

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

AMELIA GOODBAR, and IAN ANDREW  
TAYLOR, On Behalf of Themselves and  
Others Similarly Situated,

Plaintiffs,

v.

TRIANGLE CHAR & BAR EAST LLC,  
KEVIN SCOTT LONG, and EDWARD I.  
CONDON individually,

Defendants.

CIVIL ACTION NO.: 2:14-cv-3422-PMD

COLLECTIVE  
ACTION COMPLAINT  
(Jury Trial Requested)

Plaintiffs Amelia Goodbar and Ian Andrew Taylor individually and on behalf of all others similarly situated, by counsel, allege the following claims against the Defendants, Triangle Char & Bar East LLC, Kevin Scott Long and Edward I. Condon pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §201, *et seq.*

**NATURE OF CLAIMS**

1. This is an action for violations of the minimum wage and unpaid overtime provisions of the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*. Plaintiffs are former employees of Defendants. The Plaintiffs bring this action as a collective action pursuant to 29 U.S.C. §216(b). Plaintiffs and other similarly situated employees of the Defendants worked as Servers and Bartenders.

2. Plaintiffs bring this lawsuit against Defendants as a collective action on behalf of themselves and all other similarly situated employees who suffered damages as a result of

Defendants' violations of the FLSA pursuant to the collective action provisions of 29 U.S.C. § 216(b).

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over this matter pursuant to 29 U.S.C. §216(b) and 28 U.S.C. §§1331, 1367, 2201, and 2202.

4. Venue is proper in this District pursuant to 28 U.S.C. §1391(b).

5. Each of the Defendants is subject to personal jurisdiction in the State of South Carolina.

### **PARTIES**

6. Plaintiff Amelia Goodbar is over the age of nineteen (19) and is a resident of Charleston County, South Carolina.

7. Plaintiff Ian Andrew Taylor is over the age of nineteen (19) and is a resident of Charleston County, South Carolina.

8. Defendant, Triangle Char & Bar East LLC is a for-profit limited liability corporation, organized and existing under the laws of South Carolina.

9. On information and belief, Kevin Scott Long is a citizen and resident of the State of South Carolina and is a co-owner and operator of Triangle Char & Bar East LLC.

10. On information and belief, Edward I. Condon is a citizen and resident of the State of South Carolina and is a co-owner and operator of Triangle Char & Bar East, LLC.

### **FACTS AND ALLEGATIONS**

11. At all times relevant herein, Defendants own and operate Triangle Char & Bar Restaurants ("Triangle") located at 1440 Ben Sawyer Boulevard Mount Pleasant, South Carolina; and 828 Savannah Highway Charleston, South Carolina.

12. Kevin Scott Long exercises operational control over Triangle. He has the authority to hire, fire, and discipline employees of Triangle. He was involved in the decisions to set the wages and pay for Plaintiffs and all other similarly situated employees; and, therefore, Kevin Scott Long is individually liable to Plaintiffs and all other similarly situated employees.

13. Edward I. Condon exercises operational control over Triangle. He has the authority to hire, fire, and discipline employees of Triangle. He was involved in the decisions to set the wages and pay for Plaintiffs and all other similarly situated employees; and, therefore, Edward I. Condon is individually liable to Plaintiffs and all other similarly situated employees.

14. Ms. Goodbar worked for the Defendants under the title Server and Bartender from approximately March 2013 until June 2014. Her primary job duties as a server included taking and serving customers' food and beverage orders. Her primary duties as a bartender included taking customer's orders and serving alcohol drinks to customers.

15. Mr. Taylor worked for the Defendants as a server from approximately March 2013 until March 2014. His primary job duties as a server included taking and serving customers' food and beverage orders.

16. Ms. Goodbar worked at Defendants' restaurant located at 1440 Ben Sawyer Boulevard Mount Pleasant, South Carolina.

17. Mr. Taylor worked at Defendants' restaurant located at 1440 Ben Sawyer Boulevard Mount Pleasant, South Carolina.

18. Defendants paid Plaintiffs, and all other similarly situated employees, less than the statutory minimum wage by taking the "tip credit" under the FLSA, 29 U.S.C. § 203(m).

19. Defendants paid Plaintiffs an hourly wage of \$2.13 when they worked shifts as a Server.

20. Defendants paid Plaintiff Goodbar an hourly wage of \$3.50 when she worked shifts as a Bartender.

21. In addition to their hourly wage, Plaintiffs and other similarly situated employees received tips from customers. In order to meet the FLSA minimum wage of \$7.25 for Plaintiffs and other similarly situated servers, the Defendants applied a “tip credit” based on the tips received by the servers for their service to customers.

22. Upon information and belief, Defendants use a hospitality control service called Bevinco to provide an inventory management service for wine, beer, draft and liquor. Bevinco performs on-premise bar audits for the Defendants with the goal of decreasing their losses and increasing their profits. Bevinco regularly monitored the Defendants’ alcohol inventory levels for loss, waste, spillage and theft. See <http://www.bevinco.com/>

23. Bevinco reported to Defendants the inventory loss on beer, wine and liquor each week. The Defendants imposed a theory of collective punishment on all bartenders for the losses by requiring each bartender to pay a percentage of the loss based upon the number of shifts they were assign to work that week. Defendants imposed their collective punishment regardless of how the loss may have occurred or who specifically may have been responsible. For example, the bartender with the highest number of shifts paid Defendants the greatest amount.

24. Plaintiff Goodbar and other similarly situated bartenders were required to pay their imposed share of the loss reported by Bevinco to the Defendants from the cash tips they earned. If Plaintiff Goodbar did not pay the cash amount then the Defendants would retain her credit card tips until the amount was paid in full.

