

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MERCEDES WHITFIELD, on behalf
of herself and similarly situated
employees,

v.

TRINITY RESTAURANT GROUP,
LLC,

Case No. 2:18-cv-10973-DML-EAS

Hon. David M. Lawson

PLAINTIFF’S MOTION FOR RULE 23 CLASS CERTIFICATION

Plaintiff Mercedes Whitfield (“Plaintiff”) respectfully moves, pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3), for entry of an order certifying Plaintiff’s claim under the Michigan Workforce Opportunity Wage Act (“WOWA”), MCL §§ 408.411, *et seq.*, to proceed on behalf of the following class:

All current and former Servers who worked for Defendant Trinity Restaurant Group, LLC at its IHOP restaurants in the State of Michigan since March 26, 2015.

As reflected in the accompanying exhibits and discussed in the accompanying memorandum of law, Plaintiff satisfies all of the requisites to Rule 23 class litigation because the class is “sufficiently definite so that it is administratively feasible . . . to determine whether a particular individual is a

member of the proposed class,” Young v. Nationwide Mutual Insurance Co., 693 F.3d 532, 37-38 (6th Cir. 2012) (internal citations omitted), the class is “so numerous that joinder of all members is impracticable,” Fed. R. Civ. P. 23(a)(1), there are “questions of law or fact common to the class,” id. at 23(a)(2), Plaintiff’s claims and the defenses thereto “are typical of the claims or defenses of the class,” id. at 23(a)(3), Plaintiff “will fairly and adequately protect the interests of the class,” id. at 23(a)(4), those “questions of law and fact common to class members predominate over any questions affecting only individual members,” id. at 23(b)(3), and class litigation “is superior to other available methods for the fair and efficient adjudication of the controversy,” id.

Plaintiff also requests that the Court appoint the law firms of Kreis Enderle, P.C., Migliaccio & Rathod LLP, and Winebrake & Santillo, LLC to serve as class counsel pursuant to Federal Rule of Civil Procedure 23(g). As reflected in the declarations attached hereto as Exhibits N-P, these law firms have effectively and competently identified and investigated the legal claims of Plaintiff and other class members, see Fed. R. Civ. P. 23(g)(1)(A)(i), are experienced in handling class and collective actions arising under the nation’s wage and hour overtime laws, see id. at 23(g)(1)(A)(ii), are knowledgeable of the applicable law, see id. at 23(g)(1)(A)(iii); and are willing to commit substantial resources to representing the class, see id. at 23(g)(1)(A)(iv).

This motion is based on the pleadings, the limited discovery conducted to date, the memorandum of law in support of this motion (along with its exhibits), and arguments of Counsel. Pursuant to L.R. 7.1(a), Plaintiff's counsel sought concurrence from Defendant's counsel in the relief sought herein but concurrence was not obtained.

WHEREFORE, Plaintiff respectfully requests that the Court enter an order granting this motion in its entirety and directing the parties to confer and create an appropriate class notice.

Date: September 25, 2018

Respectfully submitted,

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**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF HER
MOTION FOR RULE 23 CLASS CERTIFICATION**

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STATEMENT OF ISSUES PRESENTED

1. HAS PLAINTIFF SATISFIED THE REQUIREMENTS OF FED. R. CIV. P. 23(a) AND 23(b)(3) TO CERTIFY A CLASS CONSISTING OF “ALL CURRENT AND FORMER SERVERS WHO WORKED FOR DEFENDANT TRINITY RESTAURANT GROUP, LLC AT ITS IHOP RESTAURANTS IN THE STATE OF MICHIGAN SINCE MARCH 26, 2015”?

Plaintiffs’ Answer: Yes

Defendant’s Answer: No

The Court Should Answer: Yes

2. SHOULD DEFENDANT BE REQUIRED TO PRODUCE THE NAMES, ADDRESSES, AND E-MAIL ADDRESSES OF INDIVIDUALS COVERED BY THE CERTIFIED CLASS TO FACILITATE THE NOTICE REQUIRED BY FED. R. CIV. P. 23(c)(2)?

Plaintiffs’ Answer: Yes

Defendant’s Answer: No

The Court Should Answer: Yes

3. SHOULD THE PARTIES BE ORDERED TO MEET AND CONFER AND SUBMIT TO THE COURT A DRAFT PROPOSED NOTICE TO THE CERTIFIED CLASS FOR PURPOSES OF FED. R. CIV. P. 23(c)(2)?

Plaintiffs’ Answer: Yes

Defendant’s Answer: No

The Court Should Answer: Yes

CONTROLLING OR MOST APPROPRIATE AUTHORITY

CASE LAW: (in alphabetical order):

Amchem Products, Inc. v. Windsor, 521 U.S. 591 (1997)

American Copper & Brass, Inc. v. Lake City Industrial Products, 757 F.3d 540 (6th Cir. 2014)

Amgen Inc. v. Conn. Retirement Plans & Trust Funds, 568 U.S. 455 (2013)

Beattie v. CenturyTel, Inc., 511 F.3d 554 (6th Cir. 2007)

In re Cardizem CD Antitrust Litig., 200 F.R.D. 297 (E.D. Mich. 2001)

In re Countrywide Financial Corp. Mortgage Lending Practices Litig., 708 F.3d 704 (6th Cir. 2013)

Davis v. Cintas Corp., 717 F.3d 476 (6th Cir. 2013)

Eisen v. Carlisle & Jacquelin, 417 U.S. 156 (1974)

Fast v. Applebee's Int'l, Inc., 638 F.3d 872 (8th Cir. 2011)

Haschak v. Fox & Hound Rest. Grp., 2012 U.S. Dist. LEXIS 162476 (N.D. Ill. Nov. 14, 2012)

General Tel. Co. of the Southwest v. Falcon, 457 U.S. 147 (1982)

Johnson v. Pinstripes, Inc., 2013 U.S. Dist. LEXIS 138253 (N.D. Ill. Sep. 26, 2013)

Marsh v. J. Alexander's LLC, ___ F.3d ___, 2018 U.S. App. LEXIS 26387 (9th Cir. Sept. 18, 2018)

Martinez v. Blue Star Farms, Inc., 325 F.R.D. 225 (E.D. Mich. 2013)

McFarlin v. Word Enters., LLC, 2017 U.S. Dist. LEXIS 164968 (E.D. Mich. Oct. 5, 2017)

Rikos v. Proctor & Gamble Co., 799 F.3d 497 (6th Cir. 2015)

Shahriar v. Smith & Wollensky Rest. Group, Inc., 659 F.3d 234 (2d Cir. 2011)

Sprague v. GMC, 133 F.3d 388 (6th Cir. 1998)

Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338 (2011)

In re Whirlpool Corp. Front-Loading Washer Products Litig., 722 F.3d 838 (6th Cir. 2013)

Whitlock v. FSL Mgmt., LLC, 2012 U.S. Dist. LEXIS 112859 (W.D. Ky. Aug. 10, 2010)

Young v. Nationwide Mutual Insurance Co., 693 F.3d 532 (6th Cir. 2012)

CIVIL RULES:

Fed. R. Civ. P. 23

Plaintiff Mercedes Whitfield (“Plaintiff”) submits this brief in support of her motion to certify a class under Fed. R. Civ. P. 23, consisting of: “All current and former Servers who worked for Defendant Trinity Restaurant Group, LLC at its IHOP restaurants in the State of Michigan since March 26, 2015.”

Class certification “is ‘peculiarly appropriate’ when the ‘issues involved are common to the class as a whole’ and when they ‘turn on questions of law applicable in the same manner to each member of the class.’” General Tel. Co. of the Southwest v. Falcon, 457 U.S. 147, 155 (1982). “For in such cases, ‘the class-action device saves the resources of both the courts and the parties by permitting an issue potentially affecting every [class member] to be litigated in an economical fashion under Rule 23.’” Id.

This is such a case. Plaintiff challenges Defendant’s failure to pay its Servers the full minimum wage based on two uniform practices: (1) requiring Servers to perform certain types and amounts of sidework; and (2) requiring Servers to share a portion of their tips with other restaurant employees called expeditors (or “expos”). Defendant readily *admits* the existence of these practices but argues that they are permissible under the Michigan Workforce Opportunity Wage Act (“WOWA”), MCL §§ 408.411, *et seq.* and allow it to take the “tip credit” against its minimum wage obligations to Servers. The legality of this conduct is at the heart of this case and will allow the Court to make a single determination on

whether the WOWA rights of Plaintiff and the putative class of Servers were violated. Thus, the litigation should proceed as a class action.

I. THE COMMON FACTS, CLAIMS, AND DEFENSES.

As discussed below, this lawsuit primarily involves common facts, common legal claims, and common legal defenses.

A. The common facts.

Plaintiff was employed by Defendant as a server at its IHOP restaurant located in Detroit, Michigan from approximately February 2015 to December 2016. First Amended Complaint (“FAC”) (Doc. 15) at ¶ 12; see also Declaration of Mercedes Whitfield (“Whitfield Dec.”), attached as Exh. A, at ¶ 1. Defendant owns and operates a chain of 14 IHOP restaurants in Michigan, including the Detroit location. FAC (Doc. 15) at ¶ 8; see also Rule 30(b)(6) Deposition of Robert Henderson (“Henderson Dep.”), attached as Exh. B, at 29.

Each of Defendant’s 14 restaurants employs approximately 15 to 50 servers at any given time, and the turnover rate can be as high as 60%. Id. at 37-38, 126. Defendant maintains records of the identities of all Servers by way of employee ID and timekeeping numbers. Id. at 43, 90-92.

All of Defendant’s restaurants use the same menus and serve the same food. Id. at 46, 48. All of Defendant’s servers are subject to the same employee handbook, job description, orientation, training, and timekeeping procedures. Id. at

48-49, 57-58, 61-65, 90; see also Henderson Dep. Exhibit 4, attached as Exh. C (server job description). The IHOP corporate franchisor maintains common standards for the restaurants and inspects the restaurants quarterly to ensure compliance with these standards. Id. at 45, 116.

During the proposed class period, Defendant took the tip credit and paid Plaintiff and other servers the Michigan “tipped minimum wage” plus tips. Henderson Dep. (Exh. B) at 40; see also FAC (Doc. 15) at ¶ 13; Whitfield Dec. (Exh. A) at ¶ 1. During this same time, Defendant maintained a company-wide policy and practice requiring Plaintiff and other servers to perform pre-assigned, non-tip producing sidework including, but not limited to, washing dishes, stocking condiments, preparing salads, cleaning walls, wiping tables, rolling silverware, preparing drinks and toppings, preparing food for the salad bar, getting ice, and cleaning the restaurant. Henderson Dep. (Exh. B) at 62-63, 88, 132; see also Henderson Dep. Exhibits 6 through 14 (sidework charts), attached as Exh. D-L; FAC (Doc. 15) at ¶¶ 15-20; Whitfield Dec. (Exh. A) ¶¶ 2-6. Indeed, Defendant’s Rule 30(b)(6) witness *admitted* the common nature of the sidework tasks:

Q. And I mean given that IHOP menus are the same and the items are the same, it seems like the side work needs would be pretty similar across all the restaurants. Do you agree with that?

A. The stations and you know most of the cleaning tasks would be similar absolutely.

* * *

A. I would agree that the tasks are similar across all locations. Yes.

Henderson Dep. (Exh. B) at 76-77. This sidework further includes non-tip producing deep cleaning work:

A. Sure. We have an SOP on our deep clean schedule.

* * *

Q. Are they trained specifically on deep cleaning?

A. I don't know "trained" would be the proper word, but exposed to, showed. Yes absolutely.

Q. Taught?

A. Absolutely. Sure.

* * *

Q. All the servers I think you said are required to do deep cleaning of some sort correct?

A. All employees.

Q. Including servers?

A. Yes, sir.

* * *

Q. So, all the deep cleaning in all of the restaurants are the same because they all have the same items to clean; is that fair?

A. Yes.

Id. at 45, 61, 68; see also 69-71 (detailing deep cleaning). Moreover, Defendant's

Servers are required to clean equipment in the restaurants:

Q. . . . servers were -- it appears the servers were trained to operate and clean certain equipment; is that right?

A. That is correct.

Q. Is that still the case?

A. That they're trained to use equipment and clean it? Yes.

* * *

Q. Okay. And, again, all the servers get that same training, right?

A. That's my assumption. [Id. at 63-64].

Up until about two or three months ago, Defendant also maintained a common tip-sharing practice whereby Plaintiff and other Servers were required to

contribute a portion of their tips to a “tip pool” that included other employees of the restaurant, including expos. Henderson Dep. (Exh. B) at 38; FAC (Doc. 15) at ¶ 30; Whitfield Dec. (Exh. A) at ¶ 7. Defendant does not take the tip credit for its expos and their primary job duties are readying food orders for Servers to pick up in and/or near the kitchen area. Henderson Dep. (Exh. B) at 42; Henderson Dep. Exhibit 15, attached as Exh. M (expo job description); FAC (Doc. 15) at ¶¶ 32-34; Whitfield Dec. (Exh. A) at ¶ 7. Defendant eliminated tip sharing in response to this lawsuit. Henderson Dep. (Exh. B) at 41.

B. The common legal claims.

During the relevant period, the WOVA required employers to pay employees a minimum wage of between \$7.40/hour and \$9.25/hour. See WOVA §§ 408.414 and 408.414d. However, in determining the minimum wage owed to “employees receiving gratuities,” the WOVA (like the Fair Labor Standards Act (“FLSA”)) contains a “tip credit” provision that enables an employer to pay the gratuity receiving employee as little as between \$3.10/hour and \$3.52/hour, so long as the employee’s additional gratuity payments bring her total pay above the full hourly minimum wage threshold. See id.

Employers can only use the WOVA tip credit in paying a tipped employee if they satisfy several requirements provided under the FLSA because the FLSA provides a “floor” and not a “ceiling” of protections against wage abuses, and

because Michigan law provides additional protections beyond those set forth in the FLSA. These requirements include:

- The employer affirmatively notifies the employee that it will be paid in accordance with the tip credit provision. See 29 C.F.R. § 203(m); **and**
- The employee retains all tips received by the employee unless they are part of a valid “tip pool” that only includes employees who “customarily and regularly” receive tips because their jobs entail direct customer interaction. Id.; Montano v. Montrose Restaurant Associates, Inc., 800 F.3d 186, 193 (5th Cir. 2015); **and**
- The employee does not perform unrelated sidework tasks or spends no more than 20% of his or her time performing related but non-tip producing sidework tasks. See 29 C.F.R. § 531.56(e); Marsh v. J. Alexander’s LLC, ___ F.3d ___, 2018 U.S. App. LEXIS 26387 (9th Cir. Sept. 18, 2018); Fast v. Applebee’s Int’l, Inc., 638 F.3d 872 (8th Cir. 2011).

