**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF GEORGIA**
**ATLANTA DIVISION**

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| KEIRA VAUGHAN, JACQUELINE WOODARD, SASHE OMOGIATE, and MAKEDA ROOTS individually and on behalf of all other similarly situated individuals,<br><br>Plaintiffs,<br><br>v.<br><br>PARADISE ENTERTAINMENT GROUP, INC. d/b/a MAGIC CITY,<br><br>Defendant. | **Civil Action No.: 1:14-cv-00914-SCJ** |

**DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR PROTECTIVE ORDER REQUESTING REPRESENTATIVE DISCOVERY**

Defendant Paradise Entertainment Group, Inc. d/b/a Magic City ("**PEG**" or the "**Club**") hereby submits this Response in Opposition to Plaintiffs' Motion for Protective Order Requesting Representative Discovery ("**Plaintiffs' Motion**").

**INTRODUCTION**

It is beyond dispute that the entertainers at Magic City made far in excess of minimum wage. Some made thousands in one night. Each one had entered into a written contract, which allowed her to keep all the Club's service fees ($10 per dance), as well as any tips that she received. The entertainers collect the Club's $10 per dance service fee, then get to keep it. Obviously one five minute dance per

hour would generate more than minimum wage. Magic City is nationally recognized for the quality of the entertainers, as well as the secure and protective environment that the Club provided for the performers. The entertainers at Magic City do well.

Ironically, the Plaintiffs claim that because the money flowed directly from the patrons to the entertainers, the entertainers were never paid **by** Magic City, so they are now entitled to collect minimum wage and severe penalties. The fact that the entertainers received their compensation directly from the patrons is precisely the point. Plaintiffs were not employees, they were entertainers working directly with and for patrons, and being paid directly.

In light of this manifest injustice, PEG has filed counterclaims against the Plaintiffs for unjust enrichment and breach of contract. [Doc. No. 55.] Plaintiffs' Motion completely ignores PEG's Counterclaims. For example, the amount of unjust enrichment will vary from one Plaintiff to the next. On the basis of its Counterclaim alone, PEG should be entitled to take discovery from all the Opt-in Plaintiffs.

Furthermore, the Plaintiffs are not one homogeneous group as Plaintiffs would have the Court believe. Early investigation has revealed that the four (4) named Plaintiffs ("**Named Plaintiffs**") and thirty-eight (38) conditional collective members ("**Opt In Plaintiffs**") (collectively, "**Plaintiffs")** can be divided into at

least five separate and distinct categories. Three of the categories consist of Plaintiffs who signed one of three different versions of an agreement with PEG. The vast majority signed the Activity and Facility Use Agreement prepared in 2012 by Thompson Hine LLP ("**Tenancy Agreement**"). Another group is of five (5) Opt-In Plaintiffs for whom PEG has no records and whom PEG believes never entertained at Magic City ("**Five Women**"). The fifth group includes one (1) Named Plaintiff (Makeda Roots ("**Ms. Roots**")) and nine (9) Opt-In Plaintiffs ("**Ten Women**") whose agreements are suspiciously missing from their entertainer personnel files ("**Files**").

PEG Transmitted over 1,300 pages of documentation to Plaintiffs as part of a good faith effort to settle the case before and during mediation. After mediation failed, PEG filed its Amended Answer and Counterclaims and served written discovery on all Plaintiffs. PEG served notice of depositions for the four Named Plaintiffs and eight of the Opt-In Plaintiffs. PEG's written requests appropriately seek discoverable information material to its defenses under the fact-based FLSA analysis and its Counterclaims. PEG should be entitled to defend and pursue its case as actively as Plaintiffs have pursued theirs, of course in a reasonable manner. PEG has produced for deposition six (6) witnesses, already. PEG opposes Plaintiffs' Motion and requests to move forward with discovery in the manner it

has proposed. PEG will continue to attempt to cooperate with Plaintiffs' counsel in discovery.

## STATEMENT OF FACTS

### A. Initial Procedure.

Three named Plaintiffs filed a Collective Action Complaint against M-Entertainment Properties on March 28, 2014 alleging violations of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 216(b). [Doc. No. 1.] The Plaintiffs amended their Complaint on April 8, 2014 to add a fourth named Plaintiff, Ms. Roots. [Doc. No. 6.] PEG voluntarily notified Plaintiffs that the wrong Defendant was named and the parties agreed to a Second Amended Complaint to substitute the correct Defendant, PEG, which was filed on May 2, 2014. [Doc. No. 8.] PEG filed its Answer to the Second Amended Complaint on May 22, 2013. [Doc. No. 15.]