25. The Defendants violated the rights of numerous employees and failed to pay these employees the federally mandated minimum wage.

26. Defendants regularly required the Plaintiffs and other similarly situated employees to work “off the clock”.

27. Plaintiffs and other similarly situated employees regularly worked over forty (40) hours in a workweek without being paid either their regular hourly rate or any overtime compensation.

28. Defendants engaged in a practice of wage theft whereby they improperly took a portion of the tips received by Plaintiffs and used this money for their own purposes.

29. Plaintiffs and other similarly situated employees were not exempt from the minimum wage and overtime compensation provisions of the FLSA.

**FOR A FIRST CAUSE OF ACTION**  
**(FLSA Minimum Wage Claim, 29 U.S.C. §§ 201, et seq.)**  
**(Individual and Collective Action)**

30. Plaintiffs, on behalf of themselves and all other similarly situated employees, re-allege and incorporate by reference all preceding paragraphs as if specifically set forth herein.

31. The FLSA mandates that employers compensate non-exempt employees at a minimum wage rate of \$7.25 per hour.

32. The FLSA, 29 U.S.C. § 203(m), provides an exception allowing employers to pay less than the statutory minimum wage to tipped employees, on the condition that the pooling of tips is only amongst those who customarily and regularly receive tips.

33. When the employer, its owners, or its managers retain a portion of the employees’ tips, the tip credit exception is invalidated.

34. Without the benefit of the tip credit provision, Defendants must pay each nonexempt employee the statutory minimum wage of Seven and 25/100 dollars (\$7.25) per hour.

35. Defendants paid Plaintiff Goodbar and other bartenders an hourly rate of \$3.50 and took the maximum tip credit of \$3.75 toward Defendants' minimum wage obligation.

36. Defendants' compensation of Plaintiff Goodbar and other bartenders violates the minimum wage provisions of the FLSA in several particulars, including but not limited to:

- a. Defendants did not permit Plaintiff Goodbar and other employees similarly situated to retain all tips they received;
- b. Defendants unlawfully retained portions of the tips received by Plaintiff Goodbar and the FLSA Collective Plaintiffs for their own profit;
- c. Defendants failed to provide oral or written notice of the FLSA's requirements for a valid tip credit.

37. At all times relevant herein, Defendants have been regularly engaged in interstate commerce.

38. At all times relevant herein, Defendants have been an enterprise within the meaning of § 3(r) and § 3(s)(1) of the FLSA, 29 U.S.C. §§ 203(r) & (s).

39. At all times relevant herein, each Defendant has been an employer within the meaning of the FLSA, 29 U.S.C. §§ 203.

40. At all times relevant herein, Defendants owned an operation and were an enterprise engaged in interstate commerce or in the production of interstate commerce as defined by the Act, 29 U.S.C. §203(r) and 203(s).

41. At all times relevant herein, the annual gross sales volume of the Defendants' business was in excess of \$500,000.00. Additionally, Plaintiffs and other similarly situated employees worked in interstate commerce so as to fall within the protections of the FLSA.

42. Plaintiffs, on behalf of themselves and other similarly situated employees are entitled to recover damages as a result of the Defendants' violations of the minimum wage provisions of the FLSA, liquidated damages in an equal amount, and their reasonable attorneys' fees and costs incurred in bringing this action.

43. Defendants' violation of the tip credit was willful, knowing, intentional, and reckless, and therefore, Plaintiffs on behalf of themselves and other similarly situated employees are entitled to recover liquidated damages from Defendants.

**FOR A SECOND CAUSE OF ACTION**  
**(Fair Labor Standards Act–Failure to Pay Overtime Wages)**  
**(Individual and Collective Action)**

44. Plaintiffs, on behalf of themselves and all other similarly situated employees, re-allege and incorporate by reference all preceding paragraphs as if specifically set forth herein.

45. Plaintiffs and other servers and bartenders worked for more than forty (40) hours during a workweek during their employment with Defendants.

46. Defendants failed to pay Plaintiffs and other servers and bartenders at the rate of one-and-a-half times their normal rate of pay for all hours worked in excess of forty (40) hours in a workweek as required by section 7(a) of the FLSA, 29 U.S.C. § 207(a).

47. Defendants also failed to pay Plaintiffs and the members of the Plaintiffs' class for all compensable time for which Plaintiffs and members of Plaintiffs' class provided work for the benefit of Defendants.

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

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

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

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

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

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs individually and on behalf of themselves and all others similarly situated individuals who join this action demand:

- a. Designation of this action as a collective action on behalf of the FLSA collective class pursuant to 29 U.S.C. § 216 (b);
- b. Judgment against Defendants for an amount equal to Plaintiffs unpaid minimum wages at the applicable hourly rate of \$7.25;
- c. Judgment against Defendants for all overtime worked at one and one half times the regular rate of pay;
- d. Judgment against the Defendants for the amount of unlawfully retained portions of the tips they received from Plaintiffs;



- e. Judgment against Defendants that their violations of the FLSA and its implementing regulations were willful;
- f. Liquidated damages in an amount equivalent to the overtime damages, and unpaid minimum wages owed to Plaintiffs;
- g. Attorneys' fees and costs; and
- h. All such further relief as the Court deems just and equitable.

**JURY DEMANDED**

Plaintiffs Goodbar and Taylor on behalf of themselves and all other similarly situated employees hereby demand a trial by jury.

Respectfully submitted,

/s/ Marybeth Mullaney

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