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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

James Bourlier, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

TYC, LLC, an Arizona Limited Liability Company; **Dakota Scottsdale LLC**, an Arizona Limited Liability Company, **Scottsdale Beach Club, LLC**, an Arizona Limited Liability Company; **Triyar Beach Club LLC**, an Arizona Limited Liability Company; **Triyar Entertainment Scottsdale I LLC**, an Arizona Limited Liability Company; **Shawn Yari and Jane Doe Yari**, a Married Couple; **Steven Yari and Jane Doe Yari**, a Married Couple; and **Bob Agahl and Jane Doe Agahl**, a Married Couple,

Defendants.

No. _____

PLAINTIFF’S COLLECTIVE ACTION COMPLAINT PURSUANT TO 29 U.S.C. § 201, ET SEQ.

(Demand for Jury Trial)

Plaintiff, James Bourlier (“Plaintiff”), individually, and on behalf of all other persons similarly situated, allege as follows:

PRELIMINARY STATEMENT

1. Plaintiff brings this action on behalf of himself and all similarly-situated current and former servers and bartenders of Defendants who were compensated at a rate

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1 of less than the applicable Arizona and federal minimum wage on account of receiving
2 tips in a given workweek.

3 2. Plaintiff, individually, and on behalf of all others similarly-situated, brings
4 this action against Defendants¹ for their unlawful failure to pay minimum wage and
5 overtime in violation of the Fair Labor Standards Act, 29 U.S.C. § 201-219 (the
6 “FLSA”).
7

8 3. Plaintiff brings a collective action under the FLSA to recover the unpaid
9 minimum wages, improperly withheld tips, and unpaid overtime owed to him
10 individually and on behalf of all other similarly-situated employees, current and former,
11 of Defendants. Members of the Collective Action are referred to as the “Collective
12 Members.”
13

14 4. The Collective Members are all current and former servers and bartenders
15 who were employed by Defendants at any time starting three years before this Complaint
16 was filed, up to the present.
17

18 5. This is an action for unpaid minimum and overtime wages, liquidated
19 damages, interest, attorneys’ fees, and costs under the FLSA.

20 6. The FLSA was enacted “to protect all covered workers from substandard
21 wages and oppressive working hours.” Under the FLSA, employers must pay all non-
22 exempt employees a minimum wage of pay for all time spent working during their
23 regular 40-hour workweeks. Under the FLSA, employers must pay all non-exempt
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26
27 ¹ All Defendants to this action are collectively referred to as either “Triyar” or
“Defendants” unless specified otherwise.

1 employees an overtime premium of at least one and one-half times their regular rate of
2 pay for all time spent working in excess of 40 hours in a given workweek.

3 7. The FLSA's definition of the term "wage," in turn, recognizes that under
4 certain circumstances, an employer of tipped employees may credit a portion of its
5 employees' tips against its minimum wage obligation, a practice commonly referred to as
6 taking a "tip credit."
7

8 8. Under the FLSA, employers must inform their tipped employees of the
9 provisions of 29 U.S.C. § 203(m) and its supporting regulations in order to be able to take
10 a tip credit with respect to their employees' wages.

11 9. In addition to informing their tipped employees of 29 U.S.C. § 203(m) and
12 its supporting regulations, employers must allow their tipped employees to retain all tips
13 earned, except to the extent that they require the tipped employees to participate in a valid
14 tip pooling arrangement. A valid tip pooling arrangement includes only employees who
15 customarily and regularly receive tips.
16

17 10. The FLSA, in turn, requires that employers comply with any State law that
18 establishes a higher minimum wage than that established by the FLSA. *See* 29 U.S.C. §
19 218(a). Therefore, federal law requires that all Arizona employers comply with the
20 minimum wage standards set forth by the Arizona Wage Act and limits the maximum
21 allowable tip credit to \$3.00 per hour. *See Montijo v. Romulus, Inc.*, 2015 WL 1470128,
22 at *5 n. 4 (D. Ariz. March 30, 2015).
23

24 11. For example, the Arizona minimum wage in 2014 was \$7.90. If an
25 employer of tipped employees has satisfied its tip credit obligations, it may impose a tip
26
27

1 credit on that overtime rate of up \$3.00 per hour, for a total minimum hourly rate of
2 \$4.90.

3 12. For example, the Arizona minimum wage in 2015 was \$8.05. If an
4 employer of tipped employees has satisfied its tip credit obligations, it may impose a tip
5 credit on that overtime rate of up \$3.00 per hour, for a total minimum hourly rate of
6 \$5.05.

7
8 13. For example, the Arizona minimum wage in 2016 was \$8.05. If an
9 employer of tipped employees has satisfied its tip credit obligations, it may impose a tip
10 credit on that overtime rate of up \$3.00 per hour, for a total minimum hourly rate of
11 \$5.05.

12
13 14. For example, the Arizona minimum wage in 2017 was \$10.00. If an
14 employer of tipped employees has satisfied its tip credit obligations, it may impose a tip
15 credit on that overtime rate of up \$3.00 per hour, for a total minimum hourly rate of
16 \$7.00.

17
18 15. For example, the Arizona minimum wage is currently \$10.50 in 2017. If an
19 employer of tipped employees has satisfied its tip credit obligations, it may impose a tip
20 credit on that overtime rate of up \$3.00 per hour, for a total minimum hourly rate of
21 \$7.00.

22 16. Defendants imposed a tip credit upon all of their servers and bartenders,
23 including Plaintiff and the Collective Members.

24 17. Defendants engaged in the regular policy and practice of not allowing
25 Plaintiff and the Collective Members to retain all tips they received. Specifically,
26 Defendants subjected Plaintiff and the Collective Members to their policy and practice of
27

1 requiring participation in a tip pool that included staff who do not customarily and
2 regularly receive tips, such as salaried managers and upper management, in violation of
3 29 U.S.C. § 203(m).

4 18. Therefore, Defendants were precluded from exercising a tip credit against
5 Plaintiff's and Collective Members' wages.

6
7 19. Defendants did not notify Plaintiff, or any of the Collective Members, of
8 the provisions of 29 U.S.C. § 203(m) and 29 C.F.R. § 531.59 before imposing a tip credit
9 on their wages.

10 20. Therefore, Defendants did not pay Plaintiff or the Collective Members the
11 applicable federal or Arizona minimum wage, in violation of 29 U.S.C. § 206, and were
12 precluded from exercising a tip credit against Plaintiff's and Collective Members' wages.

13
14 21. Throughout Plaintiff's and the Collective Members' employment, the
15 Defendants engaged in the practice of willfully failing to pay Plaintiff and the Collective
16 Members one and one-half times their regular rate of pay for all hours that they worked in
17 excess of 40 hours per week.

18
19 22. As a result of Defendants' willful failure to pay Plaintiff and the Collective
20 Members one and one-half times their regular rate of pay for all hours worked in excess
21 of 40 hours per week, Defendants paid Plaintiff and the Collective Members less than the
22 applicable overtime wage rate for such work that they performed in excess of 40 hours
23 per workweek.

24
25 23. As a result of Defendants' willful failure to compensate Plaintiff and the
26 Collective Members the applicable overtime wage rate for such hours worked,
27 Defendants have violated 29 U.S.C. § 207(a).