Plaintiff alleges that Defendant – having benefited from WOWA’s tip credit to pay Plaintiff and other servers – failed to satisfy these requirements in two ways.

First, Plaintiff alleges that Defendant violated the WOWA’s minimum wage mandate by requiring Plaintiff and other Servers to: (i) perform sidework that is unrelated to their tip-producing work; or (ii) spend more than 20% of their time performing related, but non-tip producing, sidework. See generally FAC (Doc. 15) at ¶¶ 13-20. Examples of these sidework tasks include, but are not limited to, washing dishes, stocking condiments, preparing salads, cleaning walls, wiping tables, rolling silverware, preparing drinks and toppings, preparing food for the salad bar, getting ice, and cleaning the restaurant. Id.

Second, Plaintiff alleges that Defendant violated WOVA by requiring servers to share a portion of their tips with other restaurant employees performing the work of expos. Id. at ¶¶ 30-35. Specifically, Plaintiffs allege that expos do not have the requisite level of direct customer interaction to enable them to participate in a tip pool with the Servers. Id.

Based on these two unlawful practices, Plaintiffs assert they are entitled to unpaid wages representing the difference between the fully applicable minimum wage under MCL § 408.411 and the sub-minimum wage Defendant paid to Plaintiff and its other Servers pursuant to § 408.414d. See FAC (Doc. 15) at ¶ 85.

Defendant readily *admits* that Plaintiff and other servers were required to not only perform sidework, including deep cleaning and equipment cleaning,¹ but were also required to share tips with expos.² See Section I.A supra. The fundamental issues in this lawsuit are whether, under WOVA, Defendant impermissibly took the tip credit against its minimum wage obligations to Plaintiff and other Servers based on these practices. Resolution of these issues will require a common legal inquiry into Defendant's common restaurant operations and practices.

C. The common legal defenses.

Defendant asserts various legal defenses that ultimately must be resolved through common legal analysis that impacts the WOVA rights of each of

¹This practice will generally be referred to herein as Defendant's "Sidework" practice.

²This practice will be referred to herein as Defendant's "Tip Sharing" practice.

Defendant's Servers. Most notably, Defendant asserts various defenses that are derived from the FLSA and other interpretative authority. See generally Answer (Doc. 21) at Affirmative Defenses. These include, *inter alia*:

- “Plaintiff’s claim under the alleged ‘dual jobs’ regulation, 29 C.F.R. § 531.56(e), fails because said regulation is entitled to no deference and is not enforceable.” Id. at Defense No. 9;
- “To the extent the alleged ‘dual jobs’ regulation, 29 C.F.R. § 531.56(e) is applicable, Defendant fully complied with the regulation.” Id. at Defense No. 10;
- “Plaintiff’s alleged ‘20% rule’ claim fails because Department of Labor Field Operations Handbook § 30d00(3) is entitled to no deference and is not enforceable. Id. at Defense No. 11;
- “To the extent the alleged ‘20% rule’ applies, Defendant fully complied with its provisions.” Id. at Defense No. 12;

Notably, two Courts of Appeal have specifically rejected these defenses regarding Defendant’s Sidework practice including the Ninth Circuit just last week. See Marsh v. J. Alexander’s LLC, ___ F.3d ___, 2018 U.S. App. LEXIS 26387 (9th Cir. Sept. 18, 2018); Fast v. Applebee’s Int’l, Inc., 638 F.3d 872 (8th Cir. 2011).

In sum, Defendant asserts many defenses that ultimately must be argued and resolved based on common *legal* arguments that can be resolved class-wide.

II. LEGAL STANDARD.

Rule 23 “creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue his claim as a class action.” Shady Grove Orthopedic Assocs. v. Allstate Ins. Co., 559 U.S. 393, 398 (2010); see also Tyson Foods, Inc.

v. Bouaphakeo, ___ U.S. ___, 136 S. Ct. 1036, 1042 (2016). To be certified, a proposed class must satisfy the requirements of Rule 23(a) and one or more subsections of Rule 23(b). Bridging Comms. Inc. v. Top Flite Fin. Inc., 843 F.3d 1119, 1124 (6th Cir. 2016). Rule 23(a) requires “numerosity, commonality, typicality, and adequate representation.” Amgen, Inc. v. Conn. Ret. Plans & Trust Funds, 568 U.S. 455, 460 (2013). In addition, the proponent must show that that the class meets the requirement of Rule 23(b)(3): questions of law or fact predominate over any questions affecting only individual members, and a class action is the superior method to bring this action. Id.

While certification requires a rigorous analysis that may entail some overlap with the merits, “Rule 23 grants courts no license to engage in free-ranging merits inquiries at the certification stage.” Amgen, 568 U.S. at 466; see also Beattie v. CenturyTel, Inc., 511 F.3d 554, 560 (6th Cir. 2007) (“Rule 23 does not require a district court, in deciding whether to certify a class, to inquire into the merits of the plaintiff’s suit.”). “The question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are met.” Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 164 (1974).

“District courts have ‘broad discretion in determining whether an action should be certified as a class action.’” Int’l Union v. Kelsey-Hayes Co., 2015 U.S. Dist. LEXIS 55057, *4 (E.D. Mich. Apr. 28, 2015). “‘When a court is in doubt as

to whether to certify a class action, it should err in favor of allowing a class.” Id.

III. CLASS CERTIFICATION IS WARRANTED.

As discussed below, Plaintiff meets all of requirements under Rule 23.

A. Granting this motion will further the public policy behind class actions.

“The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights.” Young v. Nationwide Mutual Insurance Co., 693 F.3d 532, 545 (6th Cir. 2012) (quoting Amchem Products, Inc. v. Windsor, 521 U.S. 591, 617 (1997)); see also In re Whirlpool Corp. Front-Loading Washer Products Litig., 722 F.3d 838, 861 (6th Cir. 2013) (class actions especially desirable where “cost of litigation would dwarf any potential recovery”).

This lawsuit is precisely the type of dispute contemplated by Rule 23’s class action mechanism. If Plaintiff prevails in this matter, she and the other Servers would be awarded unpaid wages based on the hourly tip credit taken by Defendant multiplied by the number of hours the Servers were paid the sub-minimum hourly wage. The average Server could expect an award of a few thousand dollars in this type of case. Under such circumstances, “[e]conomic reality dictates that [Plaintiff’s] suit proceed as a class action or not at all.” Eisen, 417 U.S. at 161.

B. The class is sufficiently definite and ascertainable.

“Before a court may certify a class pursuant to Rule 23, the class definition

must be sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member of the proposed class.”

Young, 693 F.3d at 537-38 (internal citations omitted). This requirement is satisfied where class membership can be determined “by reference to objective criteria.” Id. at 538; see also e.g. American Copper & Brass, Inc. v. Lake City Industrial Products, 757 F.3d 540, 545 (6th Cir. 2014) (class sufficiently definite where class members could be identified based on fax numbers).

Here, this requirement is easily met because the identities of Servers who were paid the sub-minimum wage during the relevant statutory period are readily available in Defendant’s payroll and timekeeping records. See Section I.A supra.

C. Rule 23(a)(1)’s Numerosity requirement is satisfied.

Employees seeking class certification must satisfy each of Rule 23(a)’s four requirements: “numerosity; commonality; typicality; and adequacy of representation.” Amgen, 568 U.S. at 460; accord Whirlpool, 722 F.3d at 850. We turn first to numerosity.

Rule 23(a)(1) requires the class to be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). “The Sixth Circuit has certified a class with as few as thirty five people.” McFarlin v. Word Enters., LLC, 2017 U.S. Dist. LEXIS 164968, *3 (E.D. Mich. Oct. 5, 2017). Here, this requirement is easily satisfied because the putative class consists of hundreds of

individuals at a minimum. See Section I.A supra.

D. Rule 23(a)(2)'s Commonality requirement is satisfied.

Rule 23(a)(2) requires “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). As the Sixth Circuit observed, plaintiffs must point to “a common question that will yield a common answer for the class (to be resolved later at the merits stage), and that the common answer relates to the actual theory of liability in the case.” Rikos v. Proctor & Gamble Co., 799 F.3d 497, 505 (6th Cir. 2015); see also Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011) (common claim “must be of such a nature that it is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke”); accord Whirlpool, 722 F.3d at 852-53; Davis v. Cintas Corp., 717 F.3d 476, 487 (6th Cir. 2013); In re Countrywide Fin. Corp. Mort. Lending Pract. Litig., 708 F.3d 704, 707 (6th Cir. 2013). “What we are looking for is a common issue the resolution of which will advance the litigation.” Sprague v. GMC, 133 F.3d 388, 397 (6th Cir. 1998).

The Supreme Court and Sixth Circuit have both held that ***only one*** common question is necessary to certify a class. See Whirlpool, 722 F.3d at 853 (“there need be only one common question to certify a class”); Dukes, 564 U.S. at 359 (“We quite agree that for purposes of Rule 23(a)(2) ‘[e]ven a single [common] question’ will do.”) (internal quotation omitted); see also McFarlin, 2017 U.S. Dist. LEXIS

164968, at *8-9 (“The Sixth Circuit has found commonality where the plaintiffs could identify one common question, despite the fact that there were some unique questions/inquiries for individuals within the class.”) (citing examples).

Also, commonality can exist even if a defendant is pursuing defenses that purportedly require individualized analysis and may potentially result in an individualized determination of class members’ damages. See Rikos, 799 F.3d at 505 (plaintiffs not required to “prove at the class-certification stage that all or most class members were in fact injured to meet [the commonality] requirement”); Whirlpool, 722 F.3d at 854 (“[n]o matter how individualized the issue of damages may be,’ determination of damages ‘may be reserved for individual treatment with the question of liability tried as a class action.”); Countrywide, 708 F.3d at 707 n.4 (“To the extent that the district court . . . expected class members to suffer the same damages, it did so in error.”); Young, 693 F.3d at 543 (“existence of [individualized] defenses does not defeat the commonality requirement”).

Applying the above principles to this action, Plaintiff easily satisfies Rule 23(a)(2)’s commonality requirement. Indeed, as discussed in Section I supra, this litigation is replete with “common issue[s] the resolution of which will advance the litigation.” Sprague, 133 F.3d at 397. The common questions include, *inter alia*:

- Did the Defendant have a policy or practice of requiring Plaintiff and other Servers to perform sidework?
- Were the sidework tasks performed by Plaintiff and other Servers

“related” to their tip producing work?

- Did Plaintiff and other Servers spend more than 20% of their time performing related but non-tipped sidework tasks?
- Did the Defendant have a policy or practice of requiring Plaintiff and other Servers to share tips with Expediters?
- Did Defendant’s Expediters possess sufficient direct customer interaction as part of their job duties to participate in a tip pool?

See generally Section I supra (discussing common legal claims and defenses).

Both federal appellate and district courts find the commonality requirement satisfied by tipped employees challenging similar Sidework and Tip Sharing practices under state law. See, e.g., Johnson v. Pinstripes, Inc., 2013 U.S. Dist. LEXIS 138253, *12 (N.D. Ill. Sep. 26, 2013) (“In the instant case, plaintiffs have likewise submitted evidence of a company-wide policy of side work. The common question of whether employees still engaged in ‘tipped’ labor through required side work is therefore common to the entire class. As such, the commonality requirement of Rule 23 is satisfied for Class One.”); Haschak v. Fox & Hound Rest. Grp., 2012 U.S. Dist. LEXIS 162476, *6 (N.D. Ill. Nov. 14, 2012) (holding Rule 23(a)(2) satisfied “by demonstrating that Defendants maintained a company-wide policy requiring its employees to perform ‘sidework’ on a regular basis”);³

³ See also Driver v. AppleIllinois, LLC, 265 F.R.D. 293, 311-12 (N.D. Ill. 2010); Berger v. Perry’s Steakhouse of Ill., LLC, 2018 U.S. Dist. LEXIS 39751, *11-12 (N.D. Ill. Mar. 12, 2018); Koenig v. Granite City Food & Brewery, Ltd., 2017 U.S. Dist. LEXIS 71809, *9-10 (W.D.Pa. May 11, 2017); Mooney v. Domino’s Pizza, Inc., 2016 U.S. Dist. LEXIS 118193, *16-21 (D.Mass. Sept. 1, 2016); Schaefer v. Walker Bros. Enters., 2013 U.S. Dist. LEXIS 143047, *4-6

Shahriar v. Smith & Wollensky Rest. Group, Inc., 659 F.3d 234, 252 (2d Cir.

2011) (“[W]e conclude that the District Court properly found there to be questions of law or fact common to the class, Rule 23(a)(2), since the Plaintiffs’ [state law] class claims all derive from the same compensation policies and tipping practices of Park Avenue.”); Whitlock v. FSL Mgmt., LLC, 2012 U.S. Dist. LEXIS 112859, *23 (W.D. Ky. Aug. 10, 2010) (“The common question of fact with regard to this subclass is whether there was a common policy or practice of Defendants to require tipped employees of FSL and FSH to participate in mandatory tip pooling and sharing.”).⁴ In sum, Rule 23(a)(2)’s commonality requirement is satisfied.

E. Rule 23(a)(3)’s Typicality requirement is satisfied.

Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). This requirement tends to “merge” with the commonality requirement, Young, 693 F.3d at 542, and tests whether the interests of the named plaintiff and the class members are sufficiently “‘aligned’” so that “‘in pursuing his own claims, the

(N.D. Ill. Sept. 19, 2013); Clark v. Honey-Jam Café, LLC, 2013 U.S. Dist. LEXIS 62461, *3-4 (N.D. Ill. Mar. 21, 2013).

