

deductions from wages, and for other relief under the South Carolina Payment of Wages Act, South Carolina Code Ann. § 41-10-10, et. seq. (“SCPWA”). These claims are proposed as opt-out class claims under Rule 23 of the Federal Rules of Civil Procedure.

PARTIES, JURISDICTION, VENUE, and FACTS

3. Plaintiffs reallege each and every allegation contained in the above paragraphs as if repeated here verbatim.

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

5. CM is a South Carolina limited liability company maintaining offices and agents in the County of Charleston, state of South Carolina. CM is an employer of individuals and operates a restaurant in Charleston, South Carolina doing business as Miyabi Japanese Steak & Sushi Bar (or some form of this name) (“Miyabi”). CM, on occasions, has shared some of its employees with other individuals or entities, including CJM and Kyoto, operating a restaurant doing business as Miyabi Japanese Steak & Sushi Bar. CM, in the operation of Miyabi, performs related activities to the activities of the other Defendants in their operation of Miyabi Japanese Steak & Sushi Bar. CM has, on information and belief, in the operation of the restaurant, paid a portion of its profits, or a management fee, to Defendants CJM and/or Kyoto. Plaintiffs were under the common control of CM and all other Defendants.

6. CJM is a South Carolina corporation maintaining offices and agents and otherwise doing business in various counties of the State of South Carolina, including Charleston County. CJM’s website currently reads, “We currently have eight Miyabi Steak and Seafood restaurants in the Southeast. Please see the contact information for each location below.” The website then lists the location of the Miyabi in Charleston. In pictures on CJM’s website, it shows a sign reading, “Miyabi Japanese Steak & Sushi Bar.” On information and belief, CJM

acts either directly or indirectly as an employer of Plaintiffs. CJM performs related activities with Defendant CM. CJM exercises common control over CM and its employees, and the related activities with CM are part of a unified operation in operating Miyabi. CJM and Defendants CM engage in these related activities for a common business purpose. CJM has the authority to hire and fire employees of CM. CJM has the authority to control work conditions of the employees of CM. CJM has the authority to determine the rate and method of payment of employees of CM. On information and belief, CJM maintains some portion of the employment records of employees of CM. In addition, CJM's office address is 4420 Oleander Drive, Suite 204, Myrtle Beach, South Carolina 29577, which is the same address listed for Defendant Kyoto. Plaintiffs were under the common control of CJM and all other Defendants.

7. Kyoto is a South Carolina corporation maintaining offices and agents and otherwise doing business in various counties of the State of South Carolina, including Charleston County. On information and belief, Kyoto acts either directly or indirectly as an employer of Plaintiffs. Kyoto performs related activities with Defendant CM. Kyoto exercises common control over CM and its employees, and the related activities with CM are part of a unified operation in operating Miyabi. Kyoto and Defendants CM engage in these related activities for a common business purpose. Kyoto has the authority to hire and fire employees of CM. Kyoto has the authority to control work conditions of the employees of CM. Kyoto has the authority to determine the rate and method of payment of employees of CM. On information and belief, Kyoto maintains some portion of the employment records of employees of CM. In addition, Kyoto's office address is 4420 Oleander Drive, Suite 204, Myrtle Beach, South Carolina 29577, which is the same address listed for Defendant CJM. Plaintiffs were under the common control of Kyoto and all other Defendants.

8. Upon information and belief, Hirao is a citizen and resident of the County of Horry, State of South Carolina, and an owner and officer of CJM, and on information and belief, is an owner and/or officer of CM and/or Kyoto. He has the authority to exercise operational control over CM and Kyoto; he has the authority to hire, fire, and discipline Plaintiffs; he has the authority to set the direct, or hourly, wages for Plaintiffs; he has the authority to set the rules of the tip pool used by CM; CJM; and/or Kyoto; therefore, he is individually liable to Plaintiffs.

9. Upon information and belief, Maeda is a citizen and resident of the County of Georgetown, State of South Carolina, and an owner and officer of CJM, and on information and belief, is an owner and/or officer of CM and/or Kyoto. He has the authority to exercise operational control over CM and Kyoto; he has the authority to hire, fire, and discipline Plaintiffs; he has the authority to set the direct, or hourly, wages for Plaintiffs; he has the authority to set the rules of the tip pool used by CM; CJM; and/or Kyoto; therefore, he is individually liable to Plaintiffs.

10. Upon information and belief, John Doe 1-10 are citizens and residents of the states of South Carolina, and each are either an owner or officer of one (1) of the following: CM; CJM; or Kyoto. Doe has the authority to exercise operational control over CM; CJM; and Kyoto; Doe has the authority to hire, fire, and discipline Plaintiffs; Doe has the authority to set the direct, or hourly, wages for Plaintiffs; Doe has the authority to set the rules of the tip pool used by CM; CJM; and Kyoto; therefore, Doe is individually liable to Plaintiffs.