1 30. At all times material to the matters alleged in this Complaint, Plaintiff was
2 an individual residing in Maricopa County, Arizona, and is a former employee of
3 Defendants.

4 31. At all material times, Plaintiff was a full-time, non-exempt employee of
5 Defendants who worked at Defendants' "Dakota" restaurant location, located at 7301 E.
6 Indian Plaza, Scottsdale, AZ 85251 from approximately April 1, 2013 through
7 approximately September 6, 2017.

8 32. At all material times, Plaintiff was employed by Defendants and paid as a
9 tipped employee. Defendants employed Plaintiff to perform various tipped and non-
10 tipped duties, including, but not limited to, serving drinks and food to customers, tending
11 the bar, cleaning, busing tables, and other side work required of him by Defendants.
12

13 33. At all material times, Plaintiff was an employee of Defendants as defined
14 by the FLSA, 29 U.S.C. § 203(e)(1) and was a non-exempt employee under 29 U.S.C. §
15 213(a)(1).
16

17 34. Plaintiff has given his written consent to be a party Plaintiff in this action
18 pursuant to 29 U.S.C. § 216(b), a true and accurate copy of which is attached to this
19 Complaint as "**Exhibit A.**"
20

21 35. Plaintiff brings this action on behalf of himself and on behalf of all other
22 persons similarly situated who are current or former tipped employees of Defendants,
23 including but not limited to servers and bartenders who agree in writing to join this action
24 seeking recovery under the FLSA.
25

26 36. Plaintiff brings this action on behalf of themselves and on behalf of all
27 other similarly situated current and former employees of Defendants—specifically, servers

1 and bartenders whose hourly wages were subject to a tip credit and whose wages,
2 therefore, were less than the applicable statutory minimum wage.

3 37. Defendant TYC, LLC is an Arizona limited liability company, authorized
4 to do business in the State of Arizona and was at all relevant times Plaintiff's and the
5 Collective Members' Employer as defined by the FLSA, 29 U.S.C. § 203(d).
6

7 38. At all relevant times, Defendant TYC, LLC owned and operated as Dakota,
8 a full-service restaurant and bar located at 7301 East Indian Plaza, Scottsdale, AZ 85251.

9 39. Under the FLSA, Defendant TYC, LLC is an employer. The FLSA defines
10 "employer" as any person who acts directly or indirectly in the interest of an employer in
11 relation to an employee. Defendant TYC, LLC is the owner of Dakota. At all relevant
12 times, Defendant TYC, LLC had the authority to hire and fire employees, supervised and
13 controlled work schedules or the conditions of employment, determined the rate and
14 method of payment, and maintained employment records in connection with Plaintiff's
15 and the Collective Members' employment with Dakota. Having acted in the interest of
16 TYC, LLC in relation to the company's employees, including Plaintiff, Defendant TYC,
17 LLC is subject to liability under the FLSA.
18
19

20 40. Defendant Dakota Scottsdale LLC is an Arizona limited liability company,
21 authorized to do business in the State of Arizona and was at all relevant times Plaintiff's
22 and the Collective Members' Employer as defined by the FLSA, 29 U.S.C. § 203(d).
23

24 41. At all relevant times, Defendant Dakota Scottsdale LLC owned and
25 operated as Dakota, a full-service restaurant and bar located at 7301 East Indian Plaza,
26 Scottsdale, AZ 85251.
27

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1 42. Under the FLSA, Defendant Dakota Scottsdale LLC is an employer. The
2 FLSA defines “employer” as any person who acts directly or indirectly in the interest of
3 an employer in relation to an employee. Defendant Dakota Scottsdale LLC is the owner
4 of Dakota. At all relevant times, Defendant Dakota Scottsdale LLC had the authority to
5 hire and fire employees, supervised and controlled work schedules or the conditions of
6 employment, determined the rate and method of payment, and maintained employment
7 records in connection with Plaintiff’s and the Collective Members’ employment with
8 Dakota. Having acted in the interest of Dakota Scottsdale LLC in relation to the
9 company’s employees, including Plaintiff, Defendant Dakota Scottsdale LLC is subject
10 to liability under the FLSA.
11

12 43. Defendant Scottsdale Beach Club LLC is an Arizona limited liability
13 company, authorized to do business in the State of Arizona and was at all relevant times
14 Plaintiff’s and the Collective Members’ Employer as defined by the FLSA, 29 U.S.C. §
15 203(d).
16

17 44. At all relevant times, Defendant Scottsdale Beach Club LLC owned and
18 operated as Maya Day + Nightclub, a full-service restaurant and bar located at 7333 East
19 Indian Plaza, Scottsdale, AZ 85251.
20

21 45. Under the FLSA, Defendant Scottsdale Beach Club LLC is an employer.
22 The FLSA defines “employer” as any person who acts directly or indirectly in the interest
23 of an employer in relation to an employee. Defendant Scottsdale Beach Club LLC is the
24 owner of Maya Day + Nightclub. At all relevant times, Defendant Scottsdale Beach Club
25 LLC had the authority to hire and fire employees, supervised and controlled work
26 schedules or the conditions of employment, determined the rate and method of payment,
27

1 and maintained employment records in connection with Plaintiff's and the Collective
2 Members' employment with Maya Day + Nightclub. Having acted in the interest of
3 Scottsdale Beach Club LLC in relation to the company's employees, including Plaintiff,
4 Defendant Scottsdale Beach Club LLC is subject to liability under the FLSA.

5 46. Defendant Triyar Beach Club LLC is an Arizona limited liability company,
6 authorized to do business in the State of Arizona and was at all relevant times Plaintiff's
7 and the Collective Members' Employer as defined by the FLSA, 29 U.S.C. § 203(d).

8 47. At all relevant times, Defendant Triyar Beach Club LLC owned and
9 operated as Maya Day + Nightclub, a full-service restaurant and bar located at 7333 East
10 Indian Plaza, Scottsdale, AZ 85251.

11 48. Under the FLSA, Defendant Triyar Beach Club LLC is an employer. The
12 FLSA defines "employer" as any person who acts directly or indirectly in the interest of
13 an employer in relation to an employee. Defendant Triyar Beach Club LLC is the owner
14 of Maya Day + Nightclub. At all relevant times, Defendant Triyar Beach Club LLC had
15 the authority to hire and fire employees, supervised and controlled work schedules or the
16 conditions of employment, determined the rate and method of payment, and maintained
17 employment records in connection with Plaintiff's and the Collective Members'
18 employment with Maya Day + Nightclub. Having acted in the interest of Triyar Beach
19 Club LLC in relation to the company's employees, including Plaintiff, Defendant Triyar
20 Beach Club LLC is subject to liability under the FLSA.

21 49. Defendant Triyar Entertainment Scottsdale I LLC is an Arizona limited
22 liability company, authorized to do business in the State of Arizona and was at all
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1 relevant times Plaintiff's and the Collective Members' Employer as defined by the FLSA,
2 29 U.S.C. § 203(d).

