

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
(NORTHERN DIVISION)**

**TESSA MARKETTI**

1733 Manor Road  
Baltimore, Maryland 21222  
*Resident of Baltimore County*

**STEVE ORTIZ**

9906 Cervidae Lane  
Randallstown, Maryland 21133  
*Resident of Baltimore County*

**ANGELA BOUGHNER**

48 Mapledale Avenue  
Glen Burnie, Maryland 21061  
*Resident of Anne Arundel County*

Plaintiffs,

***Individually and on Behalf of All  
Similarly Situated Employees***

v.

**THE CORDISH COMPANIES, INC.**

601 East Pratt Street  
Suite 600  
Baltimore, Maryland 21202

Serve: CSC-Lawyers Incorporating Service  
7 St. Paul Street  
Suite 820  
Baltimore, Maryland 21202

**LUCKIES' BALTIMORE, LLC**

601 East Pratt Street  
Suite 600  
Baltimore, Maryland 21202

Serve: CSC-Lawyers Incorporating Service  
7 St. Paul Street

Civil Action No.:

Collective/Class Claims

Jury Trial Requested

Suite 820  
Baltimore, Maryland 21202

Defendants.

**CLASS AND COLLECTIVE ACTION COMPLAINT FOR WAGES OWED AND  
STATUTORY DAMAGES**

Plaintiffs TESSA MARKETTI, STEVE ORTIZ and ANGELA BOUGHNER, by and through their undersigned counsel and The Law Offices of Peter T. Nicholl, hereby submit their Complaint against Defendants LUCKIE’S BALTIMORE, LLC and THE CORDISH COMPANIES, INC. to recover statutory and compensatory damages, costs and attorneys’ fees under the Internal Revenue Code (hereinafter, “IRC”) 26 U.S.C. § 7434; unpaid wages, liquidated damages, interest, reasonable attorneys’ fees and costs under Section 16(b) of the Federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201, *et seq.* (hereinafter, “FLSA”); unpaid wages, interest, reasonable attorneys’ fees and costs under Maryland Wage and Hour Law, Maryland Code Annotated, Labor and Employment Article §§ 3-401, *et seq.* (hereinafter, “MWHL”); and unpaid wages, treble damages, interest, reasonable attorneys’ fees and costs under the Maryland Wage Payment and Collection Law, Md. Code Ann., Lab. & Empl., §§ 3-501, *et seq.* (hereinafter, “MWPCCL”), and in support thereof, state as follows:

**INTRODUCTION**

Cordish Companies (“Defendant”) own and operate a series of entertainment districts nationwide. One such district is Power Plant Live!, located in downtown Baltimore. Power Plant Live! is comprised of multiple bars and restaurants. Plaintiffs and others similarly situated were all employed as bartenders at Power Plant!.

Defendant paid Plaintiffs and other similarly situated employees an hourly tip-credit wage. They also received tips. However, a combination of these payments did not result in Defendant's bartenders being paid correctly. Plaintiffs and other bartenders were paid well below the minimum wage rate for multiple hours of work.

Employers are only permitted to pay tipped employees below the minimum wage when certain conditions are satisfied. These conditions are not satisfied if employees are required to perform work that is unrelated to their tipped occupation. They are also not satisfied if the untipped work related to their tipped occupation exceeds twenty percent (20%) of their time each week. Under these circumstances, the employer must pay the full minimum wage.

Both circumstances exist in the present controversy, which makes clear that Plaintiffs and others similarly situated should have been paid the full minimum wage during certain periods. Defendant's failure to do so was unlawful.

Defendant promoted other unlawful practices that resulted in Plaintiffs' failure to receive the minimum wage. Defendant regularly staffed guest bartenders at its facilities whenever it hosted special events. This was to ensure there were enough bartenders present to handle the increased customer volume. However, guest bartenders were not actually employees of Defendant; they were just there to "help out." They were not assigned register identification numbers in Defendant's point-of-sale ("POS") system. In order to access the system, they were required to use Plaintiffs' and Defendant's other employees' register identification numbers. Because of this structure, anytime a guest bartender made a sale, the tips associated with that sale were attributed to Plaintiffs and other employees, rather than Defendant's "guests." This made it impossible to determine whether it was Defendant's regular bartenders or a guest bartender who actually made a given sale. This includes the tips that resulted from these sales.