On June 12, 2014, PEG suggested, to avoid litigation, that the parties stipulate to an FLSA conditional certification of the collective action and that they agree to mediate after the close of the opt-in period. [Doc. No. 21] The Court granted conditional certification and judicial notice on June 16, 2014. [Doc. No. 22.] Furthermore, the Tenancy Agreement has a mandatory mediation clause as a pre-condition to filing suit.

Thirty-nine (39) consent notices were filed between May 8, 2014 and January 2, 2015. [Doc. Nos. 11, 19, 20, 23, 24, 26, 27, 29-45, and 57.] One opt-in

has subsequently withdrawn from the case bringing the current number of Plaintiffs to forty-two (42). [Doc. No. 64.] PEG has no knowledge of five of the opt-ins and contends they never performed at Magic City. *See* Declaration of Chernita Zachary ¶¶ 7-13, 23, attached hereto as Exhibit "A" (hereinafter "Zachary Decl.") Shortly after the lawsuit was filed, staff at PEG began examining the personnel files to prepare for mediation and disclosure. (Zachary Decl. ¶ 37.) At that time, PEG discovered that ten personnel files were missing under suspicious circumstances. (Id. ¶¶ 37-43.) All ten of the files belong to Plaintiffs in this lawsuit, and files of entertainers who are not participating in this lawsuit are not missing.

The parties engaged in mediation on November 11, 2014. *See* Declaration of Gary Freed, Esq. ¶ 3, attached hereto as Exhibit "B" (hereinafter "Freed Decl."). The mediation subsequently failed and PEG filed its Second Amended Answer, Defenses and Counterclaims on December 19, 2014. [Doc. No. 55.]

**B. The Discovery Dispute.**

PEG served written discovery on December 22, 2014 [Doc. No. 56] in order to determine, in part, which parties performed when (if at all) and under which contract, the location and person responsible for missing documents and to pursue its Counterclaims. As a matter of professional courtesy, PEG contacted Plaintiffs' counsel on January 13, 2015 in an effort to schedule depositions on available dates.

In contrast, Plaintiffs unilaterally noticed six PEG depositions at their local counsel's offices without discussion with PEG. [Doc. No. 58.] (Freed Decl. ¶ 4.) Plaintiffs sent PEG a letter requesting a conference to discuss the issue of representative discovery on January 13, 2015.[1] (Freed Decl. ¶ 5.) The parties met and conferred on January 20, 2015 and continued the conversation over the course of the next two days. (Freed Decl. ¶ 6.) Plaintiffs proposed, in part, that all discovery should be limited to a "representative" group of varying numbers. (Freed Decl. ¶ 7) and that PEG should not be permitted to select the Plaintiffs but that the group should be selected either on a random basis or that the parties should each select half the group with named Plaintiffs in Plaintiffs' group. (Freed Decl. ¶ 8.)

PEG objected for several reasons: 1) PEG identified some Plaintiffs it needs to depose as part of a representative sampling of each of the five aforementioned categories; 2) PEG identified other Plaintiffs for depositions because of specific knowledge PEG believes they have about its Affirmative Defenses or Counterclaims[2]; 3) PEG needs documents from those Plaintiffs whose files are missing key documents and are not in PEG's possession, custody or control[3]; 4)

[1] Plaintiffs attached their letter to Plaintiffs' Motion in violation of L.R. 7.4.
[2] FRCP 30 entitles a party to depose **any person** not any person an opposing party approves.
[3] PEG believes Plaintiffs are aware that the Files are missing.

PEG requires Plaintiff's tax returns and other financial statements[4] in order to fully develop its defenses and to pursue its Counterclaims; 5) PEG needs the requested documents from the Five Women; 6) PEG requires social media information and information on certifications and other professional information in order to pursue its defenses under the FLSA; 7) PEG requires factual information from all Plaintiffs to determine whether the Plaintiffs are "similarly situated," and whether a Motion for Decertification is appropriate; and 8) PEG requires responses to its Requests for Admission in order to narrow the issues before the Court, which will save time, money and resources for all parties and their counsel.

