

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**JASON CARVER and ANDREW MOORE, on  
behalf of themselves and all others similarly  
situated,**

**Index No.: 11 CV 3738 (CM)**

**Plaintiffs,**

**-against-**

**CFR2, LLC d/b/a FLUTE GRAMERCY, CFR  
CORP., HERVE ROUSSEAU, and BRICE  
BARRY,**

**Defendants.**

**COURT-AUTHORIZED NOTICE**

**If you have been employed at Flute Bar Gramercy and/or Flute Bar  
Midtown between June 2, 2008 to the date of the notice, please read  
this notice.**

**A collective action lawsuit may affect your legal rights.**

*This is a court-authorized notice.  
This is not a solicitation from a lawyer.*

**NOTICE OF PENDENCY OF LAWSUIT REGARDING WAGES**

To: All waitresses, bussers, barbacks and bartenders who have worked at CFR, LLC d/b/a Flute Gramercy and CFR Corp d/b/a Flute since June 2, 2008.

The purpose of this Notice is to advise you of the lawsuit that has been filed against Flute Gramercy and Flute Midtown and to advise you of your legal rights in connection with that suit. The receipt of this notice does not mean that you will recover any money. You should carefully read this notice before making any decision regarding the lawsuit.

## **1. DESCRIPTION OF THE LAWSUIT**

Plaintiffs Jason Carver and Andrew Moore (“Class Representatives”), filed this lawsuit against Flute Gramercy and Flute on June 2, 2011. The Class Representatives allege that Flute Bar did not pay employees for all hours worked, including overtime, Flute Bar did not keep accurate records of hours worked, and that Flute Bar misappropriated tips, gratuities and service charges intended for waitresses, bussers, bartenders, and barbacks retaining portions of the tips that Plaintiffs earned and imposing a tip redistribution. Plaintiffs also allege they were not advised that Flute Bar would avail itself of the “tip credit” and they did not receive full minimum wage of \$7.15 or \$7.25 for every hour worked, regardless of tips received. The lawsuit seeks money owed in back wages, money owed in retention of tips, additional damages known as “liquidated damages,” interest, attorneys’ fees, and costs.

Flute Bar denies any wrongdoing, asserts they complied with the Fair Labor Standards Act (“FLSA”) have paid their employees properly, including fairly and accurately distributing tips in accordance with Flute Bar’s tip pooling policy, advising its employees of Flute’s tip pooling policy and paying overtime and spread of hours. In addition, Flute Bar asserts that the plaintiffs are not entitled to any liquidated damages, interests or attorneys’ fees and costs as they are unable to establish any violations of the FLSA.

## **2. YOUR RIGHT TO MAKE A CLAIM IN THIS LAWSUIT**

If at any time between June 2, 2008 and the date of this notice you worked at Flute Gramercy or Flute Midtown as a tipped employee and believe that you were not paid for all the time you worked, and/or believe that your employer improperly retained a portion of your tips, gratuities or service charges, and/or believe that your employer failed to advise you of its use of the tip credit, or failed to pay you full minimum wage of \$7.15 or \$7.25 per hour, you may join this lawsuit. You do not need to have a record of the tips retained or hours you worked in order to do so. To join the lawsuit you must sign a written Consent form to be a “party-plaintiff” in the lawsuit. This form will be filed with the Court.

## **3. NO RETALIATION PERMITTED**

It is entirely your decision whether or not to join the lawsuit. If you do file the consent to join this lawsuit, Flute Bar cannot, by law, retaliate against you by firing you, lowering your wages, or reducing your hours.

## **4. THE CONSENT FORM**

To join this lawsuit, fill out and send the form attached to this notice, which is entitled “PLAINTIFF CONSENT FORM,” to the Clerk of the Court:

United States District Court  
Southern District of New York

500 Pearl Street  
New York, NY 10007-1312  
Attn: Clerk of the Court

If you want to join the lawsuit, your consent form must be sent by Wednesday, February 8, 2012 (90 days from the date this notice was sent).