At the end of the night, Defendant required its regular and guest bartenders to split tips evenly amongst themselves. This split was based on the sales that resulted from the particular bar where Plaintiffs and other guest bartenders were assigned. However, because all sales recorded in the POS system were solely attributed to Defendant's regular bartenders, this group of bartenders took home significantly less than the actual amount in tips that were recorded. This was the direct result of Defendant choosing to pay its guest bartenders "under the table." This illegal tip sharing arrangement caused Plaintiffs and Defendant's other regular bartenders to always make less than what was being reported on their earning statements.

Defendant did not do anything to account for this deficit. Although Defendant required the division of tips between its regular and guest bartenders, the deficit that resulted in Plaintiffs' earnings was not reflected on their paystubs. Defendant never adjusted Plaintiffs' earnings statements to account for their reduction in wages. These deductions were also not reflected on Plaintiffs' W-2s. Defendant knowingly misrepresented Plaintiffs' income on their federal and state tax filings. Defendant also willfully filed fraudulent returns that overstated Plaintiffs' and other similarly situated employees' income. Defendant's willful conduct caused Plaintiffs significant harm. Dozens of other employees were also harmed by Defendant's unlawful practices. Defendant is still engaged in these practices to date.

### **THE PARTIES**

1. Plaintiff Tessa Marketti (hereinafter, "Marketti") is an adult resident of Baltimore County, Maryland.
2. Plaintiff Steve Ortiz (hereinafter, "Ortiz") is an adult resident of Baltimore County, Maryland.

3. Plaintiff Angela Boughner (hereinafter, “Boughner”) is an adult resident of Anne Arundel County, Maryland.

4. Defendant The Cordish Companies, Inc. (hereinafter, “Cordish”) is an incorporated for profit business.

5. Cordish’s principal office is in Baltimore, Maryland.

6. Cordish operates multiple entertainment venues across the United States. This includes Power Plant Live!, the entertainment district where Plaintiffs were employed.

7. Defendant Luckie’s Baltimore, LLC (hereinafter, “Luckie’s Tavern”) is an incorporated for-profit business engaged in the sale of alcoholic beverages.

8. Defendant Luckie’s Tavern is one of the bars at Power Plant Live! operated by Cordish.

9. Luckie’s Tavern and Cordish function as a joint enterprise.<sup>1</sup>

10. Luckie’s Tavern shares a principal office with Cordish.

11. Luckie’s Tavern and Cordish (collectively, referred to as “Defendants”) operate out of the same building and suite.

12. Defendants are subject to the FLSA, MWHL and the MWPCCL due to the amount in revenues generated; Defendants’ annual dollar volume of business exceed five hundred thousand dollars (\$500,000.00).

13. At all times relevant to this Complaint, Plaintiffs engaged in interstate commerce by the nature of the duties they performed as part of their employment with Defendants.

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<sup>1</sup> Any reference to Defendants shall include their corporate officers and all those empowered to act as agents of the corporation, either explicitly or implicitly, or who are designated as agents under the doctrine of apparent agency. To the extent individual agents of Defendants are responsible for any actions alleged in this Complaint, they are hereby incorporated by reference within the term “Defendants.”

14. At all times throughout Plaintiffs' employment, Defendants fell within the purview of the term "employer" under the FLSA, 29 U.S.C. § 203(d), MWHL, § 3-401(b) and the MWPCL, § 3-501(b).

15. Defendants also fell within the definition of the term "employer" under the Internal Revenue Code ("IRC"), 26 U.S.C. § 3401(d) and 26 U.S.C. § 3121(b).

16. Plaintiffs and others similarly situated all worked as non-exempt employees for Defendants.

17. From approximately January 2016 to January 2019, Plaintiff Marketti worked as a bartender for Defendants.

18. From approximately October 2016 to December 2017, Plaintiff Ortiz worked as a bartender for Defendants.

19. From approximately April 2015 to January 2019, Plaintiff Boughner worked as a bartender for Defendants.

20. Defendants issued W-2 forms to Plaintiffs.

21. At all times relevant to this Complaint, Defendants controlled the administration of their business and set employee schedules, including Plaintiffs' schedules.

22. Defendants possessed and exercised the authority to determine the hours worked by Plaintiffs and other similarly situated employees.

23. Defendants had the authority to control Plaintiffs' tasks and the tasks of others similarly situated.

24. Defendants had the power and authority to change the course of Plaintiffs' and other similarly situated employees' duties.

25. Defendants made all decisions relating to Plaintiffs' and other similarly situated employees' rates and method of pay.