**LEGAL STANDARD**

Courts have broad discretion under Federal Rule of Civil Procedure 26 to determine discovery issues. *Josendis v. Wall to Wall Residence Repairs, Inc.*, 662 F.3d 1292, 1306 (11th Cir. 2011). "Parties may obtain discovery regarding any nonprivileged matter that is relevant to ***any party's*** claim or defense. . . . Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. Proc.

[4] Precedence in the 11th Cir. allows for production of plaintiffs' financial and tax records in FLSA cases. *See Schumann v. Collier Anesthesia, P.A.*, 2014 U.S. Dist. LEXIS 42098, *8-9 (M.D. Fla. 2014) (court permitted defendants to obtain plaintiffs' tax returns because documents relevant to economic realities of employee-employer relationship); *Hurtado v. Raly Dev.*, 2012 U.S. Dist LEXIS 121375, *39 (S.D. Fla. 2012) (defendants permitted to obtain plaintiffs' tax returns to see if plaintiffs were deducting business expenses). PEG has offered to agree to a protective order to safeguard financial information.

26(b)(1) (emphasis added). "[T]he Federal Rules[] contemplate liberal and permissive discovery of relevant information." *Luna v. Del Monte Fresh Produce (Southeast), Inc.*, 2007 U.S. Dist. LEXIS 36893, 19 (N.D. Ga. May 18, 2007) (internal punctuation and citations omitted); *Upton v. McKerrow*, 1996 U.S. Dist. LEXIS 22978, 9 (N.D. Ga. Feb. 20, 1996) ("With respect to issues of relevancy of discovery, discovery rules are to be accorded a broad and liberal treatment"). "If Court is in doubt concerning the relevancy of requested discovery[,] the discovery should be permitted." *Moss v. GEICO Indem. Co.*, 2012 U.S. Dist. LEXIS 27611, 4 (M.D. Fla. Mar. 2, 2012)(citations omitted). PEG should be entitled to discovery from all Plaintiffs and to depose the twelve Plaintiffs of its choosing in order to fully develop its counterclaims as well as pursue a vigorous defense.

## LEGAL ANALYSIS

### A. Individualized Discovery.

#### 1. PEG has a Need for Individualized Discovery.

PEG has a need for individualized discovery because of the differing groups of entertainers who performed at the club. Magic City has operated as an adult entertainment establishment in Atlanta for thirty years. Throughout that time, ownership and management have attempted to evolve in terms of its general family-like relationship with and minimal control over the entertainers. PEG has consulted with attorneys to develop entertainer agreements to comply with local

and federal laws and regulations. Although the vast majority of the Plaintiffs signed the Tenancy Agreement, there are two older agreements which have been executed by Plaintiffs.

The multitude of subcategories and the differences among them create a legitimate need for individual discovery to develop a factual defense. This legitimate need is bolstered by the fact that the group of Opt-In Plaintiffs is small. Individualized discovery has been granted in this Circuit in FLSA cases where the opt-in group is comparable or larger in size to the present collective. *See Beckworth v. Senior Home care, Inc.*, 2014 U.S. Dist. LEXIS 117264, 7-8 (N.D. Fla. Apr. 11, 2014) (individualized discovery is appropriate in part because collective, at 128, was manageable). *See also Daniel v. Quail Int'l, Inc.*, 2010 U.S. Dist. LEXIS 294, 4-5 (M.D. Ga. Jan. 5, 2010) (since class was only 39 members, individualized discovery did not raise sufficient efficiency concerns to justify representative discovery).

"When courts have authorized discovery for only a representative sample of plaintiffs, they have generally done so in [circumstances] which it would be impracticable, if not impossible to depose each plaintiff." *Forauer v. Vt. Country Store, Inc.*, 2014 U.S. Dist. LEXIS 79234, 13 (D. Vt. June 11, 2014). *See, e.g., Craig v. Rite Aid Corp.*, 2011 U.S. Dist. LEXIS 13843, 1 (M.D. Pa. Feb. 7, 2011) (1,073 opt-in plaintiffs); *Smith v. Lowe's Home Ctrs.*, 236 F.R.D. 354, 356 (S.D.

Ohio May 5, 2006) (over 1,500 opt-in plaintiffs); *McGrath v. City of Philadelphia*, 1994 U.S. Dist. LEXIS 1495, 1 (E.D. Pa. Feb. 9, 1994) (over 4,100 present and former police officers opted in); *Rindfleisch v. Gentiva Health Servs.*, 2011 U.S. Dist. LEXIS 154667, 6 (N.D. Ga. Dec. 27, 2011) (1,100 opt-ins).

