song writer, lives in the Northern District of Georgia. Hamler can be served by delivering a copy of the summons and complaint to him at his home located at 1967 Saxon Valley Circle NE, Atlanta, Georgia 30319. Hamler is commonly known and referred to as "Sean Garrett," and sometimes uses the name "Sean Garrett Hamler." Defendant is referred to herein as "Sean Garrett."

4.

Over the past 5 years Defendant Sean Garrett has conducted business through a number of "shell" corporations, each of which is insolvent and designed to perpetrate fraud on vendors, employees, independent contractors, and other individuals and entities that provided goods and services to Defendant Garrett. The insolvent, "shell" corporations are the "alter ego" and indistinguishable from Defendant Sean Garrett and include: Bet I Penned It, LLC, I Pen My Music, LLC, S.

Garrett Music, LLC, The Franchise, LLC, The Practice: Team S Dot, Inc., The Young Pen Publishing, Inc. , and Homeland Studios, LLC.

5.

Defendant Garrett is engaged in commerce as defined under the FLSA at 29 U.S.C. § 203(b).

6.

Defendant Garrett is, as an individual, an "enterprise engaged in commerce or in the production of goods or services for commerce" under the FLSA, 29 U.S.C. § 201 *et. seq.*

7.

At all relevant times, individually, Defendant Garrett has been and remains, an Employer within the meaning of § 3(d) of the FLSA, 29 U.S.C. § 203(d), in that he acted ". . .directly or indirectly in the interest of an employer in relation to an employee. . ."

8.

As an employer engaged in commerce, Defendant Garrett is subject to and required to comply with the requirements of the FLSA, 29 U.S.C. § 201 *et. seq.*

9.

Defendant at all relevant times was aware of the existence and requirements of the FLSA, including, without limitation, his duty to pay overtime compensation and to refrain from retaliation against employees who complain about violations of the FLSA.

JURISDICTION

10.

Jurisdiction over this action is conferred on this court by § 216(b) of the FLSA, 29 U.S.C. § 216(b), as well as 28 U.S.C. § 1331.

VENUE

11.

Venue is proper in the Northern District of Georgia in that the acts complained of took place in this judicial district.

FACTS

12.

Quarles, was employed by Defendant Sean Garrett from 2005 until December, 2009 in Atlanta, Georgia as a personal assistant.

13.

Quarles' job duties while employed with Defendant Garrett included running errands, acting as a "bodyguard," handling ministerial tasks as directed by Defendant Garrett, *i.e.* tour bookings.

14.

Quarles did not at any time have authority to:

1. Hire, fire or discipline employees in Defendant Garrett's employ.

2. Create work schedules for an person employed by Defendant Garrett; or

3. Perform any executive, managerial, or discretionary tasks. Quarles did not regularly and customarily exercise discretion while employed by Defendant Garrett.

15.

Defendant Garrett placed Quarles "on call" 24 hours a day, 7 days a week. As a result of being on call 24 hours per day, Quarles could not work for anyone except for Defendant Garrett.

16.

While employed with Defendant Garrett, Quarles consistently worked over 40 hours per week and often worked in excess of 60 hours per week.

17.

Defendant Garrett never provided Quarles with overtime compensation for hours worked in excess of 40 in a workweek, nor did Defendant Garrett keep records of the hours worked by Quarles.

CLAIM FOR RELIEF

VIOLATION OF 29 U.S.C. § 216(B)

(Failure to pay overtime compensation)

18.

Plaintiff repeats and realleges each and every paragraph set forth in paragraphs 1 to 17 as if fully set forth at length herein.

19.

Defendant Garrett repeatedly and willfully violated the provisions of § 7 and 15(a)(2) of the FLSA, 29 U.S.C. §§ 207 and 215(a)(2) by employing Quarles for work weeks longer than 40 hours without compensating Quarles for work in excess of 40 hours at a rate not less than one and one-half times the regular rate at which Quarles was employed.

20.

Quarles was regularly compelled to work more than 40 hours per week but was not paid overtime compensation as required under the FLSA.

21.

Quarles is not an exempt employee under the FLSA; thus, Defendant Garrett was required to pay him overtime compensation for all hours worked each week in excess of 40.

22.

Defendant Garrett's violation of the overtime pay requirements set forth in the FLSA was systematic, voluntary and willful.

23.

Defendant Garrett owes Quarles overtime pay for work performed but not compensated in an amount to be determined in this action, plus liquidated damages in an equal amount pursuant to 29 U.S.C. § 216(b).

24.

Quarles is entitled to relief shifting the burden of proof to Defendant Garrett with regard to the amount of overtime worked because Defendant failed to keep records as required by §§ 11(c) and 15(a)(5) of the FLSA, 29 U.S.C. §§ 211(c) and

215(a)(5) and the Department of Labor regulations at 29 C.F.R. § 516.

Count II

FLSA Retaliation

25.

Plaintiff repeats and realleges each and every paragraph set forth in paragraphs 1 to 24 as if fully set forth at length herein.

26.

Quarles repeatedly complained to Defendant Garrett about the uncompensated overtime hours.

27.

Defendant Garrett repeatedly replied to Quarles that, "This is not a bank," or "You are not working bankers hours," and "I think you are confused, those are bankers hours," and words to the same effect.

28.

In or about February, 2010, shortly after Quarles voiced additional complaints about the uncompensated overtime, Defendant Garrett fired Quarles in retaliation for Quarles' protected speech regarding the uncompensated overtime.

29.

As a direct result of the retaliation, Quarles has sustained financial and emotional injury for which he is entitled to recover from Defendant Garrett.

WHEREFORE, Quarles demands relief as follows:

1. That process issue and that Defendant Garrett be served according to law;

2. An Order and Judgment finding that Defendant violated 216(b) of the FLSA;

3. Judgment in favor of Everitte Quarles against Defendant, for unpaid overtime compensation together with an equal amount of the total overtime compensation as liquidated damages;

4. Pursuant to Section 216(b) of the Act, judgment in favor of Quarles against Defendant Garrett for reasonable attorneys' fees;

5. Judgment in favor of Quarles against the Defendant for all taxable and non-taxable costs;

6. Pursuant to the Seventh Amendment to the United States Constitution and Rule 38, F.R.Civ.P., **TRIAL BY JURY** on all claims on which a jury trial is available;

29.

As a direct result of the retaliation, Quarles has sustained financial and emotional injury for which he is entitled to recover from Defendant Garrett.

WHEREFORE, Quarles demands relief as follows:

1. That process issue and that Defendant Garrett be served according to law;

2. An Order and Judgment finding that Defendant violated 216(b) of the FLSA;

3. Judgment in favor of Everitte Quarles against Defendant, for unpaid overtime compensation together with an equal amount of the total overtime compensation as liquidated damages;

4. Pursuant to Section 216(b) of the Act, judgment in favor of Quarles against Defendant Garrett for reasonable attorneys' fees;

5. Judgment in favor of Quarles against the Defendant for all taxable and non-taxable costs;

6. Pursuant to the Seventh Amendment to the United States Constitution and Rule 38, F.R.Civ.P., **TRIAL BY JURY** on all claims on which a jury trial is available;

7. Such other, further and different relief as this Court deems appropriate.

This 10th day of June, 2010.

By: _____
Stephen M. Katz
Ga. Bar No. 409065
Attorney for Plaintiff

K L G
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