⁴ See also Starr v. Chi. Cut Steakhouse, LLC, 75 F. Supp. 3d 859, 872-73 (N.D. Ill. 2014); Whitehorn v. Wolfgang’s Steakhouse, Inc., 275 F.R.D. 193, 199 (S.D.N.Y. 2011); Dvornikov v. Landry’s Inc., 2017 U.S. Dist. LEXIS 49178, *24-25 (D. Mass. Mar. 31, 2017); Sanchez v. Roka Akor Chi. LLC, 2016 U.S. Dist. LEXIS 1542, *9-10 (N.D. Ill. Jan. 7, 2016); Fonseca v. Dircksen & Talleyrand Inc., 2015 U.S. Dist. LEXIS 136427, *6-10 (S.D.N.Y. Sept. 28, 2015); Murphy v. Lajaunie, 2015 U.S. Dist. LEXIS 97531, *12-13 (S.D.N.Y. July 24, 2015); Cormier v. Landry’s Seafood House-North Carolina, Inc., 2015 U.S. Dist. LEXIS 187556, *5-7 (D. Mass. Feb. 23, 2015), adopted by 2015 U.S. Dist. Lexis 187580 (D. Mass. Mar. 16, 2015); Megason v. Starjem Rest. Corp., 2014 U.S. Dist. LEXIS 3910, *25 (S.D.N.Y. Jan. 10, 2014); Lopez v. Hayes Robertson Group, Inc., 2013 U.S. Dist. LEXIS 189629, *14-15 (S.D. Fla. Sept. 23, 2013).

named plaintiff will also advance the interests of the class members,” id.

The Sixth Circuit has instructed: “A claim is typical if ‘it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if [the named plaintiff’s] claims are based on the same legal theory.’” Beattie v. CenturyTel, Inc., 511 F.3d 554, 561 (6th Cir. 2007). “Typical does not mean identical, and the typicality requirement is liberally construed.” Whitlock, 2012 U.S. Dist. LEXIS 112859, at *25 (internal citations omitted).

In Whitlock, the Western District of Kentucky applied the above principles to hold that, under Rule 23(a)(3), the named plaintiffs’ wage-and-hour claims were typical of the claims of other employees at three Louisville nightclubs. See id. at *25. As the Whitlock court explained: “the named Plaintiffs’ claims are typical of the class and subclass as they are based on the same legal theory – failure to pay wages as required for work that was performed off-the-clock . . . and/or requiring tipped employees to pool and share tips in violation of [Kentucky wage laws].” Id.

Similarly, in Johnson, the Northern District of Illinois correctly observed:

Plaintiffs claim that defendants had a policy in place that required all employees to complete side work unrelated to their tipped duties. This is an alleged practice or course of conduct by defendant that was common to all employees, and their claims are all based on the same theory of liability. Even though servers do not perform the same side work as bartenders or server assistants, it is the fact of required side work, not the nature of that work, that will determine liability.

2013 U.S. Dist. LEXIS 138253, at *17.

Here, as in Whitlock and Johnson, Plaintiff and the other Servers pursue the same theory that Defendant violated the WOVA by paying them the sub-minimum wage and implementing the Sidework and Tip Sharing practices. Plaintiff and the other Servers also pursue the same primary damages: unpaid wages. See generally FAC (Doc. 15). For these reasons – as well as the other reasons discussed in the above commonality analysis – Rule 23(a)(3)’s typicality requirement is satisfied.

F. Rule 23(a)(4)’s Adequacy requirement is satisfied.

Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). This requirement “serves to uncover conflicts of interest between named parties and the class they seek to represent.” Amchem Products, 521 U.S. at 625.

The Sixth Circuit “looks to two criteria for determining adequacy of representation: ‘1) the representative must have common interests with unnamed members of the class, and 2) it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel.’” Young, 693 F.3d at 543. The Sixth Circuit also instructs courts to “‘determine whether class counsel are qualified, experienced and generally able to conduct the litigation.’” Id.

Here, the adequacy prong is satisfied under the above criteria. First, Plaintiff shares “common interests” with other class members by challenging Defendant’s use of the tip credit to pay its Servers despite implementing the Sidework and Tip

Sharing practices. See generally FAC (Doc. 15); Whitfield Dec. (Exh. A); see also Whitlock, 2012 U.S. Dist. LEXIS 112859, at *27-30 (adequacy found where plaintiffs and class of restaurant workers sought unpaid wages and withheld tips).

Second, Plaintiff will “vigorously prosecute” the class members’ interests. Plaintiff promptly moved for conditional certification of the FLSA collective, see Doc. 16, in addition to this class certification motion. Plaintiff’s willingness to vigorously pursue these wage claims on behalf of other Servers is well-established.

Finally, the undersigned lawyers are “qualified, experienced and generally able to conduct the litigation,” having successfully prosecuted many wage and hour class/collective actions and having been appointed class counsel by various federal and state court judges. See Declaration of Jesse Young, attached as Exh. N; Declaration of Nicholas Migliaccio, attached as Exh. O; Declaration of R. Andrew Santillo, attached as Exh. P. Thus, Rule 23(a)(4) is satisfied.

G. Rule 23(b)(3)’s Predominance requirement is satisfied.

If the Court determines that Plaintiff has satisfied the four Rule 23(a) requirements, its attention must turn to Rule 23(b)(3), which requires both that common questions of law or fact “predominate over any questions affecting only individual members” and “that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” Fed. R. Civ. P. 23(b)(3). We turn first to predominance.

The Supreme Court and Sixth Circuit have articulated several important principles that dictate the predominance analysis:

First, the predominance inquiry “grants courts no license to engage in free-ranging merits inquiries.” Amgen, 568 U.S. at 466; accord Rikos, 799 F.3d at 505.

Second, predominance is regularly found even though some legal or factual issues require individualized proof. The Supreme Court instructs: “Rule 23(b)(3) . . . does *not require* a plaintiff seeking class certification to prove that each ‘elemen[t] of [her] claim [is] susceptible to classwide proof.’” Amgen, 568 U.S. at 469 (emphasis added); see also Whirlpool, 722 F.3d at 858 (“A plaintiff class need not prove that each element of a claim can be established by classwide proof.”); Young, 693 F.3d at 544 (“These potential individual inquiries do not defeat the predominance of common questions.”); Martinez v. Blue Star Farms, Inc., 325 F.R.D. 225, 231 (E.D. Mich. 2013) (“[T]he mere fact that individualized inquiries may potentially occur is not sufficient to defeat the predominance requirement.”). Importantly, as Judge Edmunds observed: “‘Common questions need only predominate: they need not be dispositive of the litigation.’” In re Cardizem CD Antitrust Litig., 200 F.R.D. 297, 307 (E.D. Mich. 2001).

Third, predominance is regularly found even though some of the anticipated defenses will require individualized analysis. The Sixth Circuit explains: “[T]he fact that a defense may arise and may affect different class members differently

does not compel a finding that individual issues predominate over common ones.” Beattie, 511 F.3d at 564 (internal quotations omitted); accord Young, 693 F.3d at 544 (same); see also Bridging, 843 F.3d at 1126 (“Rule 23(b)(3) requires merely that common issues predominate, not that all issues be common to the class.”).

Fourth, individualized damages issues do not preclude a predominance finding. The Sixth Circuit instructs: “[r]ecognition that individual damages calculations do not preclude class certification under Rule 23(b)(3) is well nigh universal.” Whirlpool, 722 F.3d at 861 (internal quotations omitted); see also Sterling v. Velsicol Chem. Corp., 855 F.2d 1188, 1197 (6th Cir. 1988) (“No matter how individualized the issue of damages may be, these issues may be reserved for individual treatment with the question of liability tried as a class action.”).

Both federal appellate and district courts have found the predominance requirement satisfied by tipped employees challenging similar Sidework practices under state law. In particular, the Northern District of Illinois in Johnson, supra, observed:

The question of whether defendants did have a policy of required unrelated side work is one that can be resolved on a class wide basis because there is a common nucleus of facts and issues.

* * *

The question of whether this side work was related to the employees’ tipped work may be answered “in one stroke.” Whether any unrelated side work rose to the level of a violation of the IWML is a merits question that should be disposed of at the merits stage. At the class certification stage, plaintiffs have sufficiently demonstrated that there is a class-wide question of liability based on the side work policy and

that this question predominates over individual damages questions. 2013 U.S. Dist. LEXIS 138253, at *13-14; see also Haschak, 2012 U.S. Dist. LEXIS 162476, at *9 (“The predominating question raised by Plaintiffs’ claim is whether Defendants’ company-wide policy requiring employees to perform ‘sidework’ is tantamount to requiring them to engage in an ‘untipped’ occupation for a sub-minimum, ‘tipped’ wage. This question can be resolved on a class-wide basis.”).⁵

Similarly, federal courts have repeatedly held that the predominance requirement is satisfied by employees challenging similar Tip Sharing practices. For example, in Whitlock, supra, the Western District of Kentucky held:

Courts have found that class certification is appropriate in cases in which the plaintiff class challenged a common practice or policy of failing to compensate employees appropriately for time worked, despite the presence of some factual variation in the claims. The predominance requirement is met if this common question is at the heart of the litigation. Plaintiffs’ alleged common policy or practice of requiring non-salaried employees to work off-the-clock and of requiring tipped employees to participate in tip pooling and sharing lies at the heart of this case. Despite the fact that individual questions may arise, those individual questions do not dictate the conclusion that a class action is impermissible. ““A single common issue may be the overriding one in the litigation, despite the fact that the suit also entails numerous remaining individual questions.”” “Common questions need only predominate: they need not be dispositive of the litigation.”

Further, individualized damage claims do not defeat the Rule

⁵ See also Driver, 265 F.R.D. at 311; Berger, 2018 U.S. Dist. LEXIS 39751, at *12; Koenig, 2017 U.S. Dist. LEXIS 71809, at *12-13; Mooney, 2016 U.S. Dist. LEXIS 118193, *24-25; Schaefer, 2013 U.S. Dist. LEXIS 143047, *8; Clark, 2013 U.S. Dist. LEXIS 62461, *5-7.

23(b)(3) class. “Varying damage levels rarely prohibit a class action if the class members’ claims possess factual and legal commonality.”

2012 U.S. Dist. LEXIS 112859, at *34-37 (internal citations omitted); see also Lopez, 2013 U.S. Dist. LEXIS 189629, at *19 (“No doubt, there are individualized issues, such as the particular category of non-tipped employee who shared in the tip pool . . . On balance, it is clear to this Court that the common issues, which arise from the implementation of an across-the-board compensation policy at all five restaurants, predominate over any individualized issues.”).⁶

Here, as in the cases cited above, the predominance requirement is satisfied. This lawsuit focuses on the legality of Defendant’s company-wide Sidework and Tip Sharing practices that equally apply to Plaintiff and Defendant’s other Michigan Servers who were paid a sub-minimum wage. The company-wide evidence is discussed above and includes admissions that Plaintiff and other Servers were regularly required to perform Sidework, and, up until just a few months ago, share tips with expos. See generally Section I.A supra.

As this lawsuit moves forward, this Court will be called upon to apply the above-described common facts to the common legal claims and defenses discussed in Sections I.B-C supra. The ultimate resolution of these claims and defenses is

⁶ See also Shahriar, 659 F.3d at 253; Starr, 75 F. Supp. 3d at 874-75; Whitehorn, 275 F.R.D. at 200; Dvornikoy, 2017 U.S. Dist. LEXIS 49178, at *25-27; Sanchez, 2016 U.S. Dist. LEXIS 1542, at *12-14; Fonseca, 2015 U.S. Dist. LEXIS 136427, at *13-16; Murphy, 2015 U.S. Dist. LEXIS 97531, at *17-20; Cormier, 2015 U.S. Dist. LEXIS 187556, at *10-11; Megason, 2014 U.S. Dist. LEXIS 3910, at *25.

both unknown and irrelevant to class certification. What matters at the class certification stage is that this litigation involves the application of common facts to common legal claims and defenses, the resolution of which will materially advance the litigation for all class members. Under these circumstances, Rule 23(b)(3)'s predominance requirement is satisfied.

H. Rule 23(b)(3)'s Superiority requirement is satisfied.

Rule 23(b)(3) also requires a finding “that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” Fed. R. Civ. P. 23(b)(3). The rule describes four factors to be considered in deciding superiority. See id. As discussed below, each factor favors class certification:

The first factor addresses “the class members’ interests in individually controlling the prosecution . . . of separate actions.” Fed. R. Civ. P. 23(b)(3)(A). This factor disfavors certification where class members maintain “a high degree of emotional involvement, extremely large [individual] damages claims, and a desire to tailor trial tactics to individual needs.” *Newberg on Class Actions, Fourth*, at §4:29. This wage rights lawsuit, which concerns each class member’s potential recovery of the unpaid tip credit taken by Defendant, is not such a case. See, e.g., Whitlock, 2012 U.S. Dist. LEXIS 112859, at *39-40.

The second factor addresses “the extent and nature of any litigation concerning the controversy already begun by . . . class members.” Fed. R. Civ. P.

23(b)(3)(B). This factor favors certification since no other related litigation exists.

The third factor addresses the desirability of “concentrating the litigation of the claims in a particular forum.” Fed. R. Civ. P. 23(b)(3)(C). Here, concentration of all claims in this Court is especially efficient and desirable because each of Defendant’s IHOP restaurants are located in Michigan including the one that Plaintiff worked at in Detroit. See FAC (Doc. 15) at ¶ 12.

The fourth factor addresses “likely difficulties in managing the class action.” Fed. R. Civ. P. 23(b)(3)(D). Here, no such difficulties exist. As discussed above, this is precisely the type of lawsuit that, due to the limited financial recovery available to any individual class member based on the unpaid tip credit, will benefit greatly from the economies of class litigation. See Young, 693 F.3d at 545; Beattie, 511 F.3d at 566-67. Moreover, because the legality of Defendant’s standardized compensation policies applies to the individual claim of each proposed class member, this factor favors certification. See Whitlock, 2012 U.S. Dist. LEXIS 112859, at *39; Johnson, 2013 U.S. Dist. LEXIS 138253, at *13-14.

IV. APPOINTMENT OF CLASS COUNSEL.

Federal Rule of Civil Procedure 23(g) requires the Court to appoint counsel to represent the class based on the consideration of four factors. See Fed. R. Civ. P. 23(g)(1)(A). Plaintiff submits that these factors support the appointment of Kreis Enderle, P.C., Migliaccio & Rathod LLP and Winebrake & Santillo, LLC.

These firms effectively and competently identified and investigated the legal claims available to Plaintiff and other class members, see Fed. R. Civ. P. 23(g)(1)(A)(i), and have demonstrated a willingness to commit substantial resources to representing the class, see id. at 23(g)(1)(A)(iv).

Moreover, as reflected in the declarations attached as Exhibits N-P, the firms are experienced in handling class and collective actions arising under the nation's wage and hour laws, see Fed. R. Civ. P. at 23(g)(1)(A)(ii), and are knowledgeable of the applicable law, see id. at 23(g)(1)(A)(iii).