Courts have also held that a class is not too big for individualized discovery in collectives much larger than this one with more complex factual circumstances. *See Wilson v. Navika Capital Group, LLC*, 2014 U. S. Dist. LEXIS 7181, 20 (S.D. Tex. Jan. 17, 2014) (ordering individualized discovery with 330 plaintiffs where many of the plaintiffs were "transient hotel workers that are barely literate.")

**2. PEG's Counterclaims Demand Individualized Discovery.**

It is patently unfair for Plaintiffs to pocket the services fees and tips they received at the Club, which consistently exceeded minimum wage, and then demand payment of minimum wage as well. Accordingly, PEG has lodged Counterclaims for unjust enrichment and breach of contract. Because the money passed directly from the patrons to the entertainers, PEG has no record of Plaintiffs' earnings. Pursuit of these Counterclaims will necessarily require individualized examination of Plaintiffs' income.

**3. Plaintiffs' Simultaneous Participation in Other FLSA Litigation.**

PEG also believes that at least two of the Plaintiffs have participated or are participating in other FLSA litigation in the adult entertainment arena which

entitles PEG to individualized discovery. *See Rodriguez v. Niagara Cleaning Servs.*, 2010 U.S. Dist. LEXIS 70437, 8 (S.D. Fla. June 24, 2010) (granting individualized discovery when defendant demonstrated a legitimate need including involvement in other FLSA cases).

**4. PEG Has the Right to Discover Plaintiffs' Actual Hours.**

PEG further requires full individualized discovery to more accurately determine actual hours entertainers performed. Defendant tendered two Rule 68 offers to Plaintiffs. According to Plaintiffs' counsel, some Plaintiffs have offered to accept an individual offer. Neither Plaintiffs nor the Court can evaluate the settlement value if PEG does not have full discovery from Plaintiffs on the issue of hours. For example, presuming she were to prevail, PEG values Jacqueline Woodard's case based on sign-in data at a maximum of $73,893.50. She values her own case at a maximum of $146,000[5] which is double PEG's estimate. PEG is entitled to individualized discovery to determine the basis for the delta. It is possible the disparity can be explained by preliminary or postliminary activities which the Supreme Court recently ruled cannot be counted toward hours for wage purposes. *Integrity Staffing Solutions, Inc. v. Busk*, 135 S. Ct. 513, 518, (U.S. 2014) (holding that activities including changing clothes, washing up or showering

[5] Plaintiff Jacqueline Woodard's Answers to Interrogatories 11, Ex. C.

"preliminary" or "postliminary" activities are non-compensable), but regardless, PEG is entitled to discovery to make that determination.

Moreover, such information is also required for the Court to review any proposed settlement for fairness. *See Walker v. Vital Recovery Servs.*, 300 F.R.D. 599, 601 (N.D. Ga. 2014)(citing *Nall v. Mal-Motels, Inc.*, 723 F.3d 1304, 1308 (11th Cir. 2013)).

**5. PEG's Requests are Not Redundant.**

Plaintiffs assert that PEG's questions are redundant and duplicative. PEG asks multiple questions about possible operative documents in the Requests for Admission in order to prevent a compound question and to establish that each Plaintiff actually signed the document in question. PEG does so in part to fully pursue its breach of contract Counterclaim,[6] which is based on the agreements that the entertainers signed, which include the requirement to raise concerns with management in writing before taking legal action and to engage in good faith mediation before filing a claim, which Plaintiffs failed to do. Thus, PEG is entitled to discovery on this issue to discover relevant information regarding its breach of contract Counterclaim.

[6] Courts in this Circuit have denied Motions to Dismiss Counterclaims in FLSA adult entertainment cases. *See Order Denying Mot.* Dismiss, Aug. 29, 2014. *Vernitta Geter et. al. v. Galardi South Enterprises, Inc.*, No. 14-21896-CIV-ALTONAGA (S.D. Fla. Aug. 29, 2014)(Doc. No. 108).

**6. PEG Is Entitled to Depose Any of the Ten Plaintiffs Whose Files Went Missing at the Beginning of the Lawsuit.**

Plaintiffs' claims of redundancy about PEG's discovery requests also fails because, as has been previously mentioned, the Files of almost a quarter of the Opt-In Plaintiffs disappeared around the time Plaintiffs' filed their suit. It is telling that Plaintiffs did not object when PEG was unable to produce those documents, nor did they ask about PEG's failure to produce those files during the four days of depositions Plaintiffs recently conducted. PEG believes it is likely that some Plaintiffs may be in custody of these documents, and PEG is entitled to them.