26. Plaintiffs and members of the putative class recognized Defendants' authority and obeyed Defendants' instructions.

### **JURISDICTION AND VENUE**

27. Original jurisdiction in this Honorable Court is expressly provided by the FLSA, 29 U.S.C. § 207, *et seq.* This court also has subject matter jurisdiction under 28 U.S.C. § 1331, as this matter presents a violation of a federal statute. 26 U.S.C. § 7434.

28. Discretionary supplemental jurisdiction of Plaintiffs' Maryland state law claims is provided by 28 U.S.C. § 1367(a); the state law claims form part of the same case or controversy and derive from a common nucleus of operative facts, on which Plaintiffs' federal claims are based.

29. No reasons exist that would force this Honorable Court to decline jurisdiction; the state law claims (i) do not raise novel or complex issues of state law, (ii) do not substantially predominate the claims over which this Honorable Court has original jurisdiction and (iii) no exceptional circumstances exist that would constitute a compelling reason for declining jurisdiction, thereby satisfying 28 U.S.C. 1367(c).

30. Pursuant to 28 U.S.C. § 1391 (b), venue is appropriate; the unlawful acts central to this matter occurred within the State of Maryland. Plaintiffs are residents of Maryland and have been for the entirety of the relevant period.

31. This Honorable Court has personal jurisdiction over Defendants; Defendants are incorporated under the laws of Maryland and conduct sufficient business within the forum state so as to constitute a submission to its laws.

**FACTUAL ALLEGATIONS FOR ALL CLAIMS**

32. Defendant Cordish operates the entertainment district Power Plant Live! (hereinafter, “Power Plant”), which consist of a series of restaurants and bars.

33. Defendant Luckie’s Tavern is one of the bars at Power Plant.

34. Leinie Lodge & Beer Garden, Mosaic Nightclub & Lounge, PBR Baltimore, MEX and Charm City Pizza are other bars at Power Plant owned and operated by Cordish.

35. All of these bars are controlled by Defendants and overseen by their district managers.

36. Plaintiffs and other similarly situated employees all work or worked at one of these bars. They all hold or held the title of bartender.

37. From approximately January 2016 to January 2019, Plaintiff Marketti worked as a bartender for Defendants. She was typically assigned to work at Luckie’s bar.

38. From approximately October 2016 to December 2017, Plaintiff Ortiz was employed as a bartender with Defendants. He typically worked at Leinie Lodge & Beer Garden.

39. From approximately April 2015 to January 2019, Plaintiff Boughner was employed with Defendants. She worked as a bartender at Luckie’s Bar.

40. Plaintiffs and other similarly situated employees all performed the duties typically associated with the role of bartender. This consisted of taking beverage orders and pouring and mixing drinks for patrons. They also had to process all payments related to the beverages they sold.

41. Plaintiffs were required to utilize Defendants’ point-of-sale (“POS”) system when taking orders from patrons. The POS system was also used to record all sales made, including tips given on top of those sales. The system was utilized to record all beverages purchased and all tips



that resulted from each purchase. Plaintiffs and other bartenders typically received tips in exchange for their work.

42. Each Plaintiff and other similarly situated employee had their own register identification number in Defendants' POS system. When Plaintiffs and others similarly situated got to their work stations prior to a shift, they had to enter their register identification number into the POS monitor. Unless they logged out of the machine, any sale made at that POS monitor was attributed to that individual register identification number. When a customer finalized a purchase, their receipt would reflect the register identification number that was logged into the POS monitor that was used to process the sale and any tip that resulted from the sale.

43. Plaintiffs and others similarly situated also performed work that did not give them the opportunity to earn tips. This work did not involve serving food and drinks, nor interacting with customers. This work included having to clean the restrooms, the bar area and their work stations.

44. Servicing the keg room and filling the ice machine are other non-tipped producing tasks they regularly performed. They were also required to stock liquor bottles and perform a variety of inventory related tasks.

45. Plaintiffs and other bartenders were also required to perform various preparatory tasks, including rolling silverware and preparing condiments. These tasks also did not give them the opportunity to earn tips.

46. Plaintiffs and other bartenders were also required to perform tasks wholly unrelated to their tipped occupations. This includes various inventory tasks related to the liquor stores where Defendants purchased their products.

47. Regardless of the tasks they performed, Plaintiffs and other bartenders were always paid the tip credit rate of three dollars and thirty-six cents (\$3.63) per hour.

48. Defendants knew, or should have known, that Plaintiffs and those similarly situated were entitled to the minimum wage for the non-tipped producing tasks they performed.