3 50. At all relevant times, Defendant Triyar Entertainment Scottsdale I LLC
4 owned and operated as Shade at the W, a full-service restaurant and bar located at 7333
5 East Indian Plaza, Scottsdale, AZ 85251.

6
7 51. Under the FLSA, Defendant Triyar Entertainment Scottsdale I LLC is an
8 employer. The FLSA defines "employer" as any person who acts directly or indirectly in
9 the interest of an employer in relation to an employee. Defendant Triyar Entertainment
10 Scottsdale I LLC is the owner of Shade at the W. At all relevant times, Defendant Triyar
11 Entertainment Scottsdale I LLC had the authority to hire and fire employees, supervised
12 and controlled work schedules or the conditions of employment, determined the rate and
13 method of payment, and maintained employment records in connection with Plaintiff's
14 and the Collective Members' employment with Shade at the W. Having acted in the
15 interest of Triyar Entertainment Scottsdale I LLC in relation to the company's
16 employees, including Plaintiff, Defendant Triyar Entertainment Scottsdale I LLC is
17 subject to liability under the FLSA.
18

19
20 52. Defendant Triyar Entertainment LLC is an Arizona limited liability
21 company, authorized to do business in the State of Arizona and was at all relevant times
22 Plaintiff's and the Collective Members' Employer as defined by the FLSA, 29 U.S.C. §
23 203(d).

24
25 53. At all relevant times, Defendant Triyar Entertainment LLC owned and
26 operated as Triyar Entertainment Group, a company that owns and operates the Triyar
27

1 Entertainment concepts, Dakota, Maya Day + Nightclub, The District, and Shade at the
2 W.

3 54. Under the FLSA, Defendant Triyar Entertainment LLC is an employer.
4 The FLSA defines “employer” as any person who acts directly or indirectly in the interest
5 of an employer in relation to an employee. Defendant Triyar Entertainment LLC is the
6 owner of Dakota, Maya Day + Nightclub, The District, and Shade at the W. At all
7 relevant times, Defendant Triyar Entertainment LLC had the authority to hire and fire
8 employees, supervised and controlled work schedules or the conditions of employment,
9 determined the rate and method of payment, and maintained employment records in
10 connection with Plaintiff’s and the Collective Members’ employment with Dakota, Maya
11 Day + Nightclub, The District, and Shade at the W. Having acted in the interest of Triyar
12 Entertainment LLC in relation to the company’s employees, including Plaintiff,
13 Defendant Triyar Entertainment LLC is subject to liability under the FLSA.
14
15

16 55. Defendants Shawn Yari and Jane Doe Yari are, upon information and
17 belief, husband and wife. They have caused events to take place giving rise to the claims
18 in this Complaint as to which their marital community is fully liable. Shawn Yari is an
19 owner of Defendants, including TYC, LLC, Dakota Scottsdale, LLC, Scottsdale Beach
20 Club, LLC, Triyar Beach Club, LLC, and Triyar Entertainment Scottsdale I, LLC, and
21 was at all relevant times Plaintiff’s and the Collective Members’ employer as defined by
22 the FLSA, 29 U.S.C. § 203(d). Jane Doe Yari is an owner of Defendants.
23
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25 56. Under the FLSA, Defendants Shawn Yari and Jane Doe Yari are
26 employers. The FLSA defines “employer” as any individual who acts directly or
27 indirectly in the interest of an employer in relation to an employee. Shawn Yari and Jane

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1 Doe Yaro are owners of Defendants. They had the authority to hire and fire employees,
2 supervised and controlled work schedules or the conditions of employment, determined
3 the rate and method of payment, and maintained employment records in connection with
4 Plaintiff's and the Collective Members' employment with Defendants. As persons who
5 acted in the interest of Defendants in relation to the company's employees, Shawn Yari
6 and Jane Doe Yari are subject to individual liability under the FLSA.
7

8 57. Defendants Steven Yari and Jane Doe Yari II are, upon information and
9 belief, husband and wife. They have caused events to take place giving rise to the claims
10 in this Complaint as to which their marital community is fully liable. Steven Yari is an
11 owner of Defendants, including TYC, LLC, Dakota Scottsdale, LLC, Scottsdale Beach
12 Club, LLC, Triyar Beach Club, LLC, and Triyar Entertainment Scottsdale I, LLC, and
13 was at all relevant times Plaintiff's and Collective Members' employer as defined by the
14 FLSA, 29 U.S.C. § 203(d). Jane Doe Yari II is an owner of Defendants.
15

16 58. Under the FLSA, Defendants Steven Yari and Jane Doe Yari II are
17 employers. The FLSA defines "employer" as any individual who acts directly or
18 indirectly in the interest of an employer in relation to an employee. Steven Yari and Jane
19 Doe Yari II are the owners of Defendants. They had the authority to hire and fire
20 employees, supervised and controlled work schedules or the conditions of employment,
21 determined the rate and method of payment, and maintained employment records in
22 connection with Plaintiff's and the Collective Members' employment with Defendants.
23 As persons who acted in the interest of Defendants in relation to the company's
24 employees, Steven Yari and Jane Doe Yari II are subject to individual liability under the
25 FLSA.
26
27

1 59. Defendants Bob Agahl and Jane Doe Agahl are, upon information and
2 belief, husband and wife. They have caused events to take place giving rise to the claims
3 in this Complaint as to which their marital community is fully liable. Bob Agahl is an
4 owner of Defendants, including TYC, LLC, Dakota Scottsdale, LLC, Scottsdale Beach
5 Club, LLC, Triyar Beach Club, LLC, and Triyar Entertainment Scottsdale I, LLC, and
6 was at all relevant times Plaintiff's and the Collective Members' employer as defined by
7 the FLSA, 29 U.S.C. § 203(d). Jane Doe Agahl is an owner of Defendants.
8

9 60. Under the FLSA, Defendants Bob Agahl and Jane Doe Agahl are
10 employers. The FLSA defines "employer" as any individual who acts directly or
11 indirectly in the interest of an employer in relation to an employee. Bob Agahl and Jane
12 Doe Agahl are owners of Defendants. They had the authority to hire and fire employees,
13 supervised and controlled work schedules or the conditions of employment, determined
14 the rate and method of payment, and maintained employment records in connection with
15 Plaintiff's and the Collective Members' employment with Defendants. As persons who
16 acted in the interest of Defendants in relation to the company's employees, Bob Agahl
17 and Jane Doe Agahl are subject to individual liability under the FLSA.
18
19

20 61. At all relevant times, Defendants Shawn Yari and Jane Doe Yari owned
21 and operated as TYC, LLC, Dakota Scottsdale, LLC, Scottsdale Beach Club, LLC, Triyar
22 Beach Club, LLC, and Triyar Entertainment Scottsdale I, LLC.
23

24 62. At all relevant times, Defendants Steven Yari and Jane Doe Yari II owned
25 and operated as TYC, LLC, Dakota Scottsdale, LLC, Scottsdale Beach Club, LLC, Triyar
26 Beach Club, LLC, and Triyar Entertainment Scottsdale I, LLC.
27

1 63. At all relevant times, Defendants Bob Agahl and Jane Doe Agahl owned
2 and operated as TYC, LLC, Dakota Scottsdale, LLC, Scottsdale Beach Club, LLC, Triyar
3 Beach Club, LLC, and Triyar Entertainment Scottsdale I, LLC.