V. CONCLUSION.

For the above reasons, the Court should grant this motion and direct the parties to confer and create an appropriate class notice.

Date: September 25, 2018

Respectfully submitted,

Jesse L. Young
KREIS ENDERLE, P.C.
8225 Moorsbridge
P.O. Box 4010
Kalamazoo, MI 49003

/s/R. Andrew Santillo

Peter Winebrake
R. Andrew Santillo
Mark J. Gottesfeld
WINEBRAKE &
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715 Twining Road,
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Dresher, PA 19025

Nicholas A. Migliaccio
Jason S. Rathod
MIGLIACCIO &
RATHOD LLP
412 H Street, NE,
Suite 302
Washington, DC 20002

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 25, 2018, I electronically filed the foregoing document with the Clerk of Court which caused the following counsel for Defendant to be served by electronic means:

Edward N. Boehm, Jr. at tboehm@fisherphillips.com

Martin B. Heller at mheller@fisherphillips.com

Joseph A. Starr at jstarr@starrbutler.com

William Reed Thomas at wthomas@starrbutler.com

Date: September 25, 2018

Respectfully submitted,

/s/R. Andrew Santillo

R. Andrew Santillo

WINEBRAKE & SANTILLO, LLC

715 Twining Road, Suite 211

Dresher, PA 19025

Phone: (215) 884-2491

One of Plaintiff's Counsel

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MERCEDES WHITFIELD, on behalf of
herself and similarly situated employees,

Plaintiffs,
v.

TRINITY RESTAURANT GROUP,
LLC,

Defendant.

Case No. 2:18-cv-10973-DML-EAS

Hon. David M. Lawson

DECLARATION BY MERCEDES WHITFIELD

I, Mercedes Whitfield, an adult resident of the state of Michigan, hereby declare, subject to penalty of perjury, that the following facts are true and correct to the best of my knowledge, information, and belief:

1. I worked for Trinity Restaurant Group as a server at its IHOP restaurant located at 2701 East Jefferson Ave. in Detroit, Michigan from approximately February 2015 to December 2016. I was paid \$3.23 an hour when my employment with Trinity ended.

2. During my time at Trinity as a server, I was scheduled to work nights for the first four months, which usually started the shifts at 5 p.m. and lasted until 10 p.m. (weekdays) or later (weekends). I then transferred to morning shifts, which usually started at 6 a.m. and lasted until between 3:00 and 5:00 p.m. This is because, at the end of my scheduled shift, I was almost always required to stay late and perform sidework. Examples of this work included sweeping and mopping the floors; refilling and stocking condiments; wiping down tables and chairs; cleaning light fixtures; doing other deep cleaning; and rolling silverware.

3. Throughout my shifts, I was also required to do a lot of sidework like the tasks above as well as cutting and cupping fruit, mixing salsa, making coffee, doing dishes, and getting ice.

4. While employed by Trinity as a server, I spent well over 20 percent of my time in a week as a server performing sidework. Based on my memory of my daily routine, I spent about 50 percent of my shifts performing sidework.

5. I was required to perform the sidework during and after my shift and, if I did not, I would be disciplined and eventually fired. All of the servers were required to have a manager check their sidework before leaving and, if they had not completed the side work to the supervisor's satisfaction, could be disciplined.

6. Regardless of the amount of time I spent doing side work during my time as a server at Trinity, I was just paid \$3.23 an hour.

7. The servers also had to participate in a tip pool on the weekends, holidays and special promotion days (like "Free Pancake Day"), where we were required to "tip out," or share our tips with the food expeditors. Based on my personal observations, the expeditor did not interact with restaurant customers. Instead, he or she just brought food from the kitchen to an "expo table" near the kitchen where the server picked it up and would bring it to the table where the customers are sitting.

8. When my shifts ended and I went to clock out, the system asked me to enter how much I made in tips that day. Often when I entered the amount of tips I made, the system said that I did not enter a high enough amount. To clock out, I had to keep punching in a higher number until the system accepted the number. As a result I was forced to over-report the amount of tips I made in a shift. That amount, then, caused more money to come out in taxes. A

manager could override the system so that I could clock out by entering the correct amount in tips, but they were not willing to do that

9. Based on working side-by-side with several other servers at the Trinity IHOP location where I worked, I believe the work that other servers performed, the amount Trinity IHOP paid them, the tip pool, and the tip reporting practices were similar, regardless of the shift servers have, the location they work, or the supervisor who is working.

10. During my time at Trinity, I worked with anywhere from seven (7) to thirteen (13) other servers, depending on how busy the restaurant was at the time.

As stated above, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: 07/01/2011


Mercedes Whitfield

Exhibit B

*MERCEDES WHITFIELD, et al. v.
TRINITY RESTAURANT GROUP, LLC*

*ROBERT HENDERSON
September 21, 2018*

*Moretti Group
800-536-0804
471 W. South Street, Suite 41B
Kalamazoo, MI 49007*

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IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF MICHIGAN
 SOUTHERN DIVISION

MERCEDES WHITFIELD, on behalf
 of herself and similarly
 situated employees,

Plaintiff,

vs. CIVIL ACTION
 Case No. 2:18-cv-10973-DML-EAS

TRINITY RESTAURANT GROUP,
 LLC,

Defendant.

The deposition of ROBERT HENDERSON, taken
 before me, SANDRA APLEY, CSR-8838, a Certified
 Shorthand Reporter and Notary Public acting within the
 County of Oakland, State of Michigan, at Starr, Butler,
 Alexopoulos & Stoner, PLLC, 20700 Civic Center Drive,
 Suite 290, Southfield, Michigan, on Friday,
 September 21, 2018, at 9:00 a.m.

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1 APPEARANCES:

2 KREIS, ENDERLE, HUDGINS & BORSOS, P.C.
3 By: Mr. Jesse L. Young (P72614)
 8225 Moorsbridge
 P.O. Box 4010
 Kalamazoo, Michigan 49003
 (269) 324-3000
 jyoung@kehb.com
 Appearing on behalf of Plaintiff

6 STARR BUTLER ALEXOPOULOS & STONER, PLLC
7 By: Mr. William R. Thomas (P77760)
 20700 Civic Center Drive, Suite 290
8 Southfield, Michigan 48076
 (248) 864-4933
9 wthomas@starrbutler.com
 Appearing on behalf of Defendant

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1 Southfield, Michigan
 2 Friday, September 21, 2018
 3 9:00 a.m.
 4 --oOo--
 5 ROBERT HENDERSON
 6 was thereupon called as a witness herein, and after
 7 having been first duly sworn to tell the truth, the
 8 whole truth, and nothing but the truth, was examined
 9 and testified as follows:
 10 EXAMINATION
 11 BY MR. YOUNG:
 12 Q. Good morning.
 13 A. Good morning.
 14 Q. Could you please state your name.
 15 A. Robert Henderson.
 16 Q. Thank you, Robert. And can you state your address for
 17 the record, please.
 18 A. 42616 North Pointe Court, Clinton Township, Michigan,
 19 48036.
 20 Q. And how long have you lived at that address?
 21 A. Around eight years.
 22 Q. Thanks for coming in today for this deposition. I know
 23 it's probably not your choice to spend your Friday
 24 doing this, but we appreciate it.
 25 A. Yes, sir.

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1 Q. Have you ever had a deposition taken before?
 2 A. Yes.
 3 Q. And how many times?
 4 A. One.
 5 Q. And was that in your capacity at Trinity?
 6 A. Correct.
 7 Q. What kind of a case was that? Do you remember?
 8 A. It was over a termination.
 9 Q. Okay. And where was the deposition held?
 10 Was it here in Metro Detroit somewhere?
 11 A. It was in the Bloomfield Hills area. Yes.
 12 Q. How many years ago was that?
 13 A. I want to say around seven or eight years.
 14 Q. Was that, like, a 30(b)(6) deposition like we're doing
 15 today? Do you know?
 16 A. I'm not sure what that is.
 17 Q. Okay. So, a 30(b)(6) deposition is like today where
 18 you're coming in as the corporate representative to
 19 testify on behalf of the company.
 20 Was it a deposition like that, or was it a
 21 personal deposition, if you know?
 22 A. I don't. I don't know the difference.
 23 Q. That's fair. Okay.
 24 So, you generally know how this works. So,
 25 I'm going to ask you some questions. You're under

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1 oath, and you're going to respond, right?
 2 A. Yes.
 3 Q. So, I'm sure your counsel instructed you or gave you
 4 some instructions for today. I'll just run through
 5 them again just so we're clear. Okay?
 6 We have a stenographer here taking down the
 7 record, so when I ask you a question, please respond
 8 verbally -- no shakes of the head, no uh-huhs, uh-uh --
 9 so the court reporter can pick that up. Okay?
 10 A. All right.
 11 Q. Try to let me finish my questions before you give me
 12 your answers. I'll try to let you finish your answers
 13 before I ask my next question, again, for the sake of
 14 the record. Okay?
 15 A. All right.
 16 Q. If you need to take a break at any time, let me know.
 17 A. Okay.
 18 Q. Unless there's a question pending, I'll let you take
 19 any breaks you want. Okay?
 20 A. Okay.
 21 Q. Is there any reason that you wouldn't be able to
 22 testify truthfully today?
 23 A. No.
 24 Q. Any medications that you're taking?
 25 A. No.

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1 Q. You understand this a deposition under oath?
 2 A. Yes.
 3 Q. As it would be in court?
 4 A. Yes.
 5 Q. Okay. Your counsel might object to some of my
 6 questions today. That's perfectly fine. Unless he
 7 tells you otherwise, go ahead and answer the question
 8 regardless.
 9 A. Okay.
 10 Q. Have you ever been a party in any litigation before, a
 11 plaintiff or a defendant?
 12 A. A plaintiff, no.
 13 Q. Or a defendant, you personally?
 14 A. Yes.
 15 Q. What kind of a case was that?
 16 A. It was the one I mentioned earlier.
 17 Q. The employment case?
 18 A. Yes.
 19 Q. You were personally a defendant in the case?
 20 A. They listed Trinity Restaurant Group and myself as
 21 well.
 22 Q. Okay. Were you the manager of the employee?
 23 A. I was his direct supervisor.
 24 Q. Got it. And that case was resolved, I take it?
 25 A. Yes.

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1 Q. A settlement?
2 A. Yes.
3 Q. You ever testified in court at all?
4 A. No.
5 Q. You ever testified in an administrative hearing of any
6 kind? Unemployment or anything like that?
7 A. Unemployment via conference call.
8 Q. Okay. How many times?
9 A. Once.
10 Q. Was that local?
11 A. It was here in Michigan.
12 Q. When was that, do you remember?
13 A. Maybe around 2010. 2011.
14 Q. Okay. Again, that was in your role of Trinity?
15 A. Yes. A different role, but, yes, with Trinity.
16 Q. Was it related to the same case that you were named in
17 the lawsuit?
18 A. No.
19 Q. Different one?
20 A. Yes.
21 Q. Have you ever been questioned by the Department of
22 Labor for any reason?
23 A. I have not.
24 Q. What about the Michigan Wage & Hour Division?
25 A. I have not.

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1 Q. Do you know if Trinity has ever been investigated by
2 the Department of Labor?
3 MR. THOMAS: I'm just going to object 'cause
4 it's outside the scope of the deposition, and I'm going
5 to instruct him not to answer.
6 MR. YOUNG: I can still take his personal
7 knowledge. It is outside the scope. I'll give you
8 that.
9 MR. THOMAS: Okay. But I'm just going to
10 instruct him not to answer 'cause it's outside the
11 scope.
12 MR. YOUNG: Okay. But I can still ask the
13 witness questions about his personal knowledge in a
14 30(b)(6) deposition. It doesn't bind the company, but
15 I can ask him about his personal knowledge.
16 MR. THOMAS: Well, I mean, he's the corporate
17 representative.
18 Are you asking him as Robert Henderson or as
19 the representative?
20 MR. YOUNG: As Robert Henderson.
21 MR. THOMAS: Okay. Well, I'm still going to
22 object to the question.
23 But you can answer.
24 THE WITNESS: I'm sorry. What was the
25 question?

Page 11

1 BY MR. YOUNG:
2 Q. The question was: Do you know if Trinity has ever been
3 investigated by the Department of Labor?
4 A. Yes.
5 Q. They have been?
6 A. Yes.
7 Q. How many times, if you know?
8 A. I believe once.
9 Q. Okay. When was that?
10 A. I'm guessing on a date, but I believe within the last
11 two years.
12 Q. Okay. And which restaurants was that in connection
13 with, if you know?
14 A. I believe Mount Pleasant.
15 Q. Okay. Was it the Mount Pleasant IHOP?
16 A. Yes.
17 MR. THOMAS: And, Jesse, I'm just going to
18 object to the entire line of questioning. Will you
19 give me a standing objection?
20 MR. YOUNG: Yes. And just for record, let's
21 make it clear if we're asking him as a corporate rep or
22 Robert Henderson. Okay?
23 MR. THOMAS: Okay. So, you're asking this as
24 Robert Henderson?
25 MR. YOUNG: Yes. This whole line of

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1 questioning is personal knowledge. I agree that it's
2 outside the scope of the dep notice.
3 MR. THOMAS: Okay. And I think that's clear.
4 BY MR. YOUNG:
5 Q. All right. Is that investigation still ongoing? Do
6 you know?
7 A. I'm unsure.
8 Q. Okay. As part -- you might have already answered this.
9 As part of that investigation, were you
10 interviewed at all?
11 A. No.
12 Q. Were you involved in that investigation in any way?
13 A. No.
14 Q. All right. What did you do to prepare for your
15 deposition today?
16 A. I spoke with Will. I reviewed a couple of documents.
17 Q. Okay. And I don't want to know anything that you and
18 Will discussed, but how many times did you meet with
19 Will?
20 A. Once.
21 Q. And when was that?
22 A. Yesterday.
23 Q. And how long was that meeting?
24 A. A few hours.
25 Q. Okay. Was that in person?

