



**PARTIES, JURISDICTION, and VENUE**

3. Plaintiffs reallege each and every allegation contained in Paragraphs 1 through 2 as if repeated here verbatim.

4. Foster is a citizen and resident of the County of Horry, State of South Carolina.

5. Upon information and belief, GTC is a South Carolina corporation maintaining offices and agents and otherwise doing business in the County of Horry, State of South Carolina.

6. Upon information and belief, Lloyd is a citizen and resident of the County of Horry, State of South Carolina, and an owner of GTC.

7. This court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 based upon Plaintiffs' claims under the FLSA.

8. Foster brings this action, as an opt-in Collective Action pursuant to 29 U.S.C. § 216(b), on behalf of a class of individuals who were employed by GTC at any time within the three (3) years prior to joining this lawsuit, who were nonexempt employees paid an hourly rate less than the minimum wage of Seven and 25/100 (\$7.25) per hour, and either received tips or shared in the mandatory tip pool ("Tip Pool") created by GTC.

9. Foster also brings this action as an opt-out class action under Rule 23 of the Federal Rules of Civil Procedure, on behalf of a class of all individuals employed by GTC, at any time within the three (3) years prior to the commencement of this lawsuit, who received "wages" in the form either of tips or funds from a tip pool, and GTC deducted amounts from these wages without written or legal authorization.

10. Upon information and belief, this action satisfies the requirements of Fed. R. Civ. P. 23(a), as alleged in the following particulars:

a. The proposed Plaintiff class is so numerous that joinder of all individual

members in this action is impracticable;

b. There are questions of law and/or fact common to the members of the proposed Plaintiff class;

c. The claims of Plaintiffs are typical of the claims of the proposed Plaintiff class; and

d. Plaintiffs will fairly and adequately protect the interests of the class.

11. In addition, upon information and belief, this action satisfies one or more of the requirements of Fed. R. Civ. P. 23(b), because the questions of law and/or fact common to the members of the proposed Plaintiff class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

12. In addition, this Court has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over Plaintiffs' pendent claims, which are brought pursuant to the statutory and common law of the State of South Carolina, because those claims arise out of the same transaction or occurrence as the federal claims alleged herein.

13. Based upon the above, jurisdiction and venue are proper in this court and division.

14. The time and pay records, including the "tip-out" reports, of Plaintiffs and the members of the Plaintiff class are in the possession, custody, and/or control of Defendants, and Defendants are under a duty, pursuant to section 11(c) of the FLSA, 29 U.S.C. § 211(c), and the regulations of the United States Department of Labor, to maintain and preserve such payroll and other employment records from which the amount of Defendants' liability can be ascertained. Plaintiffs request an order of this Court requiring Defendants to preserve such records during the pendency of this action.

### **FACTS**

15. Plaintiffs reallege each and every allegation contained in Paragraphs 1 through 14 as if repeated here verbatim.

16. GTC owns and operates a restaurant in the Broadway on the Beach area of Myrtle Beach.

17. Lloyd exercises operational control over GTC; he has the authority to hire, discipline, and fire employees of GTC; he was involved in the decisions to set the wages and pay for Plaintiffs, and, therefore, Lloyd is individually liable to Plaintiffs.

18. GTC hired Foster, as a non-exempt employee, in June of 2012, and assigned him to be a “busser.”

19. Foster was subsequently promoted to server and ended his employment with GTC on October 31, 2014.

20. GTC paid Foster an hourly wage less than the statutory minimum wage by taking the “Tip Credit” under the FLSA, 29 U.S.C. § 203(m).

21. GTC required its servers to remit, from the tips they received, one percent (1%) of their total sales into a mandatory tip pool (“Tip Pool”).

22. From the Tip Pool, GTC paid funds to employees who worked in the kitchen. These employees are not employees who are “customarily and regularly tipped employees.”

23. GTC required its servers to remit, from the tips they received, one and 00/100 dollar (\$1.00) per day back to GTC for “breakage.”

24. Plaintiffs questioned management of GTC both on the Tip Pool practices that went to the kitchen employees and why they were forced to share their tips with GTC for “breakage,” but GTC continued in reckless disregard in using this illegal Tip Pool.

**FOR A FIRST CAUSE OF ACTION**  
**Violation of Fair Labor Standards Act**  
**29 U.S.C. § 203(m), 206**  
**(Violation of Tip Credit / Failure to Pay Proper Minimum Wage)**

25. Plaintiffs reallege each and every allegation contained in Paragraphs 1 through 24 as if repeated here verbatim.

26. At all times pertinent to this Complaint, GTC engaged in interstate commerce or in the production of goods for commerce as defined by 29 U.S.C. § 203(r) and 203(s).

27. At all times relevant to this Complaint, GTC's annual gross volume of sales made or business done was not less than Five Hundred Thousand and 00/100 dollars (\$500,000.00). Alternatively, Plaintiffs worked in interstate commerce so as to fall within the protection of the FLSA.

28. The business of GTC was and is an enterprise engaged in commerce as defined by 29 U.S.C. § 203(s)(1) and, as such, GTC is subject to, and covered by, the Fair Labor Standards Act.

29. The FLSA, 29 U.S.C. § 206, requires employers to pay its nonexempt employees a minimum wage of Seven and 25/100 dollars (\$7.25) an hour.