49. Tipped employees who perform work that is unrelated to their tipped occupation must be paid the full minimum wage for their work. It is also required that non-tipped work related to a tipped employee's tipped occupation cannot exceed twenty percent of his or her time each week. If the non-tipped work exceeds twenty percent (20%) of their time, tipped employees must receive the full minimum wage for their work.

50. Defendants knew, or should have known, that Plaintiffs and others similarly situated regularly performed non-tipped work unrelated to their tipped occupation, as well as non-tipped work related to their tipped occupation in excess of twenty percent (20%) of their time each week. Plaintiffs and others similarly situated should have received the full minimum wage during these periods.

51. Plaintiffs and other bartenders should have also received overtime wages at a rate of "time and a half" their regular rate of pay. Plaintiffs and other bartenders regularly worked over forty (40) hours a week. However, due to their failure to receive the required minimum wage for each hour of work, they failed to receive correct overtime payments.

52. Plaintiffs and other bartenders also failed to receive all of the tips they earned. This happened whenever Defendants hosted special events.<sup>2</sup>

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<sup>2</sup> Examples of these events include "Dashin[sic] Through the Bars" (December 15, 2018), "RUMSGIVING" (November 10, 2018), "Halloween Rally: Glow Edition" (October 25, 2018) and "Bacon Jam" (August 8, 2018).

53. During special events, Defendants expected higher than usual foot traffic. Additional bartenders were needed in order to accommodate the large crowds. Defendants would retain part-time guest bartenders to handle the increased number of customers.

54. Each time there was a special event, Defendants would typically assign one (1) to seven (7) additional guest bartenders at each bar at Power Plant. This resulted in there being dozens of guest bartenders present to help out each time a special event was scheduled.

55. The responsibilities assigned to Defendants' guest bartenders were identical to those of Plaintiffs and Defendants' other regular bartenders. They were there for the sole purpose of assisting with mixing and serving drinks to Defendants' customers.

56. However, guest bartenders were not actually employees of Defendants. They were only asked to assist on an as need basis whenever a special event was scheduled. They were not issued W-2 forms, paystubs or any other employment documentation.

57. When guest bartenders arrived to assist with a special event, they were simply required to check-in with one of Defendants' managers to let them know they were there. Guest bartenders were not required to punch in or punch out on a time clock. They simply had to sign a log book indicating the time they arrived and the time they left. Defendants did not utilize any electronic means to document when their guest bartenders were physically present.

58. During special events, guest bartenders were also not given access to Defendants' POS system. They had to sign into the system using Plaintiffs' and Defendants' other regular bartenders' identification codes. This made it impossible to differentiate whether a given sale was made by a guest bartender or a regular bartender. Defendants could only identify the particular bar where a guest bartender was assigned.

59. Guest bartenders were paid approximately eighty dollars (\$80.00) for each special event they attended. This money was paid in cash “under the table.”

60. Guest bartenders also received tips. At the end of each shift, Defendants required Plaintiffs and other regular bartenders to split tips evenly with the guest bartenders assigned to their bar. For instance, if one (1) regular bartender and eight (8) guest bartenders were assigned to work the same bar, each would receive eleven percent (11%) of the total tips generated from that particular bar. At the end of the night, these tips would be distributed as cash payments evenly amongst the regular and guest bartenders assigned to that bar.

61. However, because guest bartenders did not have an assigned register identification number in Defendants’ POS system, there was no way to differentiate the drinks that they themselves sold and the tips generated from their sales from the sales made by Plaintiffs and other regular bartenders. Because they used Plaintiffs’ and Defendants’ other regular bartenders’ identification codes to access the system, the system falsely reflected that Plaintiffs were the persons responsible for generating all sales and tips made at a particular bar.

62. In turn, Plaintiffs’ and other regular bartenders’ paystubs would inaccurately reflect their receipt of all of the tips that accrued from the bar to which they were assigned. This was despite the fact that a significant portion of these tips were also generated by and distributed to Defendants’ guest bartenders anytime they worked a special event.

63. Anytime they worked a special event, it was guaranteed that Plaintiffs’ and other regular bartenders’ paystubs would inaccurately reflect the total amount in tips they actually received that week. Defendants’ illegal policy resulted in Plaintiffs’ and other bartenders’ failure to receive the compensation they rightfully earned.

64. Because it was reported that they made more in tips than they actually did, it was common for Plaintiffs and Defendants' other regular bartenders to make less than the minimum wage anytime that Defendants hosted a special event. These events could occur as regularly as once or twice a month.