4 64. Plaintiff is further informed, believe, and therefore allege that each of the
5 Defendants gave consent to, ratified, and authorized the acts of all other Defendants, as
6 alleged in this Complaint.

7 65. Defendants, and each of them, are sued in both their individual and
8 corporate capacities.

9 66. Defendants are jointly and severally liable for the injuries and damages
10 sustained by Plaintiff and the Collective Members.

11 67. At all relevant times, Plaintiff and the Collective Members were
12 “employees” of Defendants as defined by the FLSA, 29 U.S.C. § 201, *et seq.*

13 68. The provisions set forth in the FLSA, 29 U.S.C. § 201, *et seq.*, apply to
14 Defendants.

15 69. At all relevant times, Defendants were and continue to be “employers” as
16 defined by FLSA, 29 U.S.C. § 201, *et seq.*

17 70. Defendants individually and/or through an enterprise or agent, directed and
18 exercised control over Plaintiff’s and the Collective Members’ work and wages at all
19 relevant times.

20 71. At all relevant times, Plaintiff and the Collective Members, in their work
21 for Defendants, were engaged in commerce or the production of goods for commerce.
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1 72. At all relevant times, Plaintiff and the Collective Members, in their work
2 for Defendants, were employed by an enterprise engaged in commerce that had annual
3 gross sales of at least \$500,000.

4 73. At all relevant times, all Defendants were joint employers of Plaintiff and
5 the Collective Members. At all relevant times: (1) Defendants were not completely
6 disassociated with respect to the employment of Plaintiff and the Collective Members;
7 and (2) Defendants were under common control. In any event, at all relevant times,
8 Defendants were joint employers under the FLSA and 29 C.F.R. § 791.2(b) and
9 employed Plaintiff and the Collective Members.
10

11 74. Further, at all relevant times, Defendants have operated as a “single
12 enterprise” within the meaning of the FLSA, 29 U.S.C. § 203(r)(1). That is, Defendants
13 perform related activities through unified operation and common control for a common
14 business purpose. *See Brennan v. Arnheim and Neely, Inc.*, 410 U.S. 512, 515 (1973);
15 *Chao v. A-One Med. Servs., Inc.*, 346 F.3d 908, 914-15 (9th Cir. 2003).
16

17 75. Defendants operate various full-service restaurants and bars under the
18 umbrella of Triyar Entertainment Group. The website for Triyar Entertainment Group
19 lists their concepts, including Shade at W Scottsdale, Maya Day + Nightclub, The
20 District, and Dakota. Plaintiff has attached a screen shot of the website for Triyar
21 Entertainment Group as “**Exhibit B.**”
22

23 76. Defendants share employees, have a common management, have a common
24 ownership, pool their resources, operate from the same headquarters, and share common
25 statutory agents. This group of full service restaurants and bars exist under the control
26 and direction of Defendants.
27

FACTUAL ALLEGATIONS

1
2 77. Plaintiff realleges and incorporates by reference all allegations in all
3 preceding paragraphs.

4 78. Defendants own and/or operate as Dakota, Maya Day + Nightclub, The
5 District, and Shade at W Scottsdale, enterprises located in Maricopa County, Arizona.

6
7 79. Dakota, Maya Day + Nightclub, The District, and Shade at W Scottsdale
8 are enterprises that are bars and restaurants that serve food and drinks to customers.

9 80. On approximately April 1, 2013, Plaintiff began employment with
10 Defendants as a barback and bartender, performing various repetitive tasks such as
11 serving drinks and food to customers, cleaning, bussing tables, and other side work.

12
13 81. Rather than pay their tipped employees the applicable minimum wage, for
14 the time Plaintiff was paid as a tipped employee, Defendants imposed a tip credit upon
15 Plaintiff's wages at below the applicable minimum wage.

16 82. Throughout the duration of his employment, Plaintiff was paid a rate of the
17 applicable Arizona minimum wage less a tip credit of approximately \$3.00 per hour.

18
19 83. As a result of Defendants' imposition of a tip credit, Plaintiff was forced to
20 perform work at an hourly rate that was less than the applicable minimum wage.

21 84. Defendants engaged in the regular policy and practice of not allowing
22 Plaintiff and the Collective Members to retain all tips they received. Specifically,
23 Defendants subjected Plaintiff and the Collective Members to their policy and practice of
24 requiring participation in a tip pool that included staff who do not customarily and
25 regularly receive tips, such as managers, in violation of 29 U.S.C. § 203(m). Therefore,
26 Defendants were precluded from exercising a tip credit against Plaintiff's and Collective
27

1 Members' wages, and the manner in which Defendants paid Plaintiff and the Collective
2 Members violated 29 U.S.C. § 206(a).

3 85. Specifically, Defendants had a policy and practice of requiring their servers
4 and bartenders, such as Plaintiffs and the Collective Members, to collectively pool all tips
5 they earned after every shift.

6 86. Defendants divided these pooled tips between and among front of house
7 ("FOH") employees, such as servers, bartenders, bussers, and hosts, and non-tipped back
8 managers. *Id.*

9 87. At all relevant times, Defendants implemented and maintained the policy
10 and practice of requiring their servers and bartenders at each and every one of
11 Defendants' establishments to contribute tips they earned into a pool that included
12 employees who did not customarily and regularly receive tips, including managers. *Id.*

13 88. At all relevant times, Defendants implemented and maintained the policy
14 and practice of requiring their servers and bartenders at Dakota to contribute tips they
15 earned into a pool that included employees who did not customarily and regularly receive
16 tips, including managers.

17 89. At all relevant times, Defendants implemented and maintained the policy
18 and practice of requiring their servers and bartenders at Maya Day + Nightclub to
19 contribute tips they earned into a pool that included employees who did not customarily
20 and regularly receive tips, including managers.

21 90. At all relevant times, Defendants implemented and maintained the policy
22 and practice of requiring their servers and bartenders at The District to contribute tips
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1 they earned into a pool that included employees who did not customarily and regularly
2 receive tips, including managers.

3 91. At all relevant times, Defendants implemented and maintained the policy
4 and practice of requiring their servers and bartenders at Shade at W Scottsdale to
5 contribute tips they earned into a pool that included employees who did not customarily
6 and regularly receive tips, including managers.
7

8 92. Defendants' policy and practice of requiring Plaintiff and the Collective
9 Members to pool tips with BOH employees violated 29 U.S.C. § 203(m) such that
10 Defendants were prohibited from exercising any tip credit whatsoever against Plaintiff's
11 and the Collective Members' wages at all material times, and the manner in which
12 Defendants paid Plaintiff and the Collective Members therefore violated 29 U.S.C. §
13 206(a).
14

15 93. Therefore, in a given workweek, and during each and every workweek of
16 Plaintiff's employment with Defendants, Plaintiff worked for Defendants and was not
17 paid the applicable minimum wage under the FLSA 29, U.S.C. § 206(a).
18

19 94. Defendants did not notify Plaintiff or the Collective Members of the
20 provisions of 29 U.S.C. § 203(m) and its supporting regulations prior to taking the tip
21 credit or at any time throughout the duration of their employment with Defendants.
22

23 95. Defendants did not provide written notice to Plaintiff or the Collective
24 Members prior to exercising the tip credit.