For your convenience, a self-addressed, postage-paid envelope is enclosed. If you have any questions with respect to this lawsuit, you may call Plaintiffs' counsel, Joseph Fitapelli, at Fitapelli & Schaffer, LLP, at (212) 300-0375. Mr. Fitapelli's e-mail address is [jfitapelli@fslawfirm.com](mailto:jfitapelli@fslawfirm.com).

The Defendants in this lawsuit are represented by:

Carmen A. Nicolaou  
Havkins, Rosenfeld, Ritzert, & Varriale LLP  
50 Main Street, 10<sup>th</sup> Floor  
White Plains, New York 10606  
Phone: (914)682-2636  
Fax: (914)560-2245  
E-mail: [carmen.nicolaou@hrrvlaw.com](mailto:carmen.nicolaou@hrrvlaw.com)

#### **5. EFFECT OF JOINING THIS LAWSUIT**

If you choose to join this lawsuit, you will be bound by any ruling, settlement, or judgment entered in this case, whether favorable or unfavorable.

You may be required to participate in the process known as "pre-trial discovery," which may involve answering questions under oath, orally or in writing. You may also be required to testify at trial. You may also be required to compile, copy and produce copies of documents pertaining to your employment at Flute Gramercy or Flute Midtown.

## **6. YOUR ATTORNEYS**

If you join the lawsuit, you will become a “party plaintiff” and will be represented by:

**Joseph A. Fitapelli  
Brian Schaffer  
Fitapelli & Schaffer, LLP  
475 Park Avenue South, 12<sup>th</sup> Floor  
New York, NY 10016  
Phone: (212) 300-0375  
Fax: (212) 481-1333  
www.fslawfirm.com  
E-mail: jfitapelli@fslawfirm.com**

Fitapelli & Schaffer, LLP represents the Plaintiffs in this lawsuit. By consenting to this notice, you agree that the attorneys’ fee arrangement for this case allows Plaintiffs’ counsel to handle this matter on a contingency basis. The attorneys’ fees will be determined on a percentage basis based on the recovery on behalf of Plaintiffs, and that Plaintiffs will not be responsible for fees if there is no recovery for the Plaintiffs. If there is a recovery, Plaintiffs’ counsel retains 33.3% as its attorneys’ fee before the balance of the recovery is distributed among the class participants. The agreement further provides that at the conclusion of the case, Plaintiffs’ counsel will make an application to the Court for the recovery of fees and costs, that the Court has discretion of the amount of fees to award, and that the fees may be as much as 33.3% of any settlement fund or judgment, after the deduction of costs and expenses. Also enclosed is a form entitled “Client Information.” It is to enable these attorneys to contact you. To furnish this information to the attorneys, fill out the form and mail it to the attorneys at the above address.

If you consent to participate in this lawsuit, you have the right to hire your own attorney, at your own expense. You also have the right to retain your own counsel, at your own expense, if you wish to independently pursue your claims against the Defendants.

## **7. EFFECT OF NOT FILING THE CONSENT FORM**

If you do not file the Consent form, you will not receive any money from this lawsuit, and you will not be bound by any judgment or settlement in this case, whether favorable or unfavorable.

**Please do not write or call the Court about this notice.**

**THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY UNITED STATES DISTRICT COURT JUDGE, COLLEEN McMAHON. THE COURT HAS TAKEN NO POSITION IN THIS CASE REGARDING THE MERITS OF THE PLAINTIFF'S CLAIMS OR OF THE DEFENDANTS' DEFENSES.**

**PLAINTIFF CONSENT FORM**

I hereby consent to join the action *Carver, et al. v. CFR2, LLC d/b/a Flute Gramercy, et al.*, U.S. District Court, Southern District of New York, Case No. 11 CV 3738 (CM), as a Plaintiff.

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Best Telephone Numbers

\_\_\_\_\_  
E-Mail Address

\_\_\_\_\_  
Last Four Digits of Social Security Number

\_\_\_\_\_  
Emergency Contact (and phone number)

**Mail to:**

Clerk of the Court  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10007-1312