65. Defendants were well aware that their policy of distributing all tips amongst their regular and guest bartenders equally would lead Plaintiffs' and their other regular bartenders' reported earnings to be inaccurate. This was because Defendants knowingly inflated the reported income on each of their regular bartenders' earning statements to cover for the "under the table" cash payments made to their non-employee "guest bartenders."

66. Accordingly, Defendants knew that the W-2 forms issued to Plaintiffs and their other regular bartenders were also incorrect due to being aware that these employees did not earn what was actually reported.

67. Defendants were responsible for submitting accurate wage statements on behalf of their employees to the Internal Revenue Service ("IRS").

68. Defendants were well aware that the paystubs that served as the basis to Plaintiffs' W-2 forms were inaccurate.

69. Defendants were aware that the W-2 reports attributable to Plaintiffs' and their other regular bartenders' wages should have reflected the correct distribution of funds they actually received.

70. Defendants were aware they had an obligation to ensure these amounts were correct. However, Defendants willfully refused to do so.

71. Due to their refusal, Defendants knowingly filed fraudulent W-2 forms with the IRS each time that Plaintiffs' and other similarly situated bartenders' earnings were over reported within a fiscal year.

72. Defendants knowingly caused the filing of fraudulent W-2 forms each time their guest bartenders were paid "under the table."

73. Plaintiffs and other similarly situated employees suffered significant harm as a result of Defendants' fraudulent policy. This includes losing certain state and federal benefits because their wages were reported to be above certain thresholds.

74. They were also charged too much in taxes due to their wages being reported to be higher than what they actually were.

75. Many of Defendants' other current and former bartenders have also been harmed by Defendants' illegal scheme.

76. Therefore, on behalf themselves and all those similarly situated, Plaintiffs seek the wages to which they are entitled and other available relief through this Complaint.

**FLSA COLLECTIVE ACTION ALLEGATIONS**

77. Defendants employed Plaintiffs and other similarly situated bartenders to work at their entertainment venues across the country.

78. These similarly situated employees were subject to the same unlawful practices described within this Complaint.

79. Defendants paid these similarly situated employees a tip-credit rate when they performed untipped work unrelated to their tipped occupation.

80. Defendants paid these similarly situated employees the tip-credit rate during periods when they performed untipped work related to their tipped occupation more than twenty percent (20%) of their time in a given workweek.

81. The FLSA requires employers to compensate non-exempt employees at least the minimum wage for each hour of work.

82. Defendants knew, or should have known, that Plaintiffs and those similarly situated were entitled to be paid at least the minimum wage.

83. Defendants knew that Plaintiffs' and other similarly situated employees' average compensation fell below the mandated minimum wage rate.

84. The FLSA also requires employers to compensate non-exempt employees with overtime wages for all hours worked over forty (40) within a workweek.

85. Defendants knew or should have known that Plaintiffs and other similarly situated employees were entitled to overtime pay.

86. Defendants knew that Plaintiffs and similarly situated employees consistently worked over forty (40) hours per week.

87. Due to their failure to receive the current minimum wage rate for each hour of work, Plaintiffs and other similarly situated bartenders also failed to receive overtime wages at the appropriate rate.

88. Plaintiffs commence this collective action on behalf of all similarly situated employees who have been harmed by the actions described herein.

89. There are numerous similarly situated current and former employees of Defendants that have been harmed by Defendants' common scheme to underpay their employees.

90. Plaintiffs consent forms to be party plaintiffs are attached as Exhibits 1 – 3.

91. It is likely that other individuals will join Plaintiffs during the litigation of this matter and file written consents to “opt in” to this collective action.

92. These similarly situated persons are known to Defendants and are readily identifiable through Defendants’ records.

93. Many of these similarly situated employees would benefit from the issuance of court-supervised notice, granting them the opportunity to join this lawsuit and to recover unpaid wages and other available relief.

**CLASS ACTION ALLEGATIONS UNDER THE INTERNAL REVENUE CODE**

94. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and other current and former bartenders employed at one or more of Defendants’ food and beverage establishments and were subject to the following practices and policies: Defendants’ willful filing of fraudulent information returns with respect to payments made to their regular bartenders.

95. The class Plaintiffs seek to represent is defined as: All individuals who are or were employed by Defendant(s) as bartenders for any period ranging from six (6) years preceding the filing of this Complaint to the present, on whose behalf Defendant(s) willfully filed a fraudulent return with the IRS.