25 96. As such, Defendants were not entitled to impose any tip credit upon
26 Plaintiff's wages under Federal law, and Defendants should have therefore paid the full
27 Arizona minimum wage to Plaintiff for all time Plaintiff and the Collective Members,

1 worked during the course of their regular 40-hour workweeks. As such, the full
2 applicable minimum wage for such time is owed to Plaintiffs and the Collective Members
3 for the entire time they were employed by Defendants.

4 97. Therefore, in a given workweek, and during each and every workweek of
5 Plaintiff's and the Collective Members' employment with Defendants, Plaintiff and the
6 Collective Members worked for Defendants and were not paid the applicable minimum
7 wage under the FLSA 29, U.S.C. § 206(a).

8 98. Plaintiff believes and therefore claims that Defendants subjected each and
9 every server and bartender that they employed, including Plaintiff and the Collective
10 Members, to its policy and specific course of conduct of not informing their tipped
11 employees of the provisions of 29 U.S.C. § 203(m) and its supporting regulations.

12 99. Plaintiff believes and therefore claims that Defendants subjected each and
13 every server and bartender that they employed, including Plaintiff and the Collective
14 Members, to their policy and specific course of conduct of not providing written notice to
15 Plaintiffs or the Collective Members prior to exercising the tip credit.

16 100. Defendants engaged in the regular policy and practice of requiring Plaintiff
17 and the Collective Members to work in excess of 40 hours in a given workweek without
18 compensating them at a rate of one and one-half their regular rate of pay for all hours
19 worked in excess of 40 hours per week.

20 101. Plaintiff and the Collective Members routinely worked with knowledge of
21 Defendants, and generally at Defendants' request, in excess of 40 hours per week during
22 their employment with Defendants.

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1 102. Specifically, Plaintiff and the Collective Members routinely worked in
2 excess of 40 hours per week such that their time clock report would reflect working such
3 hours. Defendants would deduct overtime hours from Plaintiff's and Collective
4 Members' pay checks, such that Defendants did not compensate Plaintiff and Collective
5 Members any wage whatsoever for hours worked in excess of 40 hours per week.
6

7 103. In a given workweek, and during each and every workweek, if Plaintiff's
8 and the Collective Members' employment with Defendants, Plaintiff and the Collective
9 Members worked in excess of 40 hours per week without being compensated at one and
10 one-half times their regular rates of pay for such time worked.
11

12 104. Defendants' failure to pay Plaintiff and the Collective Members one and
13 one-half times their regular rate of pay for all hours worked in excess of 40 hours per
14 week violated 29 U.S.C. § 207.
15

16 105. Defendants knew that – or acted with reckless disregard as to whether –
17 their failure to pay Plaintiff and the Collective Members the proper overtime rate would
18 violate federal and state law, and Defendants were aware of the FLSA and Arizona
19 minimum wage and overtime requirements during Plaintiff's and the Collective
20 Members' employment. As such, Defendants' conduct constitutes a willful violation of
21 the FLSA.
22

23 106. Plaintiffs and the Collective Members are covered employees within the
24 meaning of the Fair Labor Standards Act ("FLSA").
25

26 107. Plaintiff and the Collective Members were non-exempt employees.
27

 108. Defendants refused and/or failed to properly disclose to or apprise Plaintiffs
and the Collective Members of their rights under the FLSA.

1 109. Defendants wrongfully withheld wages from Plaintiffs and the Collective
2 Members by failing to pay all wages due for hours Plaintiffs and the Collective Members
3 worked for Defendants.

4 110. Defendants individually and/or through an enterprise or agent, directed and
5 exercised control over Plaintiffs' and the Collective Members' work and wages at all
6 relevant times.
7

8 111. Due to Defendants' illegal wage practices, Plaintiffs and the Collective
9 Members are entitled to recover from Defendants compensation for unpaid minimum
10 wages and overtime wages, an additional amount equal amount as liquidated damages, all
11 tips contributed to the tip pool, interest, and reasonable attorney's fees and costs of this
12 action under 29 U.S.C. § 216(b).
13

14 **COLLECTIVE ACTION ALLEGATIONS**

15 112. Plaintiff realleges and incorporates by reference all allegations in all
16 preceding paragraphs.
17

18 113. Plaintiff bring this action pursuant to 29 U.S.C. § 216(b) on his own behalf
19 and as representatives of individuals similarly situated who are current or former servers
20 and bartenders of Defendants.

21 114. At all times material, Defendants paid Plaintiff and the Collective Members
22 at a rate of less than the full, applicable Arizona and federal minimum wage.
23

24 115. Defendants subjected Plaintiff and the Collective Members to their policy
25 and practice of requiring participation in a tip pool that included employees, staff, and/or
26 managers who do not customarily and regularly receive tips in a given workweek and
27

1 during each and every workweek that Plaintiffs and the Collective Members worked for
2 Defendants, in violation of 29 U.S.C. § 206(a).

3 116. Defendants did not inform Plaintiff and the Collective Members of the
4 provisions of 29 U.S.C. § 203(m) and its supporting regulations prior to imposing a tip
5 credit upon their wages, in violation of 29 U.S.C. § 206(a).

6
7 117. Defendants required Plaintiff and the Collective Members to work in excess
8 of 40 hours in a given workweek without compensating Plaintiff and the Collective
9 Members at a rate of one and one-half times their regular rate of pay for such hours
10 worked, in violation of 29 U.S.C. § 207.

11 118. At all times material, Plaintiff and the Collective Members are and have
12 been similarly situated, have had substantially similar job requirements and pay
13 provisions, and are and have been subject to Defendants' decision, policy, plan, and
14 common programs, practices, procedures, protocols, routines, and rules of willfully
15 subjecting Plaintiff and the Collective Members to their policy and practice of requiring
16 participation in a tip pool that included employees, staff, and/or managers who do not
17 customarily and regularly receive tips.
18

19
20 119. At all relevant times, Plaintiff and the Collective Members are and have
21 been similarly situated, have had substantially similar job requirements and pay
22 provisions, and are and have been subject to Defendants' decision, policy, plan, and
23 common programs, practices, procedures, protocols, routines, and rules of willfully not
24 informing Plaintiff and the Collective Members of the provisions of 29 U.S.C. § 203(m)
25 and its supporting regulations prior to imposing a tip credit upon their wages.
26
27

1 120. At all relevant times, Plaintiff and the Collective Members are and have
2 been similarly situated, have had substantially similar job requirements and pay
3 provisions, and are and have been subject to Defendants' decision, policy, plan, and
4 common programs, practices, procedures, protocols, routines, and rules of willfully
5 requiring Plaintiff and the Collective Members to work in excess of 40 hours in a given
6 workweek without compensating Plaintiff and the Collective Members at a rate of one
7 and one-half times their regular rates of pay for such hours worked.