Page 13

1 A. Yes.
 2 Q. Was that here in this office?
 3 A. Yes.
 4 Q. Okay. Which documents did you review?
 5 A. I don't recall all of them. I believe it was the
 6 sidework reports, some server training material, the
 7 Trinity org chart, and my signed affidavit. I believe
 8 that's it.
 9 Q. Okay. And are these the documents that were produced
 10 in the case? Is that your understanding?
 11 A. Yes, sir.
 12 Q. All right. Did you do anything else to prepare for
 13 today?
 14 A. No.
 15 Q. Any Internet research on your own?
 16 A. No.
 17 Q. Any research at all on your own?
 18 A. No.
 19 Q. Did you talk to anybody at Trinity about today's
 20 deposition?
 21 A. No. Actually, I haven't.
 22 Q. But somebody from Trinity designated you for today for
 23 the -- I'm sorry -- for the deposition today?
 24 A. I think we as an organization figured -- we decided
 25 that I had the best knowledge to represent us here

Page 14

1 so...
 2 Q. So, tell me about that. Did you guys have a conference
 3 call, or how did that come about?
 4 A. It was a conference call.
 5 Q. All right. Who was on the conference call?
 6 MR. THOMAS: I'm just going to object to the
 7 extent that any attorneys were on that call.
 8 Was an attorney on that call?
 9 THE WITNESS: I believe so. Yes.
 10 MR. THOMAS: Then I'm going to object and
 11 instruct you not to answer.
 12 MR. YOUNG: Well, I still want to know who's
 13 on the call, though. I can have that information.
 14 MR. THOMAS: Yeah. That's okay.
 15 BY MR. YOUNG:
 16 Q. Just tell me who's on the call.
 17 A. Tom Gough, our CFO, myself and our attorneys.
 18 Q. Okay. I'm sorry. Tom Gough, you said?
 19 A. Yes.
 20 Q. G-o-f-f?
 21 A. G-o-u-g-h.
 22 Q. Got it. All right.
 23 And where does Tom live? Does he live in
 24 California?
 25 A. He does not. I believe Tom lives in North Carolina.

Page 15

1 Q. All right. And so, how did you first learn that you
 2 were going to be the designee for today?
 3 Was it on that phone call?
 4 A. It was on that phone call.
 5 Q. When was that phone call, roughly?
 6 A. I am -- I believe, to the best of my knowledge, it was
 7 in June or July.
 8 Q. Of 2018, right?
 9 A. Yes, sir.
 10 Q. Did you go to high school around here?
 11 A. I did not.
 12 Q. Where did you go to high school at?
 13 A. Corona, California.
 14 Q. How did you end up in Michigan?
 15 A. I came to work for Trinity Restaurant.
 16 Q. When was that?
 17 A. August of 2005.
 18 Q. Did you go to college?
 19 A. I did not.
 20 Q. How old were you when you came to Trinity?
 21 A. 25 years old.
 22 Q. How did you get that job?
 23 A. Which job?
 24 Q. With Trinity, your initial job.
 25 A. I work- -- there was initially three partners in the

Page 16

1 organization. One of the original partners was my boss
 2 in California, and he recruited me to come out to
 3 Michigan.
 4 Q. Were you working in IHOP Restaurants in California?
 5 A. I was not.
 6 Q. What kind of business were you working with that
 7 gentleman in California before you moved to Michigan?
 8 A. Restaurant business.
 9 Q. What kind of restaurant?
 10 A. Fast food.
 11 Q. Which restaurant?
 12 A. Burger King.
 13 Q. Okay. So, what was your initial position, then, at
 14 Trinity when you came to Michigan?
 15 A. Manager.
 16 Q. All right. What did you manage?
 17 A. An IHOP.
 18 Q. One store? Multiple stores?
 19 A. Yes, sir. One store.
 20 Q. What store was that?
 21 A. I started working in the downtown Detroit store.
 22 Q. Okay. And you were the store manager; is that right?
 23 A. Actually, I believe I was the assistant manager for a
 24 very short amount of time.
 25 Q. Okay. And then you were promoted to manager?

Page 17

1 A. To a general manager.
 2 Q. General manager. Of the Detroit store?
 3 A. Yes.
 4 Q. Is there one Detroit store or two?
 5 A. Technically, Detroit only one.
 6 Q. All right. So, how long were you the general manager
 7 of the Detroit store?
 8 A. I think for -- gosh. It was a long time ago.
 9 Roughly three to four months.
 10 Q. Okay. What did you do after that?
 11 A. I was transferred to a new location, Harper Woods.
 12 That was a new development project, so I was the
 13 opening -- the first manager for that restaurant. I
 14 helped build the team, built the staff, opened the
 15 restaurant.
 16 Q. When you started with Trinity in 2005, how many -- if
 17 you know, how many IHOP restaurants did they have?
 18 A. Five.
 19 Q. In Michigan, I'm saying.
 20 A. Yes.
 21 Q. And by the way, when we're talking about IHOPs today,
 22 we're only talking about the Michigan IHOPs.
 23 A. There's only IHOPs in Michigan.
 24 Q. Okay. Very well. That makes it easier.
 25 So, you were transferred to the Harper Woods

Page 18

1 location and opened a store and managed that store.
 2 Was it sometime in 2005 also? 2005, 2006?
 3 A. Yes. Right around there.
 4 Q. All right. And at that point, you no longer managed
 5 the Detroit store at all; is that correct?
 6 A. Correct.
 7 Q. How long were you in that position at Harper Woods?
 8 A. Roughly six to eight months.
 9 Q. Okay. Then what did you do?
 10 A. I was asked to transfer to Royal Oak IHOP and become
 11 the general manager of that location.
 12 Q. Okay. Was this a promotion, do you think?
 13 A. It was a location that was struggling. It needed some
 14 support and leadership, so the work I had done in the
 15 first two locations warranted me to go to that store.
 16 Q. So, they brought you to Royal Oak because you were
 17 performing well?
 18 A. Correct.
 19 Q. So, how long were you at the Royal Oak store? Again,
 20 approximately.
 21 A. I ran the Royal Oak location as the general manager for
 22 probably ten months until they asked me to run two
 23 locations, and then at that point, I was the general
 24 manager of both Royal Oak and Detroit.
 25 Q. And no longer affiliated with Royal Oak, right?

Page 19

1 A. No. I said "both."
 2 Q. I'm sorry. You're right. All right.
 3 So, you were at that point managing two
 4 locations. How long were you doing that?
 5 A. I did that for probably six months.
 6 Q. Okay. So, what year does this put us into now? Let's
 7 say at the end of your -- before you transferred to
 8 your next position, what year are we in, do you think?
 9 A. Probably, tail end of 2007, going into 2008.
 10 Q. Okay. All right.
 11 So, what was your next position after the GM
 12 position over at Royal Oak and Detroit?
 13 A. I was promoted to a multi-unit manager.
 14 Q. What is a multi-unit manager?
 15 A. I was overseeing three locations. I had managers -- I
 16 was no longer a general manager, so I had general
 17 managers that reported to me at that point.
 18 Q. More like a regional manager, is that fair to say?
 19 A. It's a fair comparison.
 20 Q. Or district manager?
 21 A. Much smaller scope, but yes.
 22 Q. Which three locations did you cover at that point?
 23 A. Royal Oak, Harper Woods, and Detroit.
 24 Q. And so, in this position as the multi-unit manager, you
 25 were managing the general managers of those three

Page 20

1 stores; is that right?
 2 A. I don't recall if I had general managers in all three
 3 locations, but I was managing the restaurant through
 4 managers.
 5 Q. But you were responsible for those three restaurants?
 6 A. Yes, sir.
 7 Q. So, how long were you in that position?
 8 A. I honestly don't recall.
 9 Q. Can you approximate it?
 10 A. I can guess.
 11 Q. I don't want you to guess, but I just want your best
 12 estimation.
 13 A. It's kind of a blur, to be honest with you.
 14 Q. Okay. Do you remember what your next position was?
 15 A. Next position would have been a full district manager.
 16 Q. Okay. And as a district manager, what stores were you
 17 covering at that point?
 18 A. I believe we were opening Dearborn Heights, so I took
 19 that location. Royal Oak, Detroit still, Roseville,
 20 and I don't recall if -- well, we closed Harper Woods,
 21 so I don't recall what year we closed it. But I
 22 believe it was -- it was still under my watch until we
 23 closed the restaurant.
 24 Q. So, you oversaw the closing of that restaurant?
 25 A. I did.

Page 21

1 Q. I think you said you don't remember when that closed?
 2 A. I don't.
 3 Q. Okay. And you don't remember when you became the
 4 district manager over these restaurants?
 5 A. I can't recall what year it was.
 6 Q. What was your next position with Trinity?
 7 A. Director of operations.
 8 Q. Is that your current position?
 9 A. No.
 10 Q. Okay. All right.
 11 What did you do as the director of
 12 operations?
 13 A. Director of operations, I oversaw all locations.
 14 Q. Just to be clear. All IHOP locations in Michigan?
 15 A. Correct.
 16 Q. For Trinity?
 17 A. Yes, sir.
 18 Q. So, let's talk about that for a minute.
 19 When you say you oversaw all locations, what
 20 were your responsibilities in that position?
 21 A. My responsibilities are -- or they were to ensure that
 22 we met our corporate operational measurements,
 23 inspections, service scores, overall financial
 24 stability for each location. I was responsible for
 25 staffing management. That pretty much sums it up.

Page 22

1 Q. Who did you report to when you were the director of
 2 operations?
 3 A. That is -- I reported to the two owners of the
 4 organization.
 5 Q. Who are they?
 6 A. John Baker, Dino Savant.
 7 Q. And at this point -- when did you become the director
 8 of operations, roughly?
 9 A. My best estimate would be somewhere around 2009, maybe
 10 2010.
 11 Q. And did you have regular meetings with John Baker
 12 and/or Dino when you were the director of operations?
 13 A. Meetings, no. I would -- I would describe them more as
 14 phone calls.
 15 Q. Conference calls?
 16 A. Sure. No. I would say phone calls.
 17 Q. How frequently did you have phone calls with them?
 18 A. Anytime I needed them.
 19 Q. On an as-needed basis?
 20 A. Yes.
 21 Q. Did you have scheduled phone calls, like once a month
 22 or anything like that?
 23 A. Once a week.
 24 Q. What was discussed on those phone calls typically?
 25 A. Overall health of the market.

Page 23

1 Q. Restaurant performance?
 2 A. Restaurant performance, staff levels, metrics. Yeah.
 3 Q. Okay. As the director of operations in '09, '10, were
 4 you responsible for professional policies, employment
 5 policies?
 6 A. What do you mean?
 7 Q. So, if you thought that an employee handbook needed to
 8 be updated, for example, would you do that yourself?
 9 A. No.
 10 Q. Who would handle that kind of thing?
 11 A. I'm assuming we would have -- I don't feel comfortable
 12 answering that question 'cause it would be an
 13 assumption 'cause it wasn't part of my job skills at
 14 that point.
 15 Q. Do you know who would handle that, though?
 16 A. I'm assuming the owners, but I'm just assuming.
 17 Q. But not you?
 18 A. No.
 19 Q. Where did you go after you were the director of
 20 operations?
 21 A. I was promoted to position of vice president of
 22 operations.
 23 Q. That's your current position?
 24 A. Yes, sir.
 25 Q. And that was when? 2010?

Page 24

1 A. No. I would say closer to 2011, 2012.
 2 Q. Okay. And did your job duties change with this
 3 promotion?
 4 A. Well, we acquired another brand, a second brand, so
 5 yes.
 6 Q. What brand was that?
 7 A. That was Jack in the Box.
 8 Q. Okay.
 9 A. They were not in Michigan.
 10 Q. Right. Okay.
 11 With respect to the IHOP locations, did your
 12 duties change at all?
 13 A. Yes.
 14 Q. Okay. How so?
 15 A. I promoted a director of operations, so my day-to-day
 16 managing of the details was reduced.
 17 Q. That's always nice.
 18 A. Sure.
 19 Q. Okay. Who was your director of operations while you
 20 were the VP of operations?
 21 A. Maryam Saeed.
 22 MR. THOMAS: Why don't you spell that for
 23 the --
 24 THE WITNESS: M-a-r-y-a-m. Last name
 25 is S-a-e-e-d as in David.

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1 BY MR. YOUNG:
2 Q. Okay. And Maryam is still the director of operations;
3 is that correct?
4 A. That is correct.
5 Q. And did Maryam as the director of operations have the
6 same job duties that you had when you were the director
7 of operations?
8 A. Similar.
9 Q. Okay. Any material changes in Maryam's duties versus
10 your duties as the director of operations?
11 A. I'm not sure what you mean.
12 Q. Any big differences?
13 A. Well, she had me as -- I didn't have a vice president
14 when I was the director, so she had a different level
15 of support.
16 Q. So, she had more help than you had when you were the
17 director of operations?
18 A. That's fair to say. Yes.
19 Q. More guidance, is that fair to say?
20 A. Yes.
21 Q. When you were the VP of operations, did you still
22 report to John Baker and Dino Savant?
23 A. I do.
24 Q. Okay. Have you ever been convicted of any crimes?
25 A. No.

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1 Q. Great.
2 MR. THOMAS: How often do you get a "yes"
3 answer to that question?
4 MR. YOUNG: In these depositions, not very
5 often, but I still have to ask the question. It's no
6 offense to the witness.
7 THE WITNESS: None taken.
8 (Plaintiff's Exhibit No. 1 was marked.)
9 MR. THOMAS: So, take a minute to review
10 that, top to bottom.
11 BY MR. YOUNG:
12 Q. Take all the time you need to look at it. I just want
13 to know if you've seen the document before.
14 A. Yes. I've seen this.
15 Q. Okay. Did you review this before today's deposition?
16 A. I have reviewed it. Yes.
17 Q. What's your understanding of this notice in connection
18 with the deposition today?
19 MR. THOMAS: I'm just going to object to the
20 extent it calls for a legal conclusion.
21 But you can answer it.
22 BY MR. YOUNG:
23 Q. I'm just looking for your understanding.
24 A. It was basically an outline of questions that you would
25 like to ask.