96. Similar to Plaintiffs, Defendants’ other bartenders also failed to receive all of the wages they should have received in tips. This was also the result of having to split tips with Defendants’ guest bartenders each time that Defendants hosted a special event.

97. Because these bartenders’ wages were inaccurately reported, their paystubs were also incorrect.



98. Defendants were responsible for submitting accurate wage statements of their employees' earnings to the IRS. Defendants knew that the earnings reported on their regular bartenders' W-2 forms were inaccurate. However, Defendants still knowingly filed these fraudulent W-2 forms with the IRS.

99. *Numerosity*: The individuals in the class are sufficiently numerous that joinder of all members is impracticable. Although the precise number of such individuals is currently unknown, the class includes dozens of bartenders who are readily identifiable through Defendants' pay records.

100. *Commonality*: There are questions of law and fact common to the class. All members of the proposed class were issued an IRS form W-2 which reflected the payments they received. Among the common questions of law and fact applicable to Plaintiffs and the class are whether their earnings were actually less than what was reported and whether Defendants fraudulently filed these earnings statements with the IRS.

101. *Typicality*: Plaintiffs' claims are typical of those of the class. Each and every class member worked as a bartender for Defendants. Each and every class member was employed by Defendants under the IRC. Defendants, on behalf of each and every class member, filed an IRS form W-2 which misrepresented the payments each class member made. Defendants are required to file information returns which detail the correct payments made to their employees.

102. *Adequacy*: Plaintiffs will fully and adequately protect the interests of the class. They seek the same recovery as the class, predicated upon the same violations of law and damage theory. Plaintiffs have also retained counsel who are qualified and experienced in the prosecution of large class actions. Neither Plaintiffs nor their counsel have interests that are contrary to, or conflicting with, the interests of the class.

103. *Predominance:* The common issues of law and fact predominate over any individual issues. Each class member's claim is controlled by the IRC and one set of facts that is based on Defendants' fraudulent filing of false information returns with the IRS. Therefore, the damages are eminently certifiable. Even in the absence of any actual damages sustained or demonstrated by a class member, each class member is entitled to a minimum of five thousand dollars (\$5,000.00) in statutory damages.

104. This action is maintainable as a class action. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members. This would establish incompatible standards of conduct for Defendants.

105. Accordingly, the Court should certify the proposed class.

**CLASS ACTION ALLEGATIONS UNDER MARYLAND WAGE LAWS**

106. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and other current and former employees that were employed as bartenders at one or more of Defendants' food and beverage establishments.

107. Plaintiffs and the class were all denied wages amounting to the minimum wage rate under MWHL by improperly applying the tip-credit against them, despite: (a) requiring them to perform work outside of their tipped occupation; and (b) requiring them to perform non-tipped work related to their tipped occupation in excess of twenty percent (20%) of their time worked each week.

108. The classes Plaintiffs seek to represent are defined as:

*MWHL Class:*

All individuals who are or were employed by Defendants as bartenders for any period ranging from three (3) years prior to the filing of this Complaint to the present that were paid a

tipped rate and not paid the full minimum wage during the required weeks and not paid correctly for all hours worked over forty (40) in a workweek.

*MWPCL Class:*

All individuals who were, but are no longer, employed by Defendants as bartenders for any period ranging from three (3) years prior to the filing of this Complaint to the present that were not paid all minimum and overtime wages under MWHL and thus, did not receive all wages owed to them before the termination of their employment.

109. Plaintiffs are members of the proposed class they seek to represent.

110. *Commonality:* There are questions of law and fact common to the classes. Among the common questions of law and fact applicable to Plaintiffs and the classes are: whether the MWHL class is similarly situated because they all performed the same basic duties and were subject to Defendants' common policy and practice of not paying them the required minimum and overtime wage rate; and whether Defendants failed to provide Plaintiffs and other members of the MWPCL class with all wages due before the termination of their employment.

111. *Typicality:* Plaintiffs' claims are typical of those of the classes. Each and every class member worked as a bartender for Defendants and performed non-tipped work unrelated to their tipped occupation and nontipped work related to their tipped occupation in excess of twenty percent (20%) of their workweek. Each and every member failed to receive the required minimum wage and failed to receive all wages owed to them at the end of their employment. As a result, each and every class member suffered the same harm.

112. *Numerosity:* The individuals in the class are sufficiently numerous that joinder of all members is impracticable. The class includes dozens of employees who are readily identifiable through Defendants' pay records.