9 121. Plaintiff's claims stated in this complaint are essentially the same as those
10 of the Collective Members. This action is properly maintained as a collective action
11 because in all pertinent aspects the employment relationship of individuals similarly
12 situated to Plaintiff is identical or substantially similar.

14 122. Plaintiff and the Collective Members were each compensated exclusively
15 on an hourly basis for the duration of their employment with Defendants.

17 123. In a given workweek, and during each and every workweek, of Plaintiff's
18 and the Collective Members' employment with Defendants, Plaintiff and the Collective
19 Members, pursuant to Defendants' policy and practice, contributed a portion of their tips
20 to employees who do not customarily and regularly receive tips—namely, managers.

21 124. Additionally, Defendants did not inform Plaintiff and the Collective
22 Members of the provisions of 29 U.S.C. § 203(m) and its supporting regulations at any
23 time prior to taking the tip credit and at any time over the duration of their employment
24 with Defendants. As such, Defendants were not entitled to impose any tip credit upon
25 Plaintiff's or the Collective Members' wages and, consequently, paid Plaintiff and the
26 Collective Members less than the applicable minimum wage, in violation of 29 U.S.C. §
27

1 206. Defendants should have therefore paid the full applicable, Arizona minimum wage
2 to Plaintiff and the Collective Members for all time that they worked during the course of
3 their regular 40-hour workweeks. As such, the full applicable minimum wage for such
4 time is owed to Plaintiff and the Collective Members for the entire time they were
5 employed by Defendants.
6

7 125. Defendants did not inform Plaintiff and the Collective Members of the
8 amount of cash wage the Defendants were paying Plaintiff and the Collective Members.

9 126. Defendants did not inform Plaintiff and the Collective Members of the
10 additional amount claimed by Defendants as a tip credit.

11 127. Defendants did not inform Plaintiff and the Collective Members that the tip
12 credit claimed by Defendants cannot exceed the amount of tips actually received by
13 Plaintiff and the Collective Members.
14

15 128. Defendants did not inform Plaintiff and the Collective Members that all tips
16 received by Plaintiff and the Collective Members were to be retained by Plaintiff and the
17 Collective Members except for a valid tip pooling arrangement limited to employees who
18 customarily and regularly receive tips.
19

20 129. Defendants did not inform Plaintiff and the Collective Members that the tip
21 credit would not apply to any tipped employee unless the tipped employee had been
22 informed of the tip credit provisions of 29 U.S.C. § 203(m) and its supporting
23 regulations.
24

25 130. In a given workweek, and during each and every workweek, of Plaintiff's
26 and the Collective Members' employment with Defendants, Plaintiff and the Collective
27 Members, pursuant to Defendants' policy and practice, worked in excess of 40 hours per

1 week and were not compensated at a rate of one and one-half times their regular rate of
2 pay for such hours worked, in violation of 29 U.S.C. § 207.

3 131. The Collective Members perform or have performed the same or similar
4 work as Plaintiffs.

5 132. Defendants' failure to pay minimum wage compensation required by the
6 FLSA results from generally applicable policies or practices, and does not depend on the
7 personal circumstances of Plaintiff or the Collective Members.

8 133. While Plaintiff and Defendants have described Plaintiff's and the
9 Collective Members' job titles as servers and bartenders, the specific job titles or precise
10 job responsibilities of each Collective Member does not prevent collective treatment.

11 134. All Collective Members, irrespective of their particular job requirements
12 and job titles, are entitled to proper minimum wage and overtime compensation for all
13 hours worked in a given workweek.

14 135. Although the exact amount of damages may vary among the Collective
15 Members, the damages for the Collective Members can be easily calculated by a simple
16 formula. The claims of all Collective Members arise from a common nucleus of facts.
17 Liability is based on a systematic course of wrongful conduct by the Defendants that
18 caused harm to all of the Collective Members.

19 136. As such, Plaintiff brings his FLSA minimum wage and overtime claims as
20 a collective action on behalf of the following class:

21
22
23
24
25 **The FLSA Collective Members are all of Defendants' current and**
26 **former servers and bartenders who were paid an hourly rate of less than**
27 **the Arizona minimum wage on account of their receiving tips, starting**
three years before this lawsuit was filed up to the present.

1 137. Defendants' unlawful conduct, as described in this Collective Action
2 Complaint, is pursuant to Defendants' corporate policy or practice of minimizing labor
3 costs by refusing and/or failing to properly compensate its employees according to the
4 FLSA.

5 138. Defendants are aware or should have been aware that federal law prohibited
6 them from requiring their servers and bartenders—namely, Plaintiff and the Collective
7 Members—to share their tips with employees who do not customarily and regularly
8 receive tips.

9 139. Defendants are aware or should have been aware that federal law required
10 them to inform their servers and bartenders—namely, Plaintiff and the Collective
11 Members—of the tip credit provisions of the FLSA, 29 U.S.C. § 203(m) prior to imposing
12 a tip credit upon their wages.

13 140. Defendants are aware or should have been aware that federal law required
14 them to compensate their servers and bartenders—namely, Plaintiff and the Collective
15 Members—at a rate of one and one-half times their regular rates of pay for all hours
16 worked in excess of 40 hours per week.

17 141. Defendants' unlawful conduct has been widespread, repeated, and
18 consistent.

19 142. This action is properly brought and maintained as an opt-in collective
20 action pursuant to 29 U.S.C. § 216(b).

21 143. Upon information and belief, the individuals similarly situated to Plaintiff
22 include more than one hundred (100) employees currently and/or formerly employed by
23 Defendants, and Plaintiff is unable to state the precise number of similarly-situated
24
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1 employees because that information is solely in Defendants' possession, custody, or
2 control, but it can be readily ascertained from their employment records and the records
3 of Defendants' payroll processor.

4 144. Notice can be provided to the Collective Members by First Class Mail to
5 the last address known to Defendants, via email at the last known email address known to
6 Defendants, and by text message to the last known telephone number known to
7 Defendants.
8 Defendants.

9 **DAMAGES**

10 145. Plaintiff realleges and incorporates by reference all allegations in all
11 preceding paragraphs.

12 146. Plaintiff and the Collective Members are entitled to recover compensation
13 for the hours they worked for which they were not paid at the federally mandated
14 minimum wage rate.
15 minimum wage rate.

16 147. Plaintiff and the Collective Members are entitled to recover compensation
17 for the hours they worked for which they were not paid at the Arizona mandated
18 minimum wage rate.
19 minimum wage rate.

20 148. Plaintiff and the Collective Members are entitled to recover compensation
21 for the hours they worked for which they were not paid at the applicable minimum wage
22 rate.
23 rate.

24 149. Plaintiff and the Collective Members are entitled to recover all tips that
25 Defendants improperly required them to contribute into a pool that contained employees
26 who do not customarily and regularly receive tips.
27

1 157. Defendants engaged in such conduct in direct violation of 29 U.S.C. §
2 203(m).

3 158. Therefore, Defendants were precluded from exercising a tip credit against
4 Plaintiff's and Collective Members' wages, and the manner in which Defendants paid
5 Plaintiff and the Collective Members violated 29 U.S.C. § 206(a).
6

7 159. Defendants therefore did not pay Plaintiff and the Collective Members the
8 applicable minimum wage according to the provisions of the FLSA for each and every
9 workweek that Plaintiff worked for Defendants, for the duration of their employment, in
10 violation of 29 U.S.C. § 206(a).