**B. The Parties Should Proceed with Discovery as PEG Proposed.**

Courts should examine whether individualized discovery is appropriate in FLSA litigation on a case by case basis. *Krueger v. N.Y. Tel. Co.*, 163 F.R.D. 446, 451 (S.D.N.Y. 1995) (permitting individualized discovery relating to damages in an opt-in class action). PEG believes that it is entitled to individualized discovery in this case for many reasons.

**1. PEG Should Be Able to Conduct Discovery Regarding Overtime**

First, PEG has asked for individualized discovery on the issue of how many hours each Plaintiff allegedly entertained over forty hours per week,[7] which is

[7] Plaintiffs have raised this issue and included it in their calculations and estimates but have not amended their Complaint to include a claim for overtime.

appropriate. "Under the FLSA, an employee must produce sufficient evidence to show the amount and extent of work performed for which she was improperly compensated." *Wilson v. Navika Capital Group, LLC*, 2014 U.S. Dist. LEXIS 7181, 28 (S.D. Tex. Jan. 17, 2014)(citing *Skipper v. Superior Dairies, Inc.*, 512 F.2d 409, 420 (5th Cir. 1975)). Thus, PEG is entitled to individualized discovery on the issue of overtime.

**2. PEG Cannot Determine if Plaintiffs Are "Similarly Situated" Without Individualized Discovery.**

PEG has also requested individualized discovery on whether Plaintiffs are similarly situated in order to determine if a motion for decertification is appropriate. *See e.g. Khadera*, 2011 U.S. Dist. LEXIS 92562 at *3 [11] (collecting cases); *see also Abubakar v. City of Solano*, 2008 U.S. Dist. LEXIS 17456 *2 (E.D. Cal. Feb. 22, 2008) (concluding "individualized discovery" of 160 FLSA plaintiffs was "appropriate" when defendant indicated it would be challenging whether FLSA plaintiffs were similarly situated); *Coldiron*, 2004 U.S. Dist. LEXIS 23610 at *2 (concluding the defendant could "conduct individualized discovery from the [306] opt-in plaintiffs" when "the question of whether the plaintiffs are similarly situated within the meaning of 29 U.S.C. § 216(b) [was] still an issue because [the defendant] plainly intend[ed] to move to decertify the class"); *Daniel v. Quail Int'l, Inc.*, 2010 U.S. Dist. LEXIS 294, 4-5 (M.D. Ga. Jan. 5, 2010) (individualized discovery appropriate where defendant intends to move to decertify

the class and seeks discovery on whether the opt-in plaintiffs are similarly situated). Thus, PEG is entitled to discovery on the issue of the propriety of the collective's certification.

**3. Plaintiffs' Objections Based on Judicial Economy Are Mistaken.**

Plaintiffs have sought and continue to seek $2.7 million dollars in total damages, which amounts to over $65,000 per Plaintiff, far more than precedent would dictate.[8] Throughout their Motion, Plaintiffs argue that to allow individualized discovery would interfere with the FLSA's goal of efficiency through collective action. This is followed by the argument that individualized discovery is too burdensome for "low wage workers." That is certainly not the case here where Plaintiffs are seeking such high individual rewards. Here, it is fair to require Plaintiffs to engage in good faith discovery, and it would be unfair to deprive PEG a full opportunity to defend itself based on the amount of money sought alone.

**4. The "Economic Realities Test" Demands Individualized Inquiry.**

As part of that good faith discovery, PEG has asked for financial documents including tax documentation and credit card statements. This information is relevant and discoverable because the "economic realities" of the relationship are

[8] The largest public settlement in this Court is *Clincy v. Galardi South Enters.*, No. 1:09-CV-2082-RWS in which seventy-three entertainers settled for $1.55 million which is approximately $21,233 per entertainer.

necessary to analyzing factors in the FLSA independent contractor test, such as how much Plaintiffs deduct as business expenses, and whether they had the opportunity for profit or loss.[9] *See Schumann v. Collier Anesthesia, P.A.*, 2014 U.S. Dist. LEXIS 42098, 8-9 (M.D. Fla. 2014) (court permitted defendants to seek plaintiffs' tax returns because those documents are relevant to the economic realities of the employee-employer relationship); *Hurtado v. Raly Dev.*, 2012 U.S. Dist. LEXIS 121375, 39 (S.D. Fla. 2012) (defendants could seek plaintiffs' tax returns to see if plaintiffs were deducting business expenses to see if plaintiffs had an opportunity for profit or loss). PEG should also be entitled to individualized discovery to fully develop its defenses relating to not only Plaintiffs' real wages, but to the essential elements of their claim.