113. *Adequacy:* Plaintiffs will fully and adequately protect the interests of the classes. They seek the same recovery as the classes, predicated upon the same violations of the law and the

same damage theory. Plaintiffs have also retained counsel who are qualified and experienced in the prosecution of statewide wage and hour class actions. Neither Plaintiffs nor their counsel have interests that are contrary to the interests of the classes.

114. *Predominance:* The common issues of law and fact predominate over any individual issues. Each class member's claim is controlled by Maryland's wage and hour statutory scheme and one set of facts. Similarly, the damages are eminently certifiable in that Defendants' records will provide the amount and frequency each class member was paid as well as the amount of time each class member worked.

115. This action is maintainable as a class action. The prosecution of separate actions by individual members of the classes would create a risk of inconsistent or varying adjudications with respect to individual members of the classes. The numerous adjudications that would be required to protect the individual interests of the class members would constitute a considerable drain on judicial resources.

116. Accordingly, the Court should certify the proposed classes.

**Count I - Violation of the IRC: Willful Filing of Fraudulent Information Returns**

117. Plaintiffs hereby fully incorporate in this Count all allegations contained within Plaintiffs' Complaint.

118. Plaintiffs sue for relief under 26 U.S.C. § 7434.

119. Pursuant to the IRC, 26 U.S.C. § 7434, Defendants were responsible for submitting accurate wage statements for Plaintiffs.

120. For each year of Plaintiffs' employment, Defendants knowingly filed fraudulent W-2 forms with the IRS regarding employment wages that over reported the amount actually paid to Plaintiffs and the amount actually owed to the IRS.

121. Defendants knowingly failed to prevent and/or correct the fraudulent W-2s from being filed with the IRS, despite their duty to do so.

**Count II. Violation of the FLSA: Failure to Pay the Minimum Wage**

122. Plaintiffs hereby fully incorporate in this Count all allegations contained within Plaintiffs' Complaint.

123. Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 206, each employer shall pay wages at a rate that is no less than the federal minimum wage, currently amounting to seven dollars and twenty-five cents (\$7.25) per hour.

124. Plaintiffs have not received compensation from Defendants reflecting the prescribed minimum wage rate for all hours worked for Defendants; rather, Defendants unlawfully failed to ensure that Plaintiffs received at least the minimum wage rate for each hour of work.

125. Defendants willfully and intentionally did not compensate Plaintiffs for the total minimum amount of wages they were owed by improperly applying the tip-credit provision of the FLSA.

126. There is no bona fide dispute that Plaintiffs are not exempt from the minimum wage provisions of the FLSA for the work they performed for Defendants.

127. Under the FLSA, Plaintiffs are entitled to additional wages from Defendants for all hours worked at a rate of pay no less than the federal minimum wage.

**Count III. Violation of the FLSA: Failure to Pay Overtime Wages**

128. Plaintiffs hereby fully incorporate in this Count all allegations contained within Plaintiffs' Complaint.

129. Plaintiffs are entitled to overtime under 29 U.S.C. § 207(a), which provides that employers must compensate their employees for hours worked in excess of forty (40) in a

workweek at a rate of not less than one and one-half (1.5) times the regular rate at which they are employed.

130. As described above, Plaintiffs have not received from Defendants compensation reflecting the prescribed overtime wage rate for hours worked in excess of forty (40) in a week.

131. Defendants willfully and intentionally failed to compensate Plaintiffs properly for the overtime wages they are owed.

132. There is no *bona fide* dispute that Plaintiffs are owed overtime wages for work performed for Defendants.

133. Under the FLSA, Plaintiffs are entitled to additional wages from Defendants to compensate them for hours worked in a workweek in excess of forty (40) at a rate of one and one-half (1.5) times their regular hourly wage rate.

**Count VI. Violation of MWHL: Failure to Pay the Minimum Wage**

134. Plaintiffs hereby fully incorporate in this Count all allegations contained within Plaintiffs' Complaint.

135. Pursuant to Maryland Wage and Hour Law, Maryland Labor and Employment Code Ann. § 3-415, each employer shall pay wages at a rate that is no less than the federal minimum wage, currently amounting to seven dollars and twenty-five cents (\$7.25) per hour.

136. Plaintiffs have not received compensation from Defendants reflecting the prescribed minimum wage rate for all hours worked for Defendants; rather, Defendants unlawfully failed to ensure that Plaintiffs received at least the minimum wage rate for each hour of work.

137. Defendants willfully and intentionally did not compensate Plaintiffs for the total minimum amount of wages they were owed by unlawfully applying the relevant tip-credit provisions.