11 160. As such, full applicable minimum wage for such time Plaintiff and the
12 Collective Members worked is owed to Plaintiff and the Collective Members for the
13 entire time they were employed by Defendants.
14

15 161. Defendants knew that – or acted with reckless disregard as to whether –
16 their failure to pay to Plaintiff and the Collective Members the full minimum wage as a
17 result of improperly requiring Plaintiffs and the Collective Members to participate in an
18 illegal tip pooling arrangement and retaining Plaintiff's and the Collective Members' tips
19 and over the course of their employment would violate federal and state law, and
20 Defendants were aware of the FLSA minimum wage requirements during Plaintiff's and
21 the Collective Members' employment. As such, Defendants' conduct constitutes a willful
22 violation of the FLSA.
23

24 162. Plaintiff and the Collective Members are therefore entitled to compensation
25 for the full minimum wage at an hourly rate, to be proven at trial, plus an additional equal
26
27

1 amount as liquidated damages, together with interest, reasonable attorney's fees, and
2 costs.

3 WHEREFORE, Plaintiff, James Bourlier, individually, and on behalf of all other
4 similarly situated persons, requests that this Court grant the following relief in Plaintiff's
5 and the Collective Members' favor, and against Defendants:

- 6
- 7 A. For the Court to declare and find that the Defendants committed one or
8 more of the following acts:
- 9 i. violated minimum wage provisions of the FLSA, 29 U.S.C. § 206,
10 by failing to pay proper minimum wages;
- 11 ii. willfully violated minimum wage provisions of the FLSA, 29 U.S.C.
12 § 206;
- 13
- 14 B. For the Court to award damages in the amounts of all tips contributed to the
15 improper tip pooling arrangement that included employees who do not
16 customarily and regularly receive tips;
- 17
- 18 C. For the Court to award compensatory damages, including liquidated
19 damages pursuant to 29 U.S.C. § 216(b), in amounts to be determined at
20 trial;
- 21
- 22 D. For the Court to award prejudgment and post-judgment interest on any
23 damages awarded;
- 24
- 25 E. For the Court to award Plaintiff's and the Collective Members' reasonable
26 attorneys' fees and costs of the action pursuant to 29 U.S.C. § 216(b) and
27 all other causes of action set forth in this Complaint;

1 F. For the Court to provide a reasonable incentive award for Plaintiff to
2 compensate him for the time he spent attempting to recover wages for the
3 Collective Members and for the risks he took in doing so; and

4 G. Such other relief as this Court deems just and proper.
5

6 **COUNT TWO: FAIR LABOR STANDARDS ACT**
7 **FAILURE TO PROVIDE TIP CREDIT NOTICE**

8 163. Plaintiff realleges and incorporates by reference all allegations in all
9 preceding paragraphs.

10 164. Defendants did not inform Plaintiff and the Collective Members of the
11 provisions of the “tip credit” and 29 U.S.C. § 203(m) and its supporting regulations.
12

13 165. Defendants therefore did not pay Plaintiff and the Collective Members the
14 applicable minimum wage according to the provisions of the FLSA for each and every
15 workweek that Plaintiff and the Collective Members worked for Defendants, for the
16 duration of their employment, in violation of 29 U.S.C. § 206(a).
17

18 166. As such, full applicable minimum wage for such time Plaintiff and the
19 Collective Members worked is owed to Plaintiff and the Collective Members for the
20 entire time they were employed by Defendants.

21 167. Defendants knew that – or acted with reckless disregard as to whether –
22 their failure to pay to Plaintiff and the Collective Members the full minimum wage over
23 the course of their employment would violate federal and state law, and Defendants were
24 aware of the FLSA minimum wage requirements during Plaintiff’s and the Collective
25 Members’ employment. As such, Defendants’ conduct constitutes a willful violation of
26 the FLSA.
27

1 168. Plaintiff and the Collective Members are therefore entitled to compensation
2 for the full minimum wage at an hourly rate, to be proven at trial, plus an additional equal
3 amount as liquidated damages, together with interest, reasonable attorney's fees, and
4 costs.

5 WHEREFORE, Plaintiff, James Bourlier, individually, and on behalf of all other
6 similarly situated persons, requests that this Court grant the following relief in Plaintiff's
7 and the Collective Members' favor, and against Defendants:
8

- 9 A. For the Court to declare and find that the Defendants committed one or
10 more of the following acts:
11 i. violated minimum wage provisions of the FLSA, 29 U.S.C. § 206,
12 by failing to pay proper minimum wages;
13 ii. willfully violated minimum wage provisions of the FLSA, 29 U.S.C.
14 § 206;
15
16 B. For the Court to award compensatory damages, including liquidated
17 damages pursuant to 29 U.S.C. § 216(b), in amounts to be determined at
18 trial;
19
20 C. For the Court to award prejudgment and post-judgment interest on any
21 damages awarded;
22
23 D. For the Court to award Plaintiffs' and the Collective Members' reasonable
24 attorneys' fees and costs of the action pursuant to 29 U.S.C. § 216(b) and
25 all other causes of action set forth in this Complaint;
26
27 E. For the Court to provide reasonable incentive awards for each named
Plaintiff to compensate them for the time they spent attempting to recover

1 wages for the Collective Members and for the risks they took in doing so;
2 and

3 F. Such other relief as this Court deems just and proper.

4 **COUNT THREE: FAIR LABOR STANDARDS ACT**
5 **FAILURE TO PAY PROPER OVERTIME RATE**

6 169. Plaintiff realleges and incorporates by reference all allegations in all
7 preceding paragraphs.

8 170. Plaintiff and the Collective Members were non-exempt employees entitled
9 to statutorily mandated overtime wages.

10 171. In a given workweek, Defendants failed to pay one and one-half times the
11 applicable regular rate of pay for all hours worked in excess of 40 hours.

12 172. As a result of Defendants' failure to pay Plaintiff and the Collective
13 Members one and one-half times their regular rate for all hours worked in excess of 40
14 per week in a given workweek, Defendants failed and/or refused to pay Plaintiff and the
15 Collective Members the applicable overtime rate for all hours worked for the duration of
16 his employment, in violation of 29 U.S.C. § 207.

17 173. As a result of Defendants' willful failure to compensate Plaintiff and the
18 Collective Members the applicable overtime rate for all hours worked, Defendants
19 violated the FLSA.

20 174. As such, the full applicable overtime rate is owed for all hours that Plaintiff
21 and Collective Members worked in excess of 40 hours per week.

22 175. Defendants knew that – or acted with reckless disregard as to whether –
23 their failure to pay Plaintiff and the Collective Members the proper overtime rate would
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1 violate federal and state law, and Defendants were aware of the FLSA minimum wage
2 requirements during Plaintiff's employment. As such, Defendants' conduct constitutes a
3 willful violation of the FLSA.

4 176. Defendants have and continue to willfully violate the FLSA by not paying
5 Plaintiff and the Collective Members a wage equal to one and one-half times the
6 applicable regular rate of pay for all time Plaintiff and the Collective Members spent
7 working for Defendants.