**5. Plaintiffs' Choice to Opt-In Entails Obligations to Participate in Discovery.**

Plaintiffs also accepted that they could be subject to discovery when they opted into this case. They knowingly chose to join and should not now be permitted to evade the discovery. *See Notice of Lawsuit,* Attached as Exhibit "D"

[9] The six factor independent contractor test for an FLSA analysis is: 1) the nature and degree of the alleged employer's control as to the manner in which the work is to be performed; 2) the alleged employee's opportunity for profit or loss depending upon his managerial skill; 3) the alleged employee's investment in equipment or materials required for his task, or his employment of workers; 4) whether the service rendered requires a special skill; 5) the degree of permanency and duration of the working relationship; and 6) the extent to which the service rendered is an integral part of the alleged employer's business. *Clincy v. Galardi South Enters.*, 808 F. Supp. 2d 1326, 1343 (N.D. Ga. 2011).

at ¶ 4. "Plaintiffs voluntarily signed and filed consent notices to participate in this action, thereby subjecting themselves to discovery." *Wilson v. Navika Capital Group, LLC*, 2014 U.S. Dist. LEXIS 7181, 24 (S.D. Tex. Jan. 17, 2014). *See also Forauer v. Vt. Country Store, Inc.*, 2014 U.S. Dist. LEXIS 79234, 6 (D. Vt. June 11, 2014) (holding that once an individual voluntarily chooses to participate in a lawsuit, he takes on the obligation to provide discovery about his claim); *Beckworth v. Senior Home Care, Inc.*, 2014 U.S. Dist. LEXIS 117264, 8 (N.D. Fla. Apr. 11, 2014) ("Plaintiffs' counsel – and thus ostensibly his clients – were aware that individual opt-in Plaintiffs could be required to participate in discovery, as the proposed notice sent to the opt-in Plaintiffs stated as much.").

**C. Plaintiffs Cited Cases are Inapposite.**

Plaintiffs cite *Rindfleisch v. Gentiva Health Servs.*, 2011 U.S. Dist. LEXIS 154667 (N.D. Ga. Dec. 27, 2011). In *Rindfleish*, the case was bifurcated, limiting the scope of the initial necessary discovery. *Id.* at 5-6. *McGrath v. City of Philadelphia* is distinguishable because the court held that defendant was not entitled to individualized discovery on the specific issue of liability. *McGrath*, 1994 U.S. Dist. LEXIS 1495, 9 (E.D. Pa. Feb. 10, 1994). PEG is asking for individualized discovery on many issues. Perhaps most tellingly is that none of Plaintiffs' cited cases dealt with counterclaims. Nor did Plaintiffs address the issue of Defendant pursuing information for its Counterclaims in their Motion.

## CONCLUSION

For all the foregoing reasons, the Motion should be denied.

Additionally, the Named Plaintiffs have objected to much of the discovery served upon them and PEG will be filing a Motion to Compel shortly on those points if counsel, in good faith, cannot work out these issues.

Respectfully submitted this 9th day of February, 2015.

*/s/ Gary S. Freed*
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**CERTIFICATE OF COMPLIANCE WITH LR 7.1 NDGa**

The undersigned counsel hereby certifies that this pleading was prepared using one of the font and point selections approved by this Court in LR 5.1C, NDGa. Specifically, Times New Roman font was used in 14 point.

*/s/ Gary S. Freed*
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## CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing **RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR PROTECTIVE ORDER** with the Clerk of Court using the CM/ECF system which will send automatic notification of such filing to the following counsel of record:

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**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF GEORGIA**
**ATLANTA DIVISION**

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| KEIRA VAUGHAN, JACQUELINE WOODARD, SASHE OMOGIATE, and MAKEDA ROOTS individually and on behalf of all other similarly situated individuals,<br><br>Plaintiffs,<br><br>v.<br><br>PARADISE ENTERTAINMENT GROUP, INC. d/b/a MAGIC CITY,<br><br>Defendant. | Civil Action No.: 1:14-cv-00914 SCJ |

**DECLARATION OF CHERNITA L. ZACHERY**

The undersigned hereby declares and state as follows:

1. My name is Chernita L. Zachery. I give this Declaration pursuant to 28 U.S.C. § 1746 on my own knowledge for use in the proceedings specified above. This Declaration is submitted in support of Defendant Paradise Entertainment Group, Inc. ("PEG") d/b/a Magic City's Response to Plaintiffs' Motion for Protective Order Requesting Representative Discovery. I am over twenty-one (21) years of age, am a citizen of the United States, and am competent to provide this Declaration.