138. There is no bona fide dispute that Plaintiffs are not exempt from the minimum wage provisions of MWHL for the work they performed for Defendants.

139. Under MWHL, Plaintiffs are entitled to additional wages from Defendants for all hours worked at a rate of pay no less than the federal minimum wage.

**Count V. Violation of MWHL: Failure to Pay Overtime Wages**

140. Plaintiffs hereby fully incorporate in this Count all allegations contained within Plaintiffs' Complaint.

141. Pursuant to Maryland Labor and Employment Code Ann. § 3-415, each employer shall pay an overtime wage of at least one and one half (1.5) times the regular hourly rate.

142. Pursuant to Maryland Labor and Employment Code Ann. § 3-420(a), an employer shall compute the wage for overtime under § 3-415 on the basis of each hour over forty (40) that an employee works during one (1) workweek.

143. Plaintiffs have not received proper compensation from Defendants reflecting the prescribed overtime wage rate for hours worked in excess of forty (40) in a week.

144. Defendants willfully and intentionally did not compensate Plaintiffs for the overtime wages they are owed.

145. There is no *bona fide* dispute that Plaintiffs are owed overtime wages for work performed for Defendants.

146. Under MWHL, Plaintiffs are entitled to additional wages from Defendants for all overtime hours worked at a rate of one and one-half (1.5) times their regular hourly wage rate.

**Count VI. Violation of the MWPCCL: Failure to Pay Wages Owed at the Termination of Their Employment**

147. Plaintiffs hereby fully incorporate in this Count all allegations contained within Plaintiffs' Complaint.

148. Plaintiffs are entitled to wages under the Maryland Wage Payment and Collection Law, Md. Code Ann., Lab. & Empl. §§3-50, *et seq.*, which provides that each employer shall pay an employee all wages due for work that the employee performed before the end of employment, on or before the day on which the employee would have otherwise been paid the wages.

149. In accordance with §3-505(a), Plaintiffs have not received compensation from Defendants for all wages owed for work performed before the termination of their employment. This is specific to Defendants' failure to pay Plaintiffs minimum and overtime wages they are entitled to.

150. Defendants willfully and intentionally did not compensate Plaintiffs for the wages owed to them and continued to violate the MWPCCL, even after Plaintiffs informed Defendants of the violation.

151. Under the MWPCCL, there is no *bona fide* dispute that Plaintiffs are owed wages for the work they performed for Defendants.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and others similarly situated, pray for the following relief:

- a) In accordance with Rule 23 of the Federal Rules of Civil Procedure, designation of this action as a national class action on behalf of Plaintiffs and all members of the proposed national class;
- b) In accordance with Rule 23 of the Federal Rules of Civil Procedure, designation of this action as a Maryland state law class action on behalf of Plaintiffs and all members of the proposed Maryland state law classes;
- c) Designating the named Plaintiffs to act as class representatives on behalf of all similarly situated employees for the national class and the Maryland state law classes;
- d) Judgment against Defendants for its fraudulent filing with the IRS of false information returns on behalf of Plaintiffs and members of the IRC class;



- e) Judgment against Defendants for its failure to pay Plaintiffs and members of the FLSA collective class with the standards set forth by the FLSA;
- f) Judgment against Defendants for its failure to pay Plaintiffs and members of the MWHL class with the standards set forth by MWHL;
- g) Judgment against Defendants for its failure to pay Plaintiffs and members of the MWPCCL class in accordance with the standards set forth by the MWPCCL;
- h) Judgment against Defendants and classifying its conduct as willful and not in good faith;
- i) An award against Defendants of the amount of actual damages sustained, or five thousand dollars (\$5,000.00) per violation, whichever is greater, to Plaintiffs and members of the IRC class;
- j) An award of enhanced or trebled damages up to double the total amounts of unpaid wages owed to Plaintiffs and members of the classes, whichever is deemed just and equitable by this Honorable Court;
- k) An award of reasonable attorneys' fees and all costs, plus pre-judgment and post-judgment interest, to be satisfied in full by Defendants;
- l) Leave to add additional Plaintiffs to all Counts alleged herein by motion, through the filing of written consent forms, or any other method approved by this Honorable Court; and
- m) All further relief deemed just and equitable by this Honorable Court.

**REQUEST FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs request that a jury of their peers hear and decide all possible claims brought on behalf of Plaintiffs and those similarly situated.

Respectfully submitted,

/s/ Benjamin L. Davis, III

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