8 177. Plaintiff and the Collective Members are therefore entitled to compensation
9 one and one-half times his regular rate of pay for all hours worked in excess of 40 per
10 week at an hourly rate, to be proven at trial, plus an additional equal amount as liquidated
11 damages, together with interest, costs, and reasonable attorney fees.

12 **WHEREFORE**, Plaintiff, James Bourlier, individually, respectfully requests that
13 this Court grant the following relief in Plaintiff James Bourlier's favor, and against
14 Defendants:
15

- 16
- 17 A. For the Court to declare and find that the Defendants committed one or
18 more of the following acts:
 - 19 i. violated overtime provisions of the FLSA, 29 U.S.C. § 207, by failing to
20 pay proper overtime wages;
 - 21 ii. willfully violated overtime provisions of the FLSA, 29 U.S.C. § 207;
 - 22 B. For the Court to award compensatory damages, including liquidated
23 damages pursuant to 29 U.S.C. § 216(b), to be determined at trial;
 - 24 C. For the Court to award prejudgment and post-judgment interest;
- 25
26
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1 D. For the Court to award Plaintiff a reasonable attorneys' fees and costs of
2 the action pursuant to 29 U.S.C. § 216(b) and all other causes of action set
3 forth herein;

4 E. Such other relief as this Court shall deem just and proper.
5

6
7 **REQUEST FOR COLLECTIVE ACTION CERTIFICATION**

8 Plaintiff requests that the Court designate this action as a collective action on
9 behalf of the FLSA Collective Members and promptly issue a notice pursuant to 29
10 U.S.C. § 216(b) to all similarly situated members of the FLSA opt-in class, apprising
11 them of the pendency of this action, and permitting them to timely assert FLSA claims in
12 this action by filing individual Consent to Sue Forms pursuant to 29 U.S.C. § 216(b).
13

14
15 **JURY TRIAL DEMAND**

16 Plaintiffs demand a trial by jury on all issues so triable.
17

18
19 RESPECTFULLY SUBMITTED this 14th day of December, 2018.

20 BENDAU & BENDAU PLLC

21 By: /s/ Christopher Bendau
22 Clifford P. Bendau, II
23 Christopher J. Bendau
24 *Attorneys for Plaintiff*
25
26
27

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s): James Bourlier

**TYC, LLC ; Dakota Scottsdale, LLC ; Scottsdale Beach Club, LLC ; Triyar Beach Club, LLC ; Triyar Entertainment Scottsdale I, LLC ; Shawn Yari ; Jane Doe Yari ;
Defendant(s): Steven Yari ; Jane Doe Yari II ; Bob Agahl ; Jane Doe Agahl**

County of Residence: Maricopa

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

**Clifford P. Bendau II, Managing Partner
Bendau & Bendau PLLC
P.O. Box 97066
Phoenix, Arizona 85060
(480) 382-5176**

Defendant's Atty(s):

**Christopher J. Bendau , Attorney
Bendau & Bendau PLLC
P.O. Box 97066
Phoenix, Arizona 85060
(480) 382-5176**

II. Basis of Jurisdiction: **3. Federal Question (U.S. not a party)**

III. Citizenship of Principal
Parties (Diversity Cases Only)

Plaintiff:- **N/A**
Defendant:- **N/A**

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **710 Fair Labor Standards Act**

VI.Cause of Action: **29 U.S.C. § 201, et seq., Minimum wage and overtime**

VII. Requested in Complaint

Class Action: **No**
Dollar Demand:
Jury Demand: **Yes**

VIII. This case is not related to another case.

Signature: Christopher J. Bendau

Date: 12/13/18

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014

BENDAU & BENDAU PLLC

Exhibit A

BENDAU & BENDAU PLLC
Clifford P. Bendau, II (030204)
Christopher J. Bendau (032981)
P.O. Box 97066
Phoenix, Arizona 85060
Telephone: (480) 382-5176
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chris@bendaulaw.com
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

James Bourlier, individually, and on behalf of all others similarly situated,

No. _____

Plaintiff,

**PLAINTIFF JAMES BOURLIER'S
CONSENT TO JOIN COLLECTIVE
ACTION AS NAMED PLAINTIFF**

v.

TYC, LLC, an Arizona Limited Liability Company; **Dakota Scottsdale LLC**, an Arizona Limited Liability Company, **Scottsdale Beach Club, LLC**, an Arizona Limited Liability Company; **Triyar Beach Club LLC**, an Arizona Limited Liability Company; **Triyar Entertainment Scottsdale I LLC**, an Arizona Limited Liability Company; **Shawn Yari and Jane Doe Yari**, a Married Couple; **Steven Yari and Jane Doe Yari II**, a Married Couple; and **Bob Agahl and Jane Doe Agahl**, a Married Couple,

Defendants.

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I, James Bourlier, do hereby consent to be a party plaintiff to the above-entitled action. I have read the complaint to be filed in the United States District Court for the District of Arizona, Phoenix Division, and authorize my attorneys, Bendau & Bendau PLLC, to file the complaint on my behalf and for other employees similarly situated.

DocuSigned by:
James Bourlier
7670ED3D7A18430...
James Bourlier

12/7/2018
Date

BENDAU & BENDAU PLLC

Exhibit B

OUR CONCEPTS

shade
AT
W

SCOTTSDALE

Sophisticated and swinging, meet sexy and sultry. Party indoors inside the W Hotel against a dramatic back drop of desert-inspired water and fire design elements or socialize al fresco cool in the stylishly landscaped patio – the perfect mix of Arizona heat, cool pool and Scottsdale nightlife in a gorgeous setting where the fashionable jet-set mingle with hip scenesters over the most innovative drinks, finest spirits and legendary DJ's.

[Click here for website](#)

M
M Ā Y Ā
DAY + NIGHTCLUB

With a patio-dominating pool juxtaposed against a flashy nightclub, Maya Day and Nightclub in Scottsdale delivers world-class DJ-driven, Las Vegas-style revelry to the Valley. The dayclub pool parties have been the talk of Scottsdale since Maya opened in 2013 and continue to set the standard for entertainment in Arizona. When things cool down, the nightclub adjacent to the pool opens for the hottest dj's and performers around.

[Click here for website](#)

THE
DISTRICT

The restaurant and lounge is literally in a district – the area of town known as the Scottsdale Entertainment District at Indian Plaza behind the W Hotel. A project of Triyar Entertainment Group, the Burger Bar joins other Triyar destinations, including Shade, Living Room and Sunset Lawn lounges in the hotel, as well as Maya Day + Nightclub and Dakota restaurant just steps from the new spot.

[Click here for website](#)

Dakota

The new concept's design includes elements such as white-washed wood, window shutters, ivy greenery, and birdcage lighting meant to create a traditional and elegant vibe. The restaurant and bar also offers a large street-front patio with lounge seating, gas lamps, greenery, and fire pits. From "Not Your Basic" Sunday Brunch to sold out weekend nights, Dakota has a little something for everyone.

[Click here for website](#)

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Arizona Nightclub Operators Hit with Collective Action Over Alleged Tip Pooling Violations](#)