2. I am an employee of Paradise Entertainment Group, Inc. d/b/a/ Magic City ("PEG") and I am Magic City's secretary and acting day manager when PEG's owner or consultant are not present.

3. I have worked at Magic City in this capacity for approximately six years.

4. I am responsible for PEG's day-to-day operations, interviewing potential entertainers, maintaining entertainer personnel files and records, and ensuring that the company is compliant with local ordinances and state and federal laws.

5. I have reviewed personally all relevant files and records of PEG in making this Declaration.

6. PEG has no knowledge of Tanesha Dedier, Shakeelah Graham, Tulethia Hambrick, Tara Taylor and Danielle Gordon ("Five Women") and we have no record of the Five Women ever entertaining at Magic City.

7. The Five Women are purported conditional collective opt-in plaintiffs in this lawsuit.

8. PEG believes that some or all of the Five Women may have interviewed to become entertainers at Magic City, but either did not pass their interview or did not provide the necessary documentation to become an entertainer at Magic City.

9. To become an entertainer at Magic City, an applicant must complete several steps. First, an applicant must interview. An interview consists of either myself, Michael Barney, Sr. or Marvin Brown asking the applicant questions and viewing

the applicant's physical appearance to ensure that she meets the expectations of a Magic City entertainer. Sometimes the applicant is asked to dance to evaluate her talent.

10. If an applicant satisfactorily passes the interview, she then must obtain a legally required Adult Entertainment Permit ("Permit") from the City of Atlanta Police Department ("APD").

11. The Permit application seeks an applicant's name, address, date of birth, and relevant previous experience. The applicant must physically go to the APD office, verify her age via a driver's license or passport, and pay a Permit fee of $370.00.

12. An applicant will then provide Magic City with her Permit and her photo identification and complete paperwork including an Activity and Facility Use Agreement ("Agreement"), which are placed in her entertainer personnel file ("File"). She may then entertain at Magic City.

13. PEG does not keep records of each applicant unless they actually become an entertainer at Magic City.

14. I have diligently searched for any record or indication that the Five Women actually performed at Magic City. I have not found any record or indication that they the Five Women ever performed for Magic City. I have also asked my co-workers whether they know of the Five Women and none of my co-workers have any recollection of the Five Women.

15. Magic City currently has approximately one hundred and fifty (150) entertainers with current Permits and Files.

16. I maintain Files for all entertainers, active and inactive. Active and inactive entertainer Files are kept in Magic City's business office located on the bottom floor of Magic City.

17. The bottom floor of Magic City is not accessible to the general public.

18. Entertainer personnel Files are kept in a file cabinet in the office. Until recently the file cabinet was unlocked.

19. Entertainer original Permits are kept in a separate binder located on top of the file cabinet.

20. Some older inactive entertainer Files have moved from the office to a secure off-site storage facility.

21. Sometime shortly before this lawsuit was filed, entertainer personnel Files went missing from Magic City's office.

22. These missing Files are the personnel Files of named Plaintiff Makeda Roots ("Ms. Roots") and opt in Plaintiffs Rebecca Camon, Larrissa Castro, Christine Charles, Astin Currie, Lindsay Hardin, Sabrina Lopes, Jasmine Tate, Kristin Journigan, and Tamecia Pace ("Ten Women").

23. At the time the Files went missing, the office was accessible to the entertainers and employees of Magic City.

24. During the day, either myself or Katrina Smith, another PEG secretary, were present in the office.

25. However, at night, the office was empty and available for any of the entertainers or employees of Magic City to use.

26. Neither the door to the office nor the file cabinet in which Files were kept were locked.

27. It is common for entertainers to use the office at night between routines.

28. I periodically checked the active Files to verify information or to add documentation.

29. In 2013, Ms. Roots came into the office to discuss her expired permit which precluded her from dancing at Magic City. Ms. Roots' had allowed her Permit to expire and I explained to her that without an active Permit, she could no longer dance for Magic City.