11. Stone was employed at the Miyabi Japanese Steak & Sushi Bar, in Charleston, in the County of Charleston, State of South Carolina. On information and belief, his direct employer was CM and/or Kyoto. A substantial part of the events giving rise to these claims occurred in Charleston County. Stone was paid with payroll checks indicating the payor as

CHARLESTON MIYABI INC., 688 CITADEL HAVEN DRIVE, CHARLESTON, SC 29414-5642.

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

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

14. Stone 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 employees at the Miyabi Japanese Steak & Sushi Bar in Charleston, as outlined above, within the three (3) years prior to joining this lawsuit, and were paid a direct, or hourly, rate less than the minimum wage of Seven and 25/100 dollars (\$7.25) per hour, received tips, and Miyabi deducted a portion of those tips to place in the mandatory tip pool created by Miyabi ("Tip Pool").

15. Stone 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 individuals, who were employees at the Miyabi Japanese Steak & Sushi Bar in Charleston, as outlined above, within the three (3) years prior to the filing of this lawsuit, and were paid a direct, or hourly, rate less than the minimum wage of Seven and 25/100 dollars (\$7.25) per hour, received tips, and Miyabi deducted, without written or legal authorization, a portion of those tips to place in the Tip Pool.

16. 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.

17. 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.

18. Venue in this District and in this Division is appropriate pursuant to 28 U.S.C. 1391(b)(2) and 1391(c), as a substantial part of the events giving rise to the claims herein occurred in this Division, the Defendants have extensive and deliberate contacts in this Division, and one of the individual Defendants is a resident of this Division.

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

20. The work and pay records, including the “tip-out” reports, of Plaintiffs 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.

21. Stone was employed as a server from 2013 until approximately June of 2015 at

the Miyabi Japanese Steak & Sushi Bar, in Charleston, in the County of Charleston, State of South Carolina. During some of these weeks, Stone worked more than forty (40) hours in a workweek requiring his employer to pay his overtime. Defendants paid Stone a direct, or hourly, wage less than the statutory minimum wage by taking the “Tip Credit” under the FLSA, 29 U.S.C. § 203(m). Defendants required Stone, at the end of each shift, to pool, or share, from the tips he had received, a portion of the tips into the mandatory Tip Pool. From the Tip Pool, Defendants paid, directly or indirectly, a portion of these tips with back-of-the-house employees who were not employees who customarily and regularly received tips. Stone questioned management of these Defendants on the practices of whether the Tip Pool was legal, but these Defendants continued in reckless disregard in violating the FLSA.

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)

22. Plaintiffs reallege each and every allegation contained in the above paragraphs as if repeated here verbatim.

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

24. At all times relevant to this Complaint, Defendants’ 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.

25. The business of Defendants was and is an enterprise engaged in commerce as defined by 29 U.S.C. § 203(s)(1) and, as such, Defendants are subject to, and covered by, the FLSA.

26. 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.

27. 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 pooling, or sharing, of tips is shared only with other employees who customarily and regularly receive tips.

28. When the employer pools, or shares, these tips with employees, who are not employees who customarily and regularly receive tips, the tip pool is invalidated.

29. 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).

30. Defendants have violated the FLSA, 29 U.S.C. §§ 203(m), 206, in reckless disregard of the rights of Plaintiffs.

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

- a. actual damages;
- b. liquidated damages of an equal amount; and
- c. 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)

32. Plaintiffs reallege each and every allegation contained in the above paragraphs as if repeated here verbatim.

33. 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.

34. Without the benefit of the Tip Credit provision, 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.

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

36. As such, Plaintiffs seeks to recover from Defendants the following damages:

- a. actual damages;
- 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)

37. Plaintiffs reallege each and every allegation contained in the above paragraphs as if repeated here verbatim.

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

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

40. Defendants illegally deducted amounts from the wages of Plaintiffs, without having either written authorization or allowed under state or federal law, as required by SCPWA § 41-10-30(A).

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

42. Pursuant to SCPWA § 41-10-80(C), Plaintiffs are entitled to recover in this action an amount equal to three (3) times the full amount of their wages that were illegally deducted, 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 putative members of the collective action, but have not yet “opted-in,” under the FLSA;
- b. An order prohibiting Defendants from violating the FLSA, particularly the Tip Credit, in the future;
- c. For Plaintiffs, under the first and second causes of actions:
 - i. actual damages in an amount to be determined;
 - ii. liquidated damages of an equal amount; and
 - iii. reasonable attorneys’ fees and costs;
- d. An order certifying a class action under Rule 23 of the Federal Rules of Civil Procedure, for the South Carolina Class, to remedy the class-wide violations of the South Carolina Payment of Wages Act against those named Defendants;
- e. Actual damages in the amount of wages due under SCPWA;
- f. Treble damages pursuant to SCPWA;
- g. Reasonable attorneys’ fees and costs;
- h. Injunctive relief ordering Defendants to amend their wage and hour policies to comply with applicable federal and state laws; and
- i. Such further relief as the Court deems just and proper.

Plaintiffs request a trial by jury.

[SIGNATURE PAGE TO FOLLOW]



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behalf of himself and all others similarly situated**

CHARLESTON, SC

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