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1 Q. Or topics, right?
2 A. Sure.
3 Q. Okay. Did you have any discussions about this notice
4 with anybody from Trinity outside of presence of
5 attorneys?
6 A. Not that I can remember.
7 Q. If you did have a conversation with somebody from
8 Trinity about this document, you probably would
9 remember it. It's fair to say, right?
10 A. Yes.
11 Q. Okay. Is it your understanding that Exhibit 1, this
12 deposition notice, requires Trinity to designate
13 somebody to testify on behalf of Trinity?
14 A. I'm sorry. Can you repeat that?
15 Q. Sure. I just want -- your understanding is that this
16 deposition notice that we're looking at, Exhibit 1,
17 requires Trinity to designate somebody to sit in your
18 chair and testify on its behalf.
19 Is that your understanding?
20 A. Yes.
21 Q. And do you also understand that Trinity is required to
22 prepare the witness, like yourself, for a deposition
23 like today?
24 MR. THOMAS: I'm just going to object that
25 he's not a lawyer to the extent that it calls for a

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1 legal conclusion.
2 If you know, you can answer.
3 THE WITNESS: Yeah. No.
4 BY MR. YOUNG:
5 Q. Do you feel that you've been prepared adequately for
6 today's deposition?
7 A. I feel confident I can speak on behalf of the
8 organization.
9 Q. And do you understand the testimony you're going to
10 give today is not limited to your personal knowledge,
11 but it's any knowledge that is accessible to the
12 company?
13 A. Yes.
14 Q. All right. And you were designated today by Tom Gough,
15 right?
16 A. It was a conversation while I was on the phone with our
17 attorney, and Tom Gough was on the phone. Yes.
18 Q. Okay. When you were reviewing the topics for today,
19 were there any documents or other information that you
20 asked for that you weren't able to get your hands on or
21 weren't able to look at?
22 A. Not that I recall.
23 Q. Are there any topics in Exhibit 1 that you've read that
24 you don't understand?
25 A. Not that I recall.

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1 Q. All right. And you're consenting to give your
 2 testimony to bind Trinity today; is that right?
 3 A. Yes.
 4 (Plaintiff's Exhibit No. 2 was marked.)
 5 BY MR. YOUNG:
 6 Q. I'll show you what's been marked as Exhibit 2. Take a
 7 look at that and tell me if you've seen it before.
 8 A. Yes.
 9 Q. Okay. What is this document?
 10 A. This is a document outlining the organizational chart.
 11 Q. And is this for the IHOPs in Michigan?
 12 A. That is correct.
 13 Q. And how many IHOPs are in Michigan now?
 14 A. Currently, 14.
 15 Q. And this org chart that we're looking at in Exhibit 2
 16 covers all 14 restaurants; is that right?
 17 A. Yes, sir.
 18 Q. And I see your name at the top right-hand side, "Robert
 19 Henderson," right?
 20 A. That is correct.
 21 Q. And John Baker and Dino Savant at the top are the
 22 owners; is that right?
 23 A. That is correct.
 24 Q. And I see Tom Gough to the left of your name, right?
 25 A. Yes.

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1 Q. Where is Tom Gough? Where is his office? Where does
 2 he work?
 3 A. I believe he works from home.
 4 Q. Okay. Where does he live? What state?
 5 A. I don't have 100 percent confirmation, but I believe he
 6 works -- or lives in North Carolina. Tom is new to the
 7 company.
 8 Q. When did he come to the company?
 9 A. Somewhere around June.
 10 Q. Of 2018?
 11 A. Yes, sir.
 12 Q. Who was in his position before him?
 13 A. David Vasquez (phonetic).
 14 Q. How long was David Vasquez with the company?
 15 A. Approximately five years.
 16 Q. And Mr. Vasquez was the CFO the whole time?
 17 A. That is correct.
 18 Q. You might have already answered this.
 19 Where does John Baker live?
 20 A. California.
 21 Q. What about Dino Savant?
 22 A. California.
 23 Q. And Maryam Saeed, where does she live?
 24 A. Michigan.
 25 Q. What about Bryan Gwin?

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1 A. Michigan.
 2 Q. And then these three people on the left -- the training
 3 manager, field recruiter, facilities manager -- all in
 4 Michigan?
 5 A. All except for Amanda Webb.
 6 Q. Where does Amanda Webb live?
 7 A. She recently relocated to Phoenix, Arizona.
 8 Q. She's still with the company?
 9 A. On a very part-time basis.
 10 Q. Is the plan to transition her out and bring somebody
 11 else in as the field recruiter?
 12 A. I don't have a plan yet.
 13 Q. Is that your decision to make?
 14 A. It would be.
 15 Q. I notice at the bottom of this organizational chart it
 16 lists all the restaurants.
 17 Do you see that?
 18 A. Yes.
 19 Q. And it has what appear to be store numbers.
 20 Is that what those numbers are?
 21 A. Yes.
 22 Q. So, the Detroit location, for example, has Store
 23 No. 1284, right?
 24 A. That is correct.
 25 Q. And, I guess, what are those numbers used for?

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1 A. Those are assigned by IHOP, store location numbers.
 2 Q. IHOP Corporate?
 3 A. Yes, sir.
 4 Q. Are those numbers assigned when the store is opened?
 5 A. Yes.
 6 Q. I presume -- maybe you don't know, but the -- so, IHOP
 7 Corporate uses that number to track everything related
 8 to that store?
 9 A. I'm not sure why they assign that number.
 10 Q. Okay. Let's talk about Bryan again for a minute.
 11 What does he do as a district manager?
 12 A. He oversees five locations.
 13 Q. Which five?
 14 A. The ones listed directly underneath him.
 15 Q. I see. Okay.
 16 Who oversees the remaining restaurants to the
 17 right of those?
 18 A. Those fall under Maryam's scope.
 19 Q. Does Maryam also oversee the five locations that Bryan
 20 covers?
 21 A. She's responsible for them. Bryan reports to her.
 22 Q. So, is it fair to say that Bryan handles the day-to-day
 23 operations of those five restaurants?
 24 A. Yes.
 25 Q. And it's fair to say that Maryam oversees the

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1 day-to-day operations of the other nine restaurants?
2 A. Day-to-day is actually managed by the general manager.
3 I would say that is true for Bryan as well. Maryam and
4 Bryan's role is more of a support. They're not in
5 there working day to day. It's not logistically
6 possible for them to be in every location each day
7 so...
8 Q. So, each store has a --
9 A. Has a lead manager.
10 Q. Lead manager. That's the proper term?
11 A. No. General manager would be the proper term, but not
12 every location has a general manager.
13 Q. How many locations have a general manager and how many
14 don't?
15 A. Seven and seven.
16 Q. Can you identify for me which ones have a general
17 manager?
18 A. IHOP 3166, IHOP 3592, IHOP 3341, IHOP 3222, IHOP 5312,
19 IHOP 3476, IHOP 1233.
20 MR. THOMAS: Just for the record, can you
21 give their locations in addition to the numbers?
22 THE WITNESS: 3166 is Mount Pleasant. 3592
23 is Jackson. 3341 is Lakeside, Sterling Heights. 3222
24 is Dearborn Heights. 5312 is Roseville. 3476 is
25 Canton, and 1233 is Royal Oak.

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1 BY MR. YOUNG:
2 Q. Thank you. This is the most recent or current version
3 of the organizational chart; is that right?
4 A. Yes.
5 Q. How long has this -- I'll call it hierarchy, if you
6 will -- been the case at the IHOPs in Michigan?
7 A. I'm not sure. Can you clarify your question?
8 Q. Sure. I'm just wondering when was the last time this
9 organizational chart -- other than just plugging in the
10 name and the position, when was the last time this
11 organizational chart was changed?
12 A. I can't recall.
13 Q. Is there any other organizational chart that just looks
14 different as far as a district manager over all the
15 locations, anything like that?
16 A. I don't understand your question.
17 Q. In other words, if you're trying to follow the lines to
18 see who's covering what, is there a different version
19 of this organizational chart?
20 A. Well, there is no district manager, so they would flow
21 the same way.
22 Q. Okay. And so how long has that been the case, though?
23 I guess is my question.
24 A. Well, Bryan has only been employed with us for ten
25 months, so prior to that, there was -- we were without

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1 a district manager for a year, around. But prior to
2 that, we had a district manager who actually oversaw
3 the same territory as Bryan with the exception of
4 Jackson.
5 Q. That's because Jackson didn't exist?
6 A. Correct.
7 Q. Okay. So, roughly ten months ago, then, the district
8 manager position was not on this chart.
9 Is that fair to say?
10 A. We did not employ a district manager at that time.
11 Q. So "yes"?
12 A. Yes.
13 Q. Okay. So, then my question, then, is are there other
14 versions of this organizational chart that exist that
15 we can look at from, say, ten months ago or a year ago?
16 A. Not that I'm aware of.
17 Q. Where's this organizational chart kept?
18 A. I believe the main office.
19 Q. And where is that?
20 A. Newport Beach, California.
21 Q. Who maintains this? Do you know?
22 A. I actually asked our executive assistant to put that
23 together.
24 Q. For purposes of the litigation?
25 A. Yes.

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1 Q. Okay. So, just so I understand.
2 Before this lawsuit was filed, was there an
3 organizational chart in existence?
4 A. Not that I can recall.
5 Q. Okay. All right. So, just, again, to be clear.
6 Your testimony is this organizational chart
7 was prepared specifically for this litigation?
8 A. Yes.
9 Q. And there's no other version, correct?
10 A. Not that I can -- not that I'm aware of.
11 Q. So, stick with Exhibit 2 for a moment, if you will.
12 How many servers -- again, just approximate.
13 How many servers are employed at each one of these
14 restaurant locations?
15 A. I would completely be guessing if I gave you a number.
16 Q. Could you give me a range?
17 A. It would be speculation. Every store is different in
18 volume, sales.
19 Q. I understand. And we can go one by one if you want,
20 and that's fine. But I just want, like, a range.
21 You know, I've had these cases before. I
22 know there's maybe 20, 30, 40 servers on staff at any
23 given time depending on the restaurant. That's all I'm
24 looking for.
25 So, you can either give me some kind of an

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1 average for all the stores, or we can go through them
2 one by one. You can kind of just estimate if you can.
3 A. Sure. As long as it's clear it's an estimation.
4 Q. Sure. And I understand. People leave. People come
5 and go.
6 A. Yeah. I would say Mount Pleasant, probably 35 would be
7 my guess.
8 Q. Okay. And let me stop this, just so we're clear on the
9 record.
10 This is at any given time, right? 35?
11 A. Employed?
12 Q. Right.
13 A. Yes.
14 Q. I'm not talking about how many have worked there over
15 the past three years total. I'm just talking about at
16 any given time.
17 Is that your understanding?
18 A. How many servers we employ at any given time.
19 Q. Yes.
20 A. Per location.
21 Q. Yes.
22 A. Yes.
23 Q. Okay. I just wanted to make it clear for the record.
24 A. Yes. Um-hmm.
25 Q. Go ahead.

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1 A. 35 to 40 for Mount Pleasant.
2 Q. Okay.
3 A. East Lansing, 25 to 30; Saginaw, 35 to 40; Flint, 20,
4 25; Jackson, 50, 40 to 50; Monroe, 20 would be an
5 average; Royal Oak, 20, 25 would be an average;
6 Sterling Heights, 20-ish, 25; Detroit, 20 to 25; Novi
7 20; Dearborn Heights, 30 to 40; Bloomfield Hills, 15 to
8 20; Roseville, 20 to 30; Canton, 15 to 20.
9 Q. Thank you. What is -- if you know, just in your
10 experience, what is typically the turnover rate for
11 servers at the IHOP locations?
12 A. I don't have it broken down by position, but on an
13 hourly employee base we're running around 60 percent
14 turnover.
15 Q. Okay. When you say hourly positions, that's all hourly
16 positions in the restaurant?
17 A. Yes, sir.
18 Q. I'm sure the company keeps information that could tell
19 that it's 60 percent, right?
20 A. Yes.
21 Q. What kind of information would you look at? Just dates
22 of employment?
23 A. I would look at -- in order to calculate that, I would
24 pick a time frame, and then I would look at the number
25 of employees that were currently employed at the start

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1 of it, the number that were hired, the number that were
2 left, and then what we ended up with in the date range.
3 Q. Do you have any idea what the average length of
4 employment for any given server would be?
5 A. It's pretty wide range.
6 Q. Okay. So, I handle a lot of call center cases. So,
7 we've determined -- and that's just kind of a fact in
8 most cases -- that the average length of employment for
9 call center workers was, like, six months.
10 A. What's a call center worker?
11 Q. Somebody that works in a call center and answers
12 phones.
13 A. Okay.
14 Q. Completely different from this case.
15 A. Okay.
16 Q. But just based on dates of employment, we've been able
17 to figure out it's roughly six months almost across the
18 board for the industry.
19 Have you seen anything similar to that with
20 respect to the servers at IHOP?
21 MR. THOMAS: Jesse, I'm just going to object
22 real quick that we're kind of straying. You know, I
23 know we're on the topic, but we're straying from the
24 notice again, what the topics are. So, I'm just going
25 to put my objection.

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1 You can answer, if you know.
2 THE WITNESS: Can you repeat the question?
3 BY MR. YOUNG:
4 Q. Sure. I'm just trying to understand if you have any
5 idea of what the average tenure of employment that is
6 for servers at IHOP.
7 A. At IHOP nationally or for Trinity?
8 Q. No. Just for Trinity.
9 A. Like I said, it's a wide range. I have servers that
10 have worked for me since the day we took over this
11 organization 14 years ago. I have college students
12 that come and go. I wouldn't be comfortable estimating
13 that number.
14 Q. Okay. Fair enough.
15 The servers at Trinity restaurants, IHOP
16 restaurants, they're paid hourly, correct?
17 A. Yes.
18 Q. And all servers are paid the subminimum hourly wage?
19 Do you know what that means?
20 A. We take the tip credit.
21 Q. All right. Good. You understand.
22 So, you take the trip credit -- Trinity takes
23 the tip credit for all servers at its restaurants,
24 right?
25 A. Yes. I believe that's correct.

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1 Q. Are the servers required to participate in tip pools at
2 the Trinity restaurants?
3 A. Required? No.
4 Q. Okay. But even if they're not required, do you
5 understand that they do participate in tip pools?
6 A. They no longer do that.
7 Q. Okay. As of when?
8 A. 60 days ago, 30 days ago.
9 Q. And that was a company decision, company-wide decision?
10 A. I'm not sure the meaning of your question.
11 Q. Yeah. I'm just trying to figure out who made the
12 decision to stop the tip pools.
13 A. I did.
14 Q. Okay. And did you put that into, like, a memo or an
15 e-mail? How did that get communicated?
16 A. No. Just as we were in the restaurants. As I was in
17 the restaurants, I talked to the managers.
18 Q. So, you verbally communicated that to the managers?
19 A. I don't know that I did for everyone. I'm sure I
20 communicated to my director, to my district manager as
21 well. So, amongst the three of us, it was verbally
22 communicated.
23 Q. So, your understanding is that's been communicated down
24 the line to the servers?
25 A. Yes.