30. I had in my possession Ms. Root's File and reviewed it. I determined Ms. Roots had not executed a current Agreement and asked her to sign it, which she did. I place the original Agreement in her file. I explained to Ms. Roots that she must renew her Permit to be eligible to dance again and showed her the expired Permit.

31. Ms. Roots was visibly upset that I had not told her of her Permit's expiration date. Almost always, the entertainers are aware of their Permit expiration date and

proceed to renew the Permit timely. Eventually, Ms. Roots renewed her Permit and resumed dancing at Magic City for about six months after this incident.

32. Thereafter, and between the time of that incident and Ms. Root's last performance at Magic City, Plaintiffs' counsel advised that she took pictures of the PEG entertainer bulletin board and our house mom testified that she openly solicited other entertainers to opt-in to this lawsuit.

33. I have searched diligently for the Files for the Ten Women and have exhausted all locations where they might be.

34. I asked my co-workers whether they had removed or seen these Files and none of them had.

35. I brought in all off-site Files and searched through those documents.

36. I rearranged the File cabinet and looked under and around the File cabinet.

37. Ultimately, I did not find any of the missing Files.

38. I compared the sign in sheets for each night performance for at least 3 years and the only Files missing are those for the Ten Women. I am not aware of a File ever going missing previously, let alone ten Files.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 9th day of February, 2015 in Atlanta, Georgia.

Chernita L. Zachery

**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF GEORGIA**
**ATLANTA DIVISION**

| | |
|---|---|
| KEIRA VAUGHAN, JACQUELINE WOODARD, SASHE OMOGIATE, and MAKEDA ROOTS individually and on behalf of all other similarly situated individuals,<br><br>Plaintiffs,<br><br>v.<br><br>PARADISE ENTERTAINMENT GROUP, INC. d/b/a MAGIC CITY,<br><br>Defendant. | Civil Action No.: 1:14-cv-00914-SCJ |

**DECLARATION OF GARY S. FREED**

The undersigned hereby declares and state as follows:

1.

My name is Gary S. Freed. I give this Declaration based pursuant to 28 U.S.C. § 1746 on my own knowledge for use in the proceedings specified above. This Declaration is submitted in support of Defendant Paradise Entertainment Group, Inc. ("PEG") d/b/a Magic City's Response to Plaintiffs' Motion for Protective Order Requesting Representative Discovery.

2.

I am lead counsel for PEG.

3.

On November 11, 2014 PEG and a representative of the Plaintiffs engaged in unsuccessful mediation.

4.

On January 13, 2015, PEG contacted Plaintiffs' counsel regarding scheduling depositions for Plaintiffs.

5.

On January 13, 2015, Plaintiffs sent PEG a letter requesting a conference to discuss the issue of representative discovery.

6.

On January 20, 2015 the parties conferred and continued their conversation over the course of the next two days about depositions and written discovery.

7.

Plaintiffs proposed, in part, that all discovery should be limited to a "representative" group of varying numbers.

8.

Plaintiffs insisted that PEG should not be permitted to select all the Plaintiffs but that the group should include only the named Plaintiffs, with the remainder selected either on a random basis or the parties should each select half the group.

9.

PEG has attempted at all times to cooperate fully and professionally with Plaintiffs, including:

a, offering to agree to a discovery protective order to safeguard financial information;

b. advising Plaintiffs of the incorrect denomination of the Defendant and stipulating to the correct Defendant's substitution;

c. stipulating with adversarial motion practice to conditional certification of the class and to notice;

d. coordinating deposition dates for Plaintiffs instead of unilateral setting depositions as accomplished by plaintiffs;

e. making two substantial Rule 68 offers to conclude this matter, one in mid-December which was not tendered to all Plaintiffs by their counsel because of purported "vagueness" and one which was declined by Plaintiffs' counsel recently, although apparently individual Opt-In Plaintiffs have interest in settling.

10.

PEG contends it should be permitted initially to depose the four named Plaintiffs and an eight (8) person representative sampling of its choosing and be permitted to obtain written discovery from the entire putative class. The Plaintiffs monetary demand is a large number and PEG wants to ensure it has fully prepared for trial in this highly contested matter. PEG will determine after this initial

discovery what additional discovery is necessary and address it in good faith with Plaintiffs' counsel,

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 9th day of February, 2015 in Atlanta, Georgia.

Gary S. Freed, Esq.