

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

5. FFE is a South Carolina corporation maintaining offices and agents in the County of Horry, state of South Carolina. FFE is an employer of individuals and operates a restaurant in Myrtle Beach, South Carolina doing business as Miyabi Japanese Steakhouse (or some form of this name) (“Miyabi”). During the past three (3) years, FFE has shared some of its employees with other individuals or entities, including Charleston Miyabi, Inc. (“CM”), and, upon information belief, Miyabi Murrells Inlet, LLC (“MMI”), both of which also operate restaurants doing business as Miyabi Japanese Steak & Sushi Bar (or some form of this name) in this division. During this same time, managers of FFE would perform management activities for CM and MMI at the Miyabi restaurants located in Charleston and Murrells Inlet. FFE, in the operation of Miyabi, performs related activities to the activities of CM and MMI, and the other Defendants in their operation of Miyabi Japanese Steak & Sushi Bar. FFE 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 FFE 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 Horry

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 Myrtle Beach. 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 FFE. CJM exercises common control over FFE and its employees, and the related activities with FFE, and are part of a unified operation in operating Miyabi. CJM and Defendant FFE engage in these related activities for a common business purpose. CJM has the authority to hire and fire employees of FFE. CJM has the authority to control work conditions of the employees of FFE. CJM has the authority to determine the rate and method of payment of employees of FFE. On information and belief, CJM maintains some portion of the employment records of employees of FFE. 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 Horry County. On information and belief, Kyoto acts either directly or indirectly as an employer of Plaintiffs. Kyoto performs related activities with Defendant FFE. Kyoto exercises common control over FFE and its employees, and the related activities with FFE, and are part of a unified operation in operating Miyabi. Kyoto and Defendants FFE engage in these related activities for a common business purpose. Kyoto has the authority to hire and fire employees of FFE. Kyoto has the authority to control work conditions of the employees of FFE. Kyoto has the authority to determine the rate and method of payment of employees of FFE. On information and belief,

Kyoto maintains some portion of the employment records of employees of FFE. 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 FFE. 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 FFE and/or Kyoto. He has the authority to exercise operational control over FFE 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 FFE; 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 FFE and/or Kyoto. He has the authority to exercise operational control over FFE 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 FFE; 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 state of South Carolina, and each are either an owner or officer of one (1) of the following: MJS; FFE; CJM; or Kyoto. Doe has the authority to exercise operational control over FFE 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 FFE; CJM; and/or Kyoto; therefore, he is individually liable to Plaintiffs.

11. Girard was employed at the Miyabi Japanese Steak & Sushi Bar, in Myrtle Beach, in the County of Horry, State of South Carolina. On information and belief, his direct employer was FFE. Girard was provided with a W2 indicating the employer as FANTASY FAR EAST, INC., 9732 HIGHWAY 17 NORTH, MYRTLE BEACH, SC 29572.

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. Girard 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 Myrtle Beach, 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. Girard 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 Myrtle Beach, 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)(1) and 1391(c), as all Defendants are residents of this District, 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. Girard was employed as a server from 2012 until approximately August of 2014 at the Miyabi Japanese Steak & Sushi Bar, in Myrtle Beach, in the County of Horry, State of South Carolina. During some of these weeks, Girard worked more than forty (40) hours in a workweek requiring his employer to pay his overtime. Defendants paid Girard 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 Girard, 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. Girard 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;

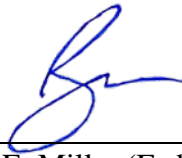
g. Reasonable attorneys’ fees and costs;

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]



Bruce E. Miller (Fed Bar No. 3393)
BRUCE E. MILLER, P.A.
147 Wappoo Creek Drive, Suite 603
Charleston, SC 29412
T: 843.579.7373
F: 843.614.6417
bmiller@brucemillerlaw.MJS

**ATTORNEY FOR ANTHONY GIRARD, on
behalf of himself and all others similarly situated**

CHARLESTON, SC

June 23, 2016