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1 Q. Why was that decision made?
2 A. Based off of this lawsuit.
3 Q. Okay. So, as it stands, the servers -- I'm sorry --
4 Trinity still takes the tip credit for the servers,
5 right?
6 A. Correct.
7 Q. But there's no longer a tip pool, right?
8 MR. THOMAS: I'm just going to object to the
9 form of the question. Misleading characterization of
10 his testimony.
11 But you can answer.
12 THE WITNESS: That is correct.
13 BY MR. YOUNG:
14 Q. I guess I'll just ask you now.
15 For the expos, does Trinity take a tip credit
16 for the expos?
17 A. No.
18 Q. Are the expos paid hourly?
19 A. Yes.
20 Q. And they're paid, I'm assuming, the minimum wage or
21 higher?
22 A. Correct.
23 Q. What is the typical pay range, if you will?
24 A. Minimum wage to, I would assume -- my best estimate
25 would be 10, \$11.

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1 Q. Okay. And has that been the case, let's say, since
2 March 2015 for the expos?
3 A. As far as I'm aware, yes.
4 Q. Backing up to the servers, just for the record.
5 Trinity took a tip credit for all the servers
6 since at least March 2016; is that right?
7 A. To the best of my knowledge, yes.
8 Q. Are the servers at Trinity IHOP restaurants assigned
9 any kind of identification numbers?
10 A. All employees have an employee number.
11 Q. They have an employee ID?
12 A. Yes.
13 Q. Do they have any other kind of identification number of
14 any sort?
15 A. Servers are issued a server card that they have to use
16 to gain access to the POS system in order to enter
17 their orders.
18 Q. Okay. And those cards are personal to the server?
19 A. Yes.
20 Q. All right. And I was just going there.
21 So, the POS system, the point of sale system
22 at Trinity, what's the name of that system?
23 A. MICROS.
24 Q. How long has MICROS been used?
25 A. I believe around ten years. It became the only POS

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1 system that we used in the company.
2 Q. All right. Is that dictated by IHOP Corporate?
3 A. For all intents and purposes, yes.
4 Q. And IHOP Corporate is also IHOP International; is that
5 right?
6 A. I don't know.
7 Q. Just so we're talking about the same thing.
8 The franchisor is IHOP Corporate, right?
9 A. Franchisor, yes.
10 Q. And Trinity is the franchisee; is that right?
11 A. That is correct.
12 Q. And that point of sale system -- that same MICROS point
13 of sale system is used at all Michigan IHOP locations?
14 A. It is now. Yes.
15 Q. When was the last time that it wasn't uniformly used at
16 all the restaurants?
17 A. I believe I said ten years ago.
18 Q. Okay. I just wanted to make sure.
19 What is the -- are you familiar with the SOP,
20 Standard Operating Procedures for IHOP?
21 A. What part of it?
22 Q. Fair enough.
23 Are you familiar with the document in
24 general, the SOP?
25 A. There's multiple. But, yes, I am aware that there is

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1 SOP for IHOP. Yes.
2 Q. When you say "there's multiple" -- I've only seen one.
3 Can you help me?
4 A. Well, there's equipment SOP. There's standard
5 operating procedures for food product, where we buy it
6 from, things like that.
7 Q. I see. And that -- the SOPs are created by IHOP
8 Corporate; is that right?
9 A. That is correct.
10 Q. And those are to be followed by the franchisees; is
11 that right?
12 A. I believe that is the intent. Yes.
13 Q. Does Trinity have its own SOP documents?
14 A. In regards to what?
15 Q. Just anything. Does it have any SOPs at all that it
16 has created separate from IHOP Corporate?
17 A. Yes.
18 Q. Okay. Can you, I guess, describe those to me?
19 I haven't seen any of those documents, so I'm
20 just curious as to what those pertain to, what they're
21 called. Can you help me with that?
22 A. Sure. We have an SOP on our deep clean schedule. We
23 had an SOP on -- I guess, I'm commingling policies and
24 SOPs, but we have guidelines of how to dissect a P&L.
25 How to --

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1 Q. I'm sorry. Let me stop you.
2 What's a P&L?
3 A. Profit and loss statement.
4 Q. Okay.
5 A. We have policy on how to submit weekly invoices to
6 accounting, things like that.
7 Q. And those are Trinity documents that govern all the
8 restaurants, the IHOP restaurants, is that fair?
9 A. Well, it's a template. I would more classify it as a
10 guideline, as an example. It's something there to help
11 support a manager as they're kind of working through
12 some of these tasks. Yes.
13 Q. Is there a Trinity SOP or a policy with respect to
14 sidework?
15 A. Each store is -- that's more of a -- it's more of a
16 function that a manager would manage on a daily basis,
17 so I don't have a uniform policy across the company of
18 sidework. It's too many variables.
19 Q. Is there a uniform policy on tip pooling or tip
20 sharing?
21 A. No.
22 Q. Is there a uniform policy on menus?
23 A. Menus, yes. That's dictated by IHOP Corporate.
24 Q. All the menus are the same?
25 A. Yes.

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1 Q. I've seen a number of documents that were produced in
2 this case that were referred to SOP or have SOPs.
3 A. Okay.
4 Q. My understanding is that was referencing a corporate
5 SOP.
6 Is that also your understanding?
7 A. I would have to see the document to...
8 Q. Okay. Fair. We'll get them out.
9 I'm not going to mark this as an exhibit, but
10 have you seen this SOP before?
11 MR. THOMAS: Can he look at it?
12 MR. YOUNG: Sure.
13 THE WITNESS: Yeah.
14 MR. THOMAS: I just want to note for the
15 record that counsel has handed Mr. Henderson a document
16 that says, "International House of Pancakes, LLC, SOP
17 Franchise Operating Procedures and Standards, dated
18 June 2013."
19 Go ahead and look at it.
20 BY MR. YOUNG:
21 Q. And all I want to know is if you've ever seen it
22 before. I don't expect you to read that entire thing.
23 A. Sure.
24 MR. THOMAS: And I'll just note that that's
25 not a document that Defendants have produced in this

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1 case.
2 MR. YOUNG: That's correct.
3 THE WITNESS: I don't believe I've seen this
4 one.
5 BY MR. YOUNG:
6 Q. Okay. Have you seen similar SOPs from IHOP Corporate?
7 A. Regarding recipes.
8 Q. Recipes?
9 A. Yes.
10 Q. Okay. Any other type of SOPs that you've seen from
11 IHOP Corporate?
12 A. Not that I recall. The two I would use would be
13 recipes and plating guidelines.
14 Q. Okay. Does Trinity have in Michigan -- with respect to
15 its Michigan IHOPs, does it have subsidiary companies
16 that you know about?
17 A. I'm not sure of your question.
18 Q. Sure. Does Trinity have, for example, a Detroit IHOP,
19 LLC?
20 A. Not that I'm aware of.
21 Q. Do you understand what I'm saying, though? Other
22 separate subsidiary companies for each restaurant.
23 A. Not that I'm aware of.
24 Q. And Trinity has an employee handbook; is that right?
25 A. That is correct.

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1 Q. And that employee handbook covers all restaurants; is
 2 that right?
 3 A. Yes.
 4 Q. Who maintains that handbook? Do you know?
 5 A. Human resource.
 6 Q. Okay. Who's the human resource employee at Trinity
 7 IHOP?
 8 A. Currently that is Jonelle Poras.
 9 Q. Okay. And I note -- if you go back to Exhibit 2, I
 10 don't see Jonelle's name on this document.
 11 Where would she sit in this organizational
 12 chart at Exhibit 2?
 13 A. I don't know. She'd be somewhere here as a support to
 14 the restaurants.
 15 Q. On the left-hand side?
 16 A. I -- I don't know. I assume. Yes.
 17 Q. That's where you would put her, though; is that right?
 18 A. I never thought of that question so...
 19 Q. Okay. She's in charge of all the HR functions for
 20 Trinity?
 21 A. She's support.
 22 Q. Who does she report to?
 23 A. She reports to the CFO.
 24 Q. Mr. Gough?
 25 A. Yes.

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1 Q. Where is Jonelle located?
 2 A. She's based out of California.
 3 Q. Okay. And I'm assuming there's a franchise agreement
 4 between Trinity and IHOP Corporate.
 5 Is that your understanding?
 6 A. It's my understanding.
 7 Q. Have you seen the franchise agreement before?
 8 A. I have not.
 9 Q. Did you play any part in negotiating that agreement in
 10 any way?
 11 A. No, sir.
 12 Q. I think you had mentioned before that IHOP Corporate
 13 dictates the menu for the restaurants?
 14 A. For the most part, yes.
 15 Q. Does IHOP Corporate also dictate the layout of the
 16 restaurants?
 17 A. In what regards?
 18 Q. Just, let's say we're building a new IHOP restaurant.
 19 I'm assuming corporate has to give approval for the
 20 layout for that restaurant.
 21 Is that your understanding?
 22 A. I would say there's probably an expectation of what the
 23 restaurant would look like when it's done, and, you
 24 know, our team has to meet that expectation.
 25 Q. Okay. Right.

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1 And we've all been to IHOPs, and they're all
 2 laid out basically the same.
 3 A. I would disagree.
 4 Q. Okay. Do you think they're substantially different?
 5 A. I think there's quit a bit of difference in our
 6 buildings. Correct.
 7 Q. Does the company have, like, the written layouts for
 8 each location?
 9 A. The blueprints?
 10 Q. Sure.
 11 A. Potentially. Sure.
 12 Q. When I say the layout or the blueprint, I mean where
 13 all the tables are and the stations and all of that.
 14 A. Oh, yes.
 15 Q. Who conducts the employee training for the servers at
 16 Trinity?
 17 A. That would be conducted by the managers, and then each
 18 store has trainers in each position.
 19 Q. Okay. So, just to break that down a little bit.
 20 So, the manager of each store performs the
 21 training for the servers?
 22 A. I would say they oversee it, but technically the
 23 servers train the servers.
 24 Q. Okay. So, is there a lead trainer for the servers, for
 25 example?

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1 A. I don't know if there's a lead, but I would say each
 2 location has their servers that they would use as
 3 trainers. Yes.
 4 Q. What kind of materials are used -- written materials
 5 are used for the training?
 6 A. Our training is -- IHOP's training is the online
 7 portal. It's called Dine Plate.
 8 Q. Can you spell that?
 9 A. D-i-n-e P-l-a-t-e.
 10 Q. And I saw that Trinity produced some training modules.
 11 Have you seen those?
 12 A. Yes.
 13 Q. Is that what you're talking about?
 14 A. No.
 15 Q. So, Dine Plate is something different than the modules
 16 that were produced in this case?
 17 A. That is correct.
 18 Q. And Dine Plate is online, you said?
 19 A. Yes, sir.
 20 Q. Is it, like, a tutorial kind of program?
 21 A. Yes.
 22 Q. All right. Are there quizzes and tests --
 23 A. Yes.
 24 Q. -- mixed in?
 25 A. Yes.

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1 Q. All right. What other -- if any, what other written
2 kind of documents are included in the training process
3 for servers?
4 A. It's really all geared towards the online portal.
5 There's videos in there. It's much more interactive.
6 As you've seen, the old program is much more module
7 paperwork, and IHOP has changed and gone to Dine Plate
8 over the last couple of years.
9 Q. So, the modules that we saw on the documents -- and
10 we'll just get these out.
11 (Plaintiff's Exhibit No. 3 was marked.)
12 MR. THOMAS: I know that's a lot of paper,
13 Robert, so why don't you just thumb through it and make
14 sure that that's consistent with what we've been
15 talking about.
16 BY MR. YOUNG:
17 Q. So, Mr. Henderson, this is Exhibit 3 that I'm showing
18 you, and I want to know if you've seen this. And I
19 don't expect you to read it or do I want to go through
20 every page with you.
21 But the first thing I'd like you to do is
22 look at the whole document and make sure I've
23 included -- make sure everything I've included in here
24 is a training document.
25 MR. THOMAS: I'm just going to note that

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1 Exhibit 3 is Bates Trinity 2 through Trinity 76.
2 MR. YOUNG: Thank you.
3 THE WITNESS: And your question exactly was
4 what? I apologize.
5 BY MR. YOUNG:
6 Q. I just want to know if you're familiar with this
7 document.
8 A. I am familiar with these documents.
9 Q. Yeah. There's two modules here, right?
10 Module No. 1 in the first page, and then
11 Module No. 3 on Page 27, if you look at the number in
12 the bottom right-hand corner?
13 A. Yes.
14 Q. Okay. What is your understanding of what these
15 training materials are?
16 A. These are actual training packets that we used to use.
17 This was actually geared towards a manager training so
18 management would be trained in all aspects of the
19 restaurant, all positions. And this is basically
20 the -- these are guidelines to what the servers -- some
21 of the server responsibilities include. So, this is
22 part of the management training, but it was geared
23 towards service.
24 Q. Okay. Is this training module an online program?
25 A. This is not.

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1 Q. Okay. This is a -- how would you describe it? A paper
2 document training program?
3 A. This is a workbook. Yeah.
4 Q. A workbook?
5 A. Yeah.
6 Q. Thank you. And this comes from IHOP Corporate?
7 A. This did.
8 Q. And I see it's got a date on here of 08 of '08 on the
9 bottom left-hand corner.
10 Do you see that?
11 A. Yes.
12 Q. When was this -- Exhibit No. 3, when was this workbook
13 used by Trinity?
14 A. I'm assuming it was through -- starting August of 2008.
15 To the best of my knowledge, Dine Plate took --
16 replaced this program two years ago, maybe three.
17 Q. Just so we're clear.
18 Exhibit No. 3, this workbook or these
19 training modules, are no longer used by Trinity as of
20 about two or three years ago?
21 A. Yes.
22 Q. You can set that aside. We can come back to those
23 exhibits.
24 (Plaintiff's Exhibit No. 4 was marked.)
25 //

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1 BY MR. YOUNG:
2 Q. I'll show you what's been marked as Exhibit 4.
3 Do you recognize that document?
4 A. Yes.
5 Q. Is this the job description for the server position at
6 Trinity?
7 A. Yes.
8 Q. Is this the current job description?
9 A. Yes.
10 Q. All right. Do you have any sense of how long this
11 specific version has been the operative job
12 description?
13 A. No. I can guess, give you an estimate.
14 Q. Best estimate?
15 A. Best estimate would be probably six years.
16 Q. Okay. And do you know where this job description comes
17 from?
18 A. I believe this is pulled off of one of our job
19 postings.
20 Q. Okay. Is it possible this also comes from the
21 corporate SOP?
22 A. It's possible. Yes.
23 MR. THOMAS: And I'm just going to put a
24 belated objection to calls for speculation.
25 //

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1 BY MR. YOUNG:
2 Q. Is this Exhibit No. 4 the same job description that's
3 used for all job servers at all Trinity IHOP
4 restaurants?
5 A. I would say it outlines our expectations for all
6 servers in all of our restaurants. I'm not sure that
7 every server in our organization has seen this.
8 Q. Right. And that's not my question.
9 Does this job description at Exhibit No. 4
10 apply to all the servers at Trinity IHOP restaurants?
11 A. Yes.
12 Q. Okay. And, in fact, this job description on Exhibit 4
13 is almost verbatim what is used for the job postings?
14 A. I believe so. Yes.
15 Q. And is it fair to say the primary job duty of the
16 server at Trinity IHOP restaurants is to provide great
17 service to the customers?
18 A. Yes.
19 Q. In fact, that's plastered all over the documents,
20 right?
21 A. I'm not sure which documents, but it is our main
22 objective. Yes.
23 Q. Do servers have to go through any -- other than
24 training, do they go through an orientation of any
25 kind?

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1 A. Every new hire goes through orientation.
2 Q. What does the orientation consist of?
3 A. I would assume -- I haven't done one in quite sometime,
4 but I assume they're given a menu, depending on the
5 position, tour of the restaurant, new-hire paperwork,
6 maybe given a training schedule, ensure they have a
7 uniform.
8 Q. Is that process the same for all the servers?
9 A. I would -- to the best of my knowledge, yes.
10 Q. And they're expecting -- I'm guessing, but you tell me.
11 Are they expected to study the menu and study
12 the documents before the training?
13 A. Before the training? No.
14 Q. Just as part of the training?
15 A. Yeah. During training, yes.
16 Q. Other than Dine Plate -- I want to go back to the
17 training real quick -- is there any other written
18 curriculum, if you will, to the training, or is Dine
19 Plate pretty much it?
20 A. We use the menus as part of the training. As far as I
21 know, that would be it.
22 Q. So, the rest of the training is kind of hands-on
23 training, if you will?
24 A. I believe the format is watch the videos, watch the --
25 go online, do some of the tutorials, and you go and --

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1 actually, you probably have your trainer demonstrate to
2 you the position that you're doing, or whatever
3 specific task, and then at some point the actual
4 trainee would demonstrate their ability to do it as
5 well.
6 Q. Okay. This Dine Plate program is not available to the
7 public, right?
8 A. I've never checked that.
9 Q. Okay. Does Trinity IHOP restaurants have, like, an
10 intranet for the employees?
11 A. A what?
12 Q. Like an intranet?
13 A. I'm not sure.
14 Q. A companywide internet platform that only Trinity
15 employees, for example, could access?
16 A. We use PeopleMatter, but that's a company that any
17 organization can sign up for. That's our online job
18 application and basically online -- it creates an
19 electronic employee file for employees.
20 Q. Okay.
21 A. But there's no communication through there. We don't
22 have any platform that we communicate to our employees
23 through.
24 Q. Is there some kind of a website or a hosting page or
25 something that hosts all the company policies and

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1 documents that the servers, if they wanted to pull,
2 like, the employee handbook, for example, they could go
3 in and do that?
4 A. That would be in their employee file, the employee
5 handbook. Everybody is issued an electronic one when
6 they complete their employee paperwork online.
7 But in regards to employee documents,
8 training documents, they would have access to via Dine
9 Plate. They create their own user name and password,
10 and I guess if they went home, they could log into it,
11 I would assume.
12 Q. Could they also access, for example, like, a sidework
13 chart if one existed?
14 A. Online?
15 Q. Yes.
16 A. Is there a Trinity one?
17 Q. Yes.
18 A. Not that I'm aware of.
19 Q. Any other documents that are hosted online?
20 A. Trinity issued?
21 Q. Yes.
22 A. No. Not that I'm aware of.
23 Q. And the trainers are -- I haven't seen Dine Plate. I
24 don't know what's in it, so bear with me here.
25 These servers, they're trained on how to

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1 provide great service, right?
2 A. It's my understanding. Yes.
3 Q. Are they trained on how to perform deep cleans?
4 A. Via Dine Plate?
5 Q. Or otherwise.
6 A. All employees are trained on cleaning. Yes.
7 Q. On deep cleans?
8 A. Cleaning.
9 Q. Well, there's a distinction I'm making. So, I've seen
10 documents that reference deep cleaning, and I've seen
11 sidework documents.
12 Do you understand the distinction of that?
13 A. Absolutely.
14 Q. So, just stick with deep cleaning with me for a minute.
15 A. Sure.
16 Q. Are they trained specifically on deep cleaning?
17 A. I don't know "trained" would be the proper word, but
18 exposed to, showed. Yes, absolutely.
19 Q. Taught?
20 A. Absolutely. Sure.
21 Q. Is that on Dine Plate?
22 A. No.
23 Q. That's --
24 A. That's Trinity issued.
25 Q. That's a hands-on kind of thing?

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1 A. Trinity created, posted. Yes.
2 Q. What about the sidework, is that something that's --
3 that's a topic on Dine Plate?
4 A. I don't know if on Dine Plate, but I know in the
5 manuals you have there references, your store sidework
6 or under shift sidework.
7 Q. Okay. You're pointing at Exhibit 3?
8 A. I apologize. Yes.
9 Q. All right. No need to apologize.
10 If you turn to the second to last page, Bates
11 No. 75, this is, I think, the only page in this exhibit
12 that references sidework.
13 Is this what you're referring to?
14 A. Yes.
15 Q. Okay. And this is -- again, this is Exhibit 3, and
16 this is a service module that's no longer being used.
17 Is sidework also on Dine Plate?
18 A. I don't -- I am unsure.
19 Q. Okay. The servers will be taught how to do sidework as
20 part of the hands-on training, though, right?
21 MR. THOMAS: Object to lack of foundation.
22 But you can answer.
23 THE WITNESS: Yes. That would be my
24 understanding.
25 //

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1 BY MR. YOUNG:
2 Q. Have you actually seen the servers being taught how to
3 do sidework at any point?
4 A. Yes.
5 Q. Okay. And they were being taught as part of the
6 training process?
7 A. End of shift, yes. Um-hmm.
8 Q. And just to wrap up this topic.
9 All the servers are trained on how to do
10 sidework, right?
11 A. That would be my expectation. Yes.
12 MR. THOMAS: Jesse, if you get to a point
13 where you're switching topics, can we take a break?
14 MR. YOUNG: Sure. Yeah. Give me one second.
15 MR. THOMAS: Yeah.
16 BY MR. YOUNG:
17 Q. If you -- again, sticking with Exhibit 3, these
18 training modules, if you can turn to Bates number page
19 33 and 34. Just take a look at those two pages, if you
20 could, and let me know when you're ready.
21 A. Um-hmm. I'm ready.
22 Q. All right. Do you understand -- again, this is a
23 document that's no longer being used, but servers
24 were -- it appears the servers were trained to operate
25 and clean certain equipment; is that right?

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1 A. That is correct.
2 Q. Is that still the case?
3 A. That they're trained to use equipment and clean it?
4 Yes.
5 Q. And do you know if that's part of the Dine Plate
6 program, or is that more of a hands-on thing?
7 A. I believe it's more hands-on.
8 Q. Okay. And, again, all the servers get that same
9 training, right?
10 A. That's my assumption. I'm not there for every
11 training, every server training.
12 Q. That's your expectation, though, right?
13 A. That's my assumption.
14 Q. The reason I say "your expectation," you had said it
15 was your expectation before with the other sidework.
16 That's why I'm asking.
17 Is it also your expectation that they would
18 learn how to use and clean the equipment, too?
19 A. Yes. Just not all this equipment here.
20 Q. So, not specifically every piece of equipment that's
21 listed on Exhibit 3, on Pages 33 and 34, right?
22 A. Correct.
23 Q. You're saying, just generally speaking, whatever
24 equipment they're using, they're being taught how to
25 use it, how to clean it. Is that fair?

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1 A. That's fair. Yes.
2 MR. YOUNG: We can take a break.
3 MR. THOMAS: Okay.
4 (At 10:18 a.m. to 10:29 a.m., recess was
5 taken.)
6 BY MR. YOUNG:
7 Q. We're back on the record.
8 You understand you're still under oath?
9 A. Yes, sir.
10 Q. We were talking about sidework a little earlier.
11 When are the servers expected to perform
12 their sidework?
13 A. Well, both throughout their shift, and some are tasks
14 that need to be done throughout their shift. Some are
15 more geared towards end of shift.
16 Q. Is there some kind of document that we can look at that
17 would tell us which ones were supposed to be after the
18 shift versus during the shift?
19 A. No. I think it's more just -- no offense -- but common
20 sense inside the restaurants of things that need to be
21 done: brewing coffee, getting ice. If we waited to the
22 end of the shift, we wouldn't be able to serve our
23 guests.
24 Q. No offense taken.
25 A. Yup.

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1 Q. Are there certain sidework tasks that are just always,
2 like, end of the shift kind of things?
3 A. Yes.
4 Q. What would those be?
5 A. Rolling silverware.
6 I'm thinking. Sorry.
7 Q. Yeah. Take your time.
8 A. Maybe, like, a final restocking of a station, final
9 cleanups of their tables and their section that they
10 worked in. Those are things that can be done
11 throughout the shift and need to be done throughout the
12 shift, but they always do a final reset before they
13 leave.
14 Q. So, like, restocking sugar and syrup and condiments and
15 stuff like that?
16 A. Condiments, yes. All of those are correct, but also
17 somebody might be tasked with the beverage station:
18 orange juice, milk, coffee, things like that.
19 Q. Got it. And, again, you mentioned common sense.
20 So, there's no set schedule for this
21 sidework; is that fair to say?
22 A. For sidework? That is correct.
23 Q. Okay. And so, for during the shift, the servers are --
24 what? -- instructed to just get to it when they can,
25 when they see it, kind of use your common sense kind of

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1 thing?
2 A. Well...
3 Q. I guess, what is their instruction? I guess is my
4 question.
5 A. Yes. I'm trying to express it.
6 Each restaurant is run differently just due
7 to volume, due to number of employees, how busy it is,
8 things like that. So, a manager would say, "Server A,
9 you're responsible for coffee on this shift. Server B
10 is responsible for ice. And we need to keep up with it
11 throughout the shift, so keep an eye on it."
12 But it's not that sole -- it's not that only
13 server's respons- -- Server A is not the only one
14 responsible for coffee. Everybody chips in. But
15 Server A is the one that, "You really need to keep an
16 eye on it."
17 Q. So, Server A would be primarily responsible for the
18 coffee?
19 A. Yes. But the expectation would be everyone chips in.
20 Q. Got it. Are there posted charts in the restaurant for
21 sidework?
22 A. In some stores, yes.
23 Q. Are they, like, checklists? Or can you describe those
24 to me, what those charts look like?
25 A. Every store is different. I believe we issued those to

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1 you. They're all going to list basically the same
2 tasks. Like I said, coffee, beverage station, salad
3 bar.
4 Q. Let's take a look at some of those, then.
5 All the servers, I think you said, are
6 required to do deep cleaning of some sort, correct?
7 A. All employees, Yes.
8 Q. Including servers?
9 A. Yes, sir.
10 Q. Okay.
11 (Plaintiff's Exhibit No. 5 was marked.)
12 BY MR. YOUNG:
13 Q. I'll show you what we've marked as Exhibit 5.
14 Do you recognize that document?
15 A. Yes.
16 Q. For the record, this is Bates No. 77 and 78.
17 What is this document?
18 A. This is a section of our overall deep clean schedule.
19 This is designed for -- this is the section that
20 pertains to the servers.
21 Q. And I think that Trinity had produced the entire deep
22 clean packet, if you will?
23 A. I believe so, yes.
24 Q. And that included, I think, all positions, right?
25 A. I believe so, yes.

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1 Q. All right. And so that Bates No. 275, for example,
 2 there's a -- what appears to be an identical text of
 3 the same document as Exhibit 5 that we were looking at.
 4 It's just in a different format.
 5 Is there any reason that it's in a different
 6 format that you know about?
 7 A. It looks like that was formatted to fit onto one page
 8 instead of two pages.
 9 Q. So, my question is: Do you know why that is?
 10 A. I don't know.
 11 Q. Just curious.
 12 A. Yeah.
 13 Q. All right. So, let's look at Exhibit 5. I think I
 14 understand, but just for the record. It looks like
 15 whoever is on the morning shift on Mondays, there's a
 16 description of what the deep clean is for that shift
 17 for that day.
 18 Am I reading that correctly?
 19 A. That is the intent of what to get done that morning on
 20 that day. Yes.
 21 Q. So, sticking with Monday, the swing shift would have
 22 the coffee urns and the ice cream freezer.
 23 Do you see that?
 24 A. Yes, sir.
 25 Q. And so, is the deep clean assigned to all the servers

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1 for that shift or just one server for that shift?
 2 A. No. It's intended to be broken up amongst the entire
 3 position.
 4 Q. So, in other words, for the morning shift on Mondays,
 5 all the servers on that shift would be responsible for
 6 the service, for the deep clean?
 7 A. Yes.
 8 Q. And so on and so forth throughout this entire exhibit;
 9 is that correct?
 10 A. Yes.
 11 Q. And this deep clean document, this applies to all the
 12 IHOP Trinity restaurants?
 13 A. That was the intent. Yes.
 14 Q. Okay. And all the IHOP restaurants use basically the
 15 same menu, right?
 16 A. Yes.
 17 Q. So, it makes sense that all of these would be the same
 18 in Exhibit 5 for all the restaurants because they all
 19 use syrup, right? They all had have coffee, right?
 20 They all have the same items that you would need for
 21 the menu, right?
 22 MR. THOMAS: And I just want to clarify.
 23 Are all IHOPs or all Trinity IHOPs?
 24 MR. YOUNG: Well, all we're talking about
 25 today is Trinity IHOPs.

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1 MR. THOMAS: Okay.
 2 MR. YOUNG: That's it.
 3 THE WITNESS: Everyone of my restaurants has
 4 salt and pepper shakers and syrup caddies and coffee
 5 urns. Yeah.
 6 BY MR. YOUNG:
 7 Q. So, all the deep cleaning in all of the restaurants are
 8 the same because they all have the same items to clean;
 9 is that fair?
 10 A. Yes.
 11 Q. Okay. All right.
 12