30. The FLSA, 29 U.S.C. § 203(m), provides an exception allowing certain employers to take a "Tip Credit" and pay less than the statutory minimum wage to tipped employees, on the condition that any "Tip Pool" is shared only with other employees who customarily and regularly receive tips.

31. When the employer, its owners, or its managers share in the Tip Pool, the Tip Pool is invalidated.

32. When the employer shares the Tip Pool with employees, who are not employees who "customarily and regularly receive tips," the Tip Pool is invalidated.

33. When the Tip Pool is invalidated, the employer can no longer enjoy the benefits of the Tip Credit provision, 29 U.S.C. § 203(m).

34. Without the benefit of the Tip Credit provision, Defendants must pay Plaintiffs an hourly rate of the statutory minimum wage of Seven and 25/100 dollars (\$7.25) per hour for all hours worked, without any credit for the tips Plaintiffs received.

35. When the employer violates the rules of the Tip Credit, the employer owes the total amount of tips that were deducted from employee's tips and redistributed illegally.

36. Defendants have violated the FLSA, 29 U.S.C. § 206, in reckless disregard of the rights of Plaintiffs.

37. As such, Plaintiffs seek to recover from Defendants the following damages:

- a. actual damages in the amount of minimum wages due;
- b. liquidated damages of an equal amount;
- c. the amount of tips deducted from their wages and redistributed illegally;
- d. reasonable attorneys' fees and the costs and disbursements of this action.

**FOR A SECOND CAUSE OF ACTION**  
**Violation of Fair Labor Standards Act**  
**29 U.S.C. § 207**  
**(Failure to Pay Proper Overtime Wage)**

38. Plaintiffs reallege each and every allegation contained in Paragraphs 1 through 37 as if repeated here verbatim.

39. Pursuant to the terms of the FLSA, 29 U.S.C. § 207, an employer must pay a nonexempt employee time and a half for all hours worked over forty (40) hours in a workweek.

40. Without the benefit of the Tip Credit provision, Defendants must pay Plaintiffs, and all other similarly situated employees, for all hours worked over forty (40) in a workweek, including any hours worked off the clock, the statutory, minimum, overtime wage of Ten and

88/100 dollars (\$10.88) per hour, without any credit for the tips Plaintiffs received.

41. Defendants failed to pay Plaintiffs and all other similarly situated employees the proper amount for all hours worked over forty (40) hours in a workweek or overtime hours worked.

42. Defendants have violated the FLSA, 29 U.S.C. § 207, in reckless disregard of the rights of Plaintiffs.

43. As such, Plaintiffs seek to recover from Defendants the following damages:

- a. actual damages in the amount of overtime wages due;
- b. liquidated damages of an equal amount; and
- c. reasonable attorneys' fees and the costs and disbursements of this action.

**FOR A THIRD CAUSE OF ACTION**  
**Violation of South Carolina Payment of Wages Act**  
**S.C. Code § 41-10-10, et. al.**  
**(Unauthorized Deductions from Wages)**

44. Plaintiffs reallege each and every allegation contained in Paragraphs 1 through 43 as if repeated here verbatim.

45. Defendants are an "employer" as defined by the SCPWA.

46. Defendants employed Plaintiffs and the members of the Plaintiff class within the State of South Carolina.

47. Money received by Plaintiffs directly as tips, or amounts received from the Tip Pool, were "wages" as defined by SCPWA, § 41-10-10(2).

48. Defendants illegally deducted amounts from the wages of Plaintiffs and the members of the Plaintiff class without providing proper written notice as required by SCPWA § 41-10-30(A).

49. Defendants' illegal deductions from the wages of Plaintiffs were willful and were made in bad faith.

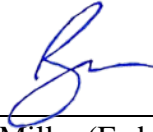
50. Pursuant to SCPWA § 41-10-80(C), Plaintiffs and the members of the Plaintiff class are entitled to recover in this action an amount equal to three (3) times the full amount of their wages that were illegally deducted from their wages, plus reasonable attorneys' fees and costs.

WHEREFORE, having fully set forth their allegations against Defendants, Plaintiffs respectfully request that the Court enter judgment for the following relief:

- a. An order authorizing the sending of appropriate notice to current and former employees of Defendants who are potential members of the collective action, but have yet "opted-in," under the FLSA;
- b. Actual damages in the amount of minimum wages due;
- c. Liquidated damages of an equal amount;
- d. The amount of tips deducted from their wages and redistributed illegally;
- e. Actual damages in the amount of overtime wages due;
- f. Liquidated damages of an equal amount;
- g. An order certifying a class action under Rule 23 of the Federal Rules of Civil Procedure to remedy the class-wide violations of the South Carolina Payment of Wages Act;
- h. Actual damages in the amount of wages due under SCPWA;
- i. Treble damages pursuant to SCPWA;
- j. Reasonable attorneys' fees and costs;
- k. Injunctive relief ordering Defendant to amend its wage and hour policies to comply with applicable federal and state laws; and
- l. Such further relief as the Court deems just and proper.



Plaintiffs request a trial by jury.



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**ATTORNEY FOR PHILLIP FOSTER,  
on behalf of himself and  
all others similarly situated**

CHARLESTON, SC

November 25, 2014