

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT, IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

NANCY BODAN, RICHARD DALLEY,
JENNEFER DELROSARIO, ANDREEAS
FARKAS, OVIDIU GARBACEA, PAOLA
GUARDIOLA, FILIP ISAKOV,
ALEKSANDAR LALIC, ALEKSANDAR
MAJSTOROVIC, GEORGE SERBAN,
MILENA SUTAKOVIC, and
SILVIANA TRIFAN,

COMPLEX BUSINESS DIVISION
Case No.:

Plaintiffs,

v.

CG RYC, LLC, CG MIAMI RIVER LLC,
FOOD AND LEVERAGE, LLC,
STEPHANE DUPOUX, and
MEYER CHETRIT,

Defendants.

COMPLAINT

Nancy Bodan, Richard Dalley, Jennefer DelRosario, Andreeas Farkas, Ovidiu Garbacea, Paola Guardiola, Filip Isakov, Aleksandar Lalic, Aleksandar Majstorovic, George Serban, Milena Sutakovic, and Silviana Trifan (collectively, "Plaintiffs"), who were employees of River Yacht Club file this Complaint against River Yacht Club's owner, CG RYC, LLC, its members CG Miami River LLC, and Food and Leverage, LLC, Stephane Dupoux, and Meyer Chetrit (collectively, "Defendants"), seeking damages resulting from the Defendants' breach of the employment relationship with the Plaintiffs and violation of the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, et seq. (the "FLSA").

PARTIES, JURISDICTION, AND VENUE

1. The amount in controversy exceeds the sum of \$15,000.00, exclusive of attorneys' fees, costs, and interest.

2. Plaintiff Nancy Bodan ("Bodan") is a resident of Miami-Dade County, Florida, is over the age of 18, is otherwise *sui juris*, and is within the jurisdiction of this Court. Bodan was a covered employee for purposes of the FLSA.

3. Plaintiff Richard Dalley ("Dalley") is a resident of Miami-Dade County, Florida, is over the age of 18, is otherwise *sui juris*, and is within the jurisdiction of this Court. Dalley was a covered employee for purposes of the FLSA.

4. Plaintiff Jennefer DelRosario ("DelRosario") is a resident of Miami-Dade County, Florida, is over the age of 18, is otherwise *sui juris*, and is within the jurisdiction of this Court. DelRosario was a covered employee for purposes of the FLSA.

5. Plaintiff Andreeas Farkas ("Farkas") is a resident of Miami-Dade County, Florida, is over the age of 18, is otherwise *sui juris*, and is within the jurisdiction of this Court. Farkas was a covered employee for purposes of the FLSA.

6. Plaintiff Ovidiu Garbacea ("Garbacea") is a resident of Miami-Dade County, Florida, is over the age of 18, is otherwise *sui juris*, and is within the jurisdiction of this Court. Garbacea was a covered employee for purposes of the FLSA.

7. Plaintiff Paola Guardiola ("Guardiola") is a resident of Miami-Dade County, Florida, is over the age of 18, is otherwise *sui juris*, and is within the jurisdiction of this Court. Guardiola was a covered employee for purposes of the FLSA.

8. Plaintiff Filip Isakov ("Isakov") is a resident of Miami-Dade County, Florida, is over the age of 18, is otherwise *sui juris*, and is within the jurisdiction of this Court. Isakov was a covered employee for purposes of the FLSA.

9. Plaintiff Aleksandar Lalic (“Lalic”) is a resident of Miami-Dade County, Florida, is over the age of 18, is otherwise *sui juris*, and is within the jurisdiction of this Court. Lalic was a covered employee for purposes of the FLSA.

10. Plaintiff Aleksandar Majstorovic (“Majstorovic”) is a resident of Miami-Dade County, Florida, is over the age of 18, is otherwise *sui juris*, and is within the jurisdiction of this Court. Majstorovic was a covered employee for purposes of the FLSA.

11. Plaintiff George Serban (“Serban”) is a resident of Miami-Dade County, Florida, is over the age of 18, is otherwise *sui juris*, and is within the jurisdiction of this Court. Serban was a covered employee for purposes of the FLSA.

12. Plaintiff Milena Sutakovic (“Sutakovic”) is a resident of Miami-Dade County, Florida, is over the age of 18, is otherwise *sui juris*, and is within the jurisdiction of this Court. Sutakovic was a covered employee for purposes of the FLSA.

13. Plaintiff Silviana Trifan (“Trifan”) is a resident of Miami-Dade County, Florida, is over the age of 18, is otherwise *sui juris*, and is within the jurisdiction of this Court. Trifan was a covered employee for purposes of the FLSA.

14. Defendant CG RYC LLC (“CG RYC”), is a Delaware limited liability company having its principal place of business located at 401 SW 3rd Avenue, Miami, FL 33131. CG RYC has transacted business and engaged in tortious and fraudulent conduct, by affirmative acts or omissions, in the State of Florida whereby it reasonably anticipated that injury would result and has, in fact, resulted upon persons within the State of Florida. As such, this Court has personal jurisdiction over CG RYC. CG RYC owns and operates River Yacht Club located at 401 SW 3rd Avenue, Miami, FL 33130.

15. Defendant CG Miami River LLC (“CG Miami River”) is a Delaware limited liability company having its principal place of business located at 2915 Biscayne Boulevard,

Suite 300, Miami, FL 33137. CG Miami River has transacted business and engaged in tortious and fraudulent conduct, by affirmative acts or omissions, in the State of Florida whereby it reasonably anticipated that injury would result and has, in fact, resulted upon persons within the State of Florida. As such, this Court has personal jurisdiction over CG Miami River. CG Miami River is a Member of CG RYC, which owns and operates River Yacht Club.

16. Defendant Food and Leverage, LLC (“Food and Leverage”), is a Florida limited liability company having its principal place of business located at 4464 Prairie Avenue, Miami Beach, FL, and is within the personal jurisdiction of this Court. Food and Leverage is a Member of CG RYC, which owns and operates River Yacht Club.

17. Defendant Stephane Dupoux (“Dupoux”) is a resident of Miami-Dade County, Florida, is over the age of 18, is otherwise *sui juris*, and is within the jurisdiction of this Court. Dupoux is the Managing Member of Food and Leverage, which is a member of the entity that owns the restaurant River Yacht Club that employed the Plaintiffs. Dupoux acted directly or indirectly in the interest of CG RYC in relation to the Plaintiffs by making day-to-day management decisions for River Yacht Club including, without limitation, making hiring decisions, controlling the compensation and scheduling of the employees, and the delineation of day-to-day responsibilities of CG RYC. As a result, Dupoux is an “employer” as defined in 29 U.S.C. § 203(d).

18. Defendant Meyer Chetrit (“Chetrit”) is a resident of New York, is over the age of 18, and is otherwise *sui juris*. Chetrit is subject to the personal jurisdiction of this Court based upon his acts and omissions in Florida. Chetrit is a Manager of CG Miami River, which is a member of the entity that owns the restaurant River Yacht Club that employed the Plaintiffs. Chetrit acted directly or indirectly in the interest of CG RYC in relation to the Plaintiffs by making day-to-day management decisions for River Yacht Club including, without limitation,

making hiring decisions, controlling the compensation and scheduling of the employees, and the delineation of day-to-day responsibilities of CG RYC. As a result, Chetrit is an “employer” as defined in 29 U.S.C. § 203(d).

19. Venue is proper because the acts and omissions giving rise to the Plaintiffs’ claims occurred or originated in Miami-Dade County, Florida.

20. Pursuant to Florida Rule of Civil Procedure 1.120 and the Eleventh Judicial Circuit’s Administrative Order No. 16 – 12, this action belongs in the Complex Business Division because it involves numerous plaintiffs, numerous defendants, a complex corporate and management structure involving the Defendants, numerous pre-trial motions raising legal issues that are inextricably intertwined and time consuming, the management of large amounts of documents, both paper and electronic, during the pendency of the matter and at trial, multiple claims resulting from consolidating individual claims in to this action, potential significant impact on the Defendants’ business, a high degree of case management, including the handling of discovery disputes and motion practice, and the need for the services of a special or general magistrate due to the anticipated complexities and protracted discovery disputes.

GENERAL ALLEGATIONS

A. The Employment Agreement

21. River Yacht Club opened on the Miami River in downtown Miami, Florida at 401 SW 3rd Avenue, Miami, FL 33130 in the end of 2016.

22. Initially, River Yacht Club entered into an employment relationship with the Plaintiffs, who were employed as bussers and servers, and who would qualify, and were supposed to be compensated as “Tipped Employees” under the FLSA.

23. As Tipped Employees, River Yacht Club agreed to pay the Plaintiffs an hourly wage of \$5.50.

24. River Yacht Club required the Plaintiffs to participate in a tip pool and to share the tips and gratuities that River Yacht Club collected from its patrons as service charges.

25. In or about the end of June 2017, River Yacht Club held a meeting and informed the Plaintiffs that their hourly wages would be retroactively reduced from \$5.50 an hour to \$3.50 an hour for the three-week period that preceded the meeting.

26. River Yacht Club, unilaterally and without advanced notice to the Plaintiffs, modified the terms of the Plaintiffs' employment without the Plaintiffs' consent.

27. This pay decrease was applied retroactively and appeared on the paychecks received by the Plaintiffs for the prior pay period without the Plaintiffs' knowledge or consent.

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CG RYC LLC
401 SW 3RD AVENUE
MIAMI, FL 33130

Earnings Statement



Period Beginning: 05/29/2017
Period Ending: 06/11/2017
Pay Date: 06/23/2017

Taxable Marital Status: Married
Exemptions/Allowances:
Federal: 2
FL: No State Income Tax

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Earnings	rate	hours	this period	year to date
Regular	3.5000	20.90	73.15	1,868.53
Credit Card Tip			532.78	1,817.16
Service Charge			97.34	12,476.13
Hourly				1,677.61
Gross Pay			\$703.27	17,839.43

Important Notes
YOUR HOURLY RATE HAS BEEN CHANGED FROM 5.5000 TO 3.5000.

B. FLSA Allegations

28. Defendant CG Miami River and Defendant Food and Leverage are members of Defendant CG RYC, which owns River Yacht Club.

29. Stephane Dupoux is the Managing Member of Food and Leverage. Dupoux acted directly or indirectly in the interest of CG RYC in relation to the Plaintiffs by making day-to-day management decisions for River Yacht Club including, without limitation, making hiring

decisions, controlling the compensation and scheduling of the employees, and the delineation of day-to-day responsibilities of CG RYC.

30. Meyer Chetrit is a Manager of CG Miami. Chetrit acted directly or indirectly in the interest of CG RYC in relation to the Plaintiffs by controlling the compensation, employee scheduling, and delineation of day-to-day responsibilities of CG RYC.

31. During all material times, pursuant to the FLSA, Defendant CG RYC was an “enterprise engaged in commerce” as defined in 29 U.S.C. § 203(s) and had an annual gross volume of sales of not less than \$500,000.

32. During all material times, the Defendants were “employers” as defined by 29 U.S.C. § 203(d).

33. The Plaintiffs were all employees of River Yacht Club and were employed during the following time periods:

- a. Nancy Bodan: Bodan (formerly Lee) has been employed by River Yacht Club since February 2017 and is still currently an employee of River Yacht Club. At all times during her employment, Bodan has been a busser and is a “tipped employee” as defined in 29 U.S.C. § 203(t). The FLSA Relevant Time Period is from February 6, 2017 to present.
- b. Richard Dalley: Dalley was employed by River Yacht Club from approximately the middle of April 2017 until the end of July 2017. At all times during his employment, Dalley was a busser and was a “tipped employee” as defined in 29 U.S.C. § 203(t). The FLSA Relevant Time Period is from April 17, 2017 to August 6, 2017.
- c. Jeneffer DelRosario: DelRosario was employed by River Yacht Club from approximately the end of December 2016 until the end of July 2017.

At all times during her employment, DelRosario was a server and was a “tipped employee” as defined in 29 U.S.C. § 203(t). The FLSA Relevant Time Period is from December 26, 2016 to August 6, 2017.

- d. Andreeas Farkas: Farkas was employed by River Yacht Club from the end of February 2017 until the end of July 2017. At all times during his employment, Farkas was a server and was a “tipped employee” as defined in 29 U.S.C. § 203(t). The FLSA Relevant Time Period is from February 20, 2017 to August 7, 2017.
- e. Ovidiu Garbacea: Garbacea was employed by River Yacht Club from approximately the end of February 2017 until the end of July 2017. At all times during his employment, Garbacea was a server and was a “tipped employee” as defined in 29 U.S.C. § 203(t). The FLSA Relevant Time Period is from February 20, 2017 to August 7, 2017.
- f. Paola Guardiola: Guardiola has been employed by River Yacht Club since the end of February 2017 and is currently still an employee of River Yacht Club. At all times during her employment, Guardiola has been a server and was a “tipped employee” as defined in 29 U.S.C. § 203(t). The FLSA Relevant Time Period is from February 20, 2017 to present.
- g. Filip Isakov: Isakov was employed by River Yacht Club from March 2017 until the end of July 2017. At all times during his employment, Isakov was a busser and was a “tipped employee” as defined in 29 U.S.C. § 203(t). The FLSA Relevant Time Period is from March 31, 2017 to July 23, 2017.
- h. Aleksandar Lalic: Lalic was employed by River Yacht Club from approximately the end of December 2016 until the end of July 2017. At all

times during his employment, Lalic was a server and was a “tipped employee” as defined in 29 U.S.C. § 203(t). The FLSA Relevant Time Period is from December 12, 2016 to August 7, 2017.

- i. Aleksandar Majstorovic: Majstorovic was employed by River Yacht Club from approximately November 2016 until the end of July 2017. At all times during his employment, Majstorovic was a server and was a “tipped employee” as defined in 29 U.S.C. § 203(t). The FLSA Relevant Time Period is from November 14, 2016 to August 7, 2017.
- j. George Serban: Serban was employed by River Yacht Club from approximately October 2016 until the end of July 2017. At all times during his employment, Serban was a server and was a “tipped employee” as defined in 29 U.S.C. § 203(t). The FLSA Relevant Time Period is from October 3, 2016 to August 7, 2017.
- k. Milena Sutakovic: Sutakovic was employed by River Yacht Club from approximately the end of November 2016 until the end of July 2017. At all times during her employment, Sutakovic was a server and was a “tipped employee” as defined in 29 U.S.C. § 203(t). The FLSA Relevant Time Period is from November 14, 2016 to August 7, 2017.
- l. Silviana Trifan: Trifan was employed by River Yacht Club from approximately May 2017 until the end of July 2017. At all times during her employment, Trifan was a server and was a “tipped employee” as defined in 29 U.S.C. § 203(t). The FLSA Relevant Time Period is from May 1, 2017 to August 7, 2017.

34. The applicable Florida minimum wage was \$8.05 per hour in 2016 and \$8.10 per hour in 2017.

35. Throughout their employment, the Plaintiffs often worked in excess of 40 hours per week.

36. Under the FLSA, if an employer satisfies the requirements set forth in 29 U.S.C. § 203(m), the employer may apply a portion of a tipped employee's tips (the "tip credit") to satisfy its obligation to pay its employees minimum wage. The tip credit may be applied to both regular and overtime hours worked.

C. The Invalid Tip Pool

37. River Yacht Club mandated and maintained an invalid tip pool that violated the minimum wage and overtime requirements of the FLSA.

38. River Yacht Club represented on its menu, receipts, and signs in the restaurant that it would charge its patrons an 18% gratuity that would then be distributed among the tipped employees.

39. Contrary to its representations to its patrons, River Yacht Club treated the 18% gratuity as a service charge, retained a portion of the gratuities that were collected from its patrons, distributed a portion of the gratuities to the restaurant's management and non-tipped employees, and mandated that the Plaintiffs and other tipped employees share the balance of the tip pool.

40. Specifically, River Yacht Club would receive 3% of the total amount of the tip pool.

41. River Yacht Club's management would receive 10% of the total amount of the tip pool.

42. The remaining 87% of the total amount of the tip pool for each night would then be split among the servers, bartenders, runners, barbacks, bussers, and hostesses.

43. For employees who worked shifts of 6 hours or more, they would receive the following number of points in the tip pool:

- a. Servers: 9 points;
- b. Bartenders: 8 points;
- c. Runners: 6 points;
- d. Barbacks: 5 points;
- e. Bussers: 5 points; and
- f. Hostesses: 1 point.

44. River Yacht Club had exclusive access and control over the financial information, employees' schedules, and total number of points that were involved in each shift and refused to grant the Plaintiffs access to the information thereby depriving them of a meaningful opportunity to ascertain whether the tip pool was properly and accurately maintained.

45. Nor did the Plaintiffs know the total number of points in the tip pool at any given time.

46. The Plaintiffs were able to view their share of the tip pool through an application on their phone named GratShare.

47. The Defendants prevented the Plaintiffs from obtaining via the GratShare application any information concerning the amount of tips owed to the Plaintiffs for each shift that they worked for River Yacht Club.

48. Not only did the GratShare application, whose data was controlled by River Yacht Club, not provide complete information to the Plaintiffs concerning their share of the tip pool, but River Yacht Club often manipulated the data that was inputted into GratShare which would

either reduce the Plaintiff's share of the tip pool or increase the share that River Yacht Club received from the tip pool.

49. Although River Yacht Club informed the Plaintiffs that it would take 3% of the total amount of the tip pool, it would often receive anywhere from as much as 24% to 33.5%.



The screenshot shows the GratShare app interface on a mobile device. At the top, the status bar shows 85% battery and 10:57 AM. The app header includes a menu icon, the GratShare logo, and a tagline 'No Gratuity'. Below the header, there are date selectors for '1-Dec-2016' and '28-Feb-2017', each with a downward arrow. The main section displays 'My Share \$11243.22'. Below this is a section titled 'Tip Distribution Breakdown' with an upward arrow. This section contains a table with six rows, each showing a distribution category, the percentage service charge, and the amount. At the bottom, there is a navigation bar with four icons: 'Daily' (calendar icon), 'Date Range' (calendar icon with a range), 'FAQ' (question mark icon), and 'Logout' (logout icon).

Tip Distribution Breakdown	
To House : 24.00% Service Charge (\$4221.75)	\$ 1013.23
To House : 3.00% Service Charge (\$14659.79)	\$ 439.8
To House : 33.50% Service Charge (\$428.07)	\$ 143.4
To Manager : 7.50% Service Charge (\$1482.22)	\$ 111.17
To Manager : 7.60% Service Charge (\$2739.53)	\$ 208.2
To Manager : 9.70% Service Charge (\$14348.07)	\$ 1391.76

50. In addition to the invalid tip pool, River Yacht Club required the Plaintiffs to share any tips that were charged to River Yacht Club's patrons' credit cards (on top of the 18% gratuity) with River Yacht Club's bussers, bar backs, and food runners.

GratShare.com	
28-Dec-2016	↓
All Day	↓
My Share \$173.01	
Tip Distribution Breakdown ▲	
Total Time : 14:22 Tips earned per hour:	\$ 12.04
To Asst Beverage Superv\Bartender\Bev Supervisor\Cell : 20.00% Service Charge (\$385.02)	\$ 77.0
To Bar Back\Busser\Runner : 26.00% Service Charge (\$385.02)	\$ 100.11
To Bar Back\Busser\Runner : 30.00% Additional Tips (\$20.00)	\$ 6.0
To House : 3.00% Service Charge (\$385.02)	\$ 11.55
To Manager : 9.70% Service Charge (\$385.02)	\$ 37.35
Daily	Date Range
FAQ	Logout

51. In or around February 2017, River Yacht Club stopped using the GratShare application.

52. From February 2017 going forward, River Yacht Club used an Excel spreadsheet to maintain the invalid tip pool.

53. As with GratShare, based on the spreadsheet, 3% of the total amount of the tip pool would go to River Yacht Club, 10% of the total amount of the tip pool would go to the

managers, and the remaining 87% of the total amount of the tip pool would be split among the “front-of-house” employees.

54. However, just as when River Yacht Club was using GratShare, the Defendants refused to grant the Plaintiffs access to any information concerning the tip pool or the tip share that each employee received from the tip pool.

55. In or about July 2017, the Plaintiffs no longer received any payment for the tips received.

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CG RYC LLC
401 SW 3RD AVENUE
MIAMI, FL 33130

Earnings Statement



Period Beginning: 07/10/2017
Period Ending: 07/23/2017
Pay Date: 08/04/2017

Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 1
FL: No State Income Tax



Earnings	rate	hours	this period	year to date
Regular	3.5000	46.05	161.18	1,916.32
Credit Card Tip				1,840.32
Hourly				2,140.15
Nontax Reimbu				1,024.32
Service Charge				15,303.00
Gross Pay			\$161.18	22,224.11

56. As a result of the above violations, the Defendants did not satisfy the tip credit requirements of 29 U.S.C. § 203(m) during the Relevant Time Period for each individual Plaintiff and thus cannot apply their tip credit towards the Defendants’ minimum and overtime wage obligations under the FLSA.

57. As such, the Defendants must pay the Plaintiffs the short fall resulting from the invalid tip credit that was applied toward the minimum wage that the Plaintiffs should have received for each regular hour worked and the overtime wage for each overtime hour worked.

58. The Defendants willfully violated the FLSA by maintaining the invalid tip pool, making inconsistent representations to their patrons and employees regarding the nature of the 18% gratuity that was being charged to the patrons, depriving the Plaintiffs of access to the information and data that was used to maintain the tip pool, manipulating the information that was put in the tip pool to increase River Yacht Club's share of the tip pool and/or reduce the Plaintiff's share of the tip pool, and retroactively reducing the Plaintiffs' hourly wage without advanced notice to the Plaintiffs and without their consent.

59. To add insult to injury, after the Defendants unilaterally reduced the Plaintiffs' hourly wage from \$5.50 to \$3.50, they stopped paying the Plaintiffs their share of the tip pool and instead retained and used the tip pool for their own pecuniary interest.

60. The Plaintiffs have satisfied all conditions precedent prior to filing this lawsuit.

61. The Plaintiffs have retained the undersigned counsel and are obligated to pay the undersigned counsel's law firm its reasonable attorneys' fees and costs that were incurred in connection with bringing and prosecuting this action.

CAUSES OF ACTION

Count I

Failure to Pay Minimum wage in Violation of the FLSA, 29 U.S.C. § 201, et seq.

62. The Plaintiffs incorporate each and every allegation set forth in Paragraphs 1 through 61, *supra*, as if fully set forth herein.

63. The Defendants willfully and intentionally forced the Plaintiffs to participate in an invalid tip pool in which management and River Yacht Club participated.

64. The Defendants did not provide the Plaintiffs with the requisite notice for instituting the tip credit under the FLSA.

65. By forcing the Plaintiffs to share tips with management and River Yacht Club and failing to provide the Plaintiffs with the required notice under the FLSA, the Defendants cannot claim the tip credit and therefore owe the Plaintiffs the full minimum wage for each hour worked up to 40 hours in a week.

66. As a direct and proximate result of the Defendants' violation of the FLSA, each Plaintiff has suffered damages resulting from the improper tip credit that the Defendants applied to each employee's minimum wage compensation during the relevant time period for each Plaintiff.

67. In addition, each Plaintiff is entitled to receive his full share of the tips that River Yacht Club collected from its patrons via the 18% gratuity as well as any additional tips that the patrons voluntarily included to their respective bills.

WHEREFORE, Plaintiffs Nancy Bodan, Richard Dalley, Jennefer DelRosario, Andreeas Farkas, Ovidiu Garbacea, Paola Guardiola, Filip Isakov, Aleksandar Lalic, Aleksandar Majstorovic, George Serban, Milena Sutakovic, and Silviana Trifan request that the Court enter judgment finding CY RYC, CG Miami River, Food and Leverage, Stephane Dupoux, and Meyer Chetrit jointly and severally liable for violation of the FLSA, 29 U.S.C. § 201, *et seq.*, award the Plaintiffs damages, costs, interest, attorneys' fees and costs, and grant such other relief a the Court deems just and proper.

Count II
Failure to Pay Overtime Wage Compensation
in Violation of the FLSA, 29 U.S.C. § 201, et seq.

68. The Plaintiffs incorporate each and every allegation set forth in Paragraphs 1 through 61, *supra*, as if fully set forth herein.

69. The Defendants willfully and intentionally forced the Plaintiffs to participate in an invalid tip pool in which management and River Yacht Club participated.

70. The Defendants did not provide the Plaintiffs with the requisite notice for instituting the tip credit under the FLSA.

71. By forcing the Plaintiffs to share tips with management and River Yacht Club and failing to provide the Plaintiffs with the required notice under the FLSA, the Defendants cannot claim the tip credit and therefore owe the Plaintiffs the overtime wage for each hour worked in excess of 40 hours in a week.

72. As a direct and proximate result of the Defendants' violation of the FLSA, each Plaintiff has suffered damages resulting from the improper tip credit that the Defendants applied to each employee's overtime compensation during the Relevant Time Period for each Plaintiff.

73. In addition, each Plaintiff is entitled to receive his or her full share of the tips that River Yacht Club collected from its patrons via the 18% gratuity as well as any additional tips that the patrons voluntarily included to their respective bills.

WHEREFORE, Plaintiffs Nancy Bodan, Richard Dalley, Jennefer DelRosario, Andreeas Farkas, Ovidiu Garbacea, Paola Guardiola, Filip Isakov, Aleksandar Lalic, Aleksandar Majstorovic, George Serban, Milena Sutakovic, and Silviana Trifan request that the Court enter judgment finding CY RYC, Stephane Dupoux, CG Miami River, and Food and Leverage jointly and severally liable for violation of the FLSA, 29 U.S.C. § 201, *et seq.*, award the Plaintiffs damages, costs, interest, attorneys' fees and costs, and grant such other relief as the Court deems just and proper.

Count III
Breach of Contract

74. The Plaintiffs incorporate each and every allegation set forth in Paragraphs 1 through 61, *supra*, as if fully set forth herein.

75. A contract exists between the Plaintiffs, on the one hand, and Defendant CY RYC, on the other hand to compensate the Plaintiffs as “Tipped Employees” under the FLSA.

76. Defendant CY RYC breached the contract by failing to properly and accurately compensate the Plaintiffs in accordance to the terms that the parties agreed to when the employment relationship began.

77. As a result of CY RYC’s breach of the contract, each Plaintiff has suffered and will continue to suffer substantial damages.

WHEREFORE, Plaintiffs Nancy Bodan, Richard Dalley, Jennefer DelRosario, Andreeas Farkas, Ovidiu Garbacea, Paola Guardiola, Filip Isakov, Aleksandar Lalic, Aleksandar Majstorovic, George Serban, Milena Sutakovic, and Silviana Trifan request that the Court enter judgment in their favor and against Defendant CY RYC for monetary damages, pre-judgment interest, plus attorneys’ fees and costs pursuant to Florida Statute § 448.08, and such other relief as the Court deems just and proper.

Count IV
Accounting

78. The Plaintiffs incorporate each and every allegation set forth in Paragraphs 1 through 61, *supra*, as if fully set forth herein.

79. The FLSA requires employers to maintain complete and accurate employment records, including, but not limited to, time sheets, payroll records, and tip pool sheets. *See* 29 CFR 516.2.

80. Here, the Plaintiffs’ employment records, including, but not limited to, time sheets, payroll, and tip pool sheets, are in the exclusive possession of the Defendants

81. The Defendants deprived the Plaintiffs of access to complete and accurate employment records.

82. As a result, the Plaintiffs have been deprived of a meaningful opportunity to ascertain whether they properly received their full share of River Yacht Club's tip pool for each shift that the Plaintiffs worked.

83. Without an accounting, the Court cannot adequately compensate the Plaintiffs for the Defendants' wrongdoings.

84. Without an accounting, the Plaintiffs lack an adequate remedy at law in that they are unable to determine with any degree of certainty the exact amount of tips that each Plaintiff should have received for each shift that he or she worked for River Yacht Club.

WHEREFORE, Plaintiffs Nancy Bodan, Richard Dalley, Jennefer DelRosario, Andreeas Farkas, Ovidiu Garbacea, Paola Guardiola, Filip Isakov, Aleksandar Lalic, Aleksandar Majstorovic, George Serban, Milena Sutakovic, and Silviana Trifan request that the Court order CY RYC, CG Miami River, Food and Leverage, Stephane Dupoux, and Meyer Chetrit to provide the Plaintiffs with an accounting of River Yacht Club's sales, tips, time-keeping records, tip pool sheets, and payroll records, and back up to the Plaintiffs' payroll checks, and grant such other relief as the Court deems just and proper.

Count V
Unjust Enrichment

85. The Plaintiffs incorporate each and every allegation set forth in Paragraphs 1 through 61, *supra*, as if fully set forth herein.

86. The Plaintiffs conferred a benefit upon the Defendants.

87. The Defendants retained the benefit that was conferred upon them by the Plaintiffs.

88. Defendants retained a portion of each Plaintiff's tips and used the tips for their own pecuniary interest.

89. The Defendants' acceptance and retention of the benefits conferred upon them by the Plaintiffs under these circumstances make it inequitable for the Defendants to retain the benefit without paying the value thereof.

WHEREFORE, Plaintiffs Nancy Bodan, Richard Dalley, Jennefer DelRosario, Andreeas Farkas, Ovidiu Garbacea, Paola Guardiola, Filip Isakov, Aleksandar Lalic, Aleksandar Majstorovic, George Serban, Milena Sutakovic, and Silviana Trifan request that the Court enter judgment finding CY RYC, CG Miami River, Food and Leverage, Stephane Dupoux, and Meyer Chetrit jointly and severally liable for monetary damages resulting from the Defendants' unjust enrichment, plus pre-judgment interest, attorneys' fees and costs under Florida Statute § 448.08, and for such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

The Plaintiffs respectfully demand a trial by jury of all issues so triable.

Dated: November 3, 2017.

Respectfully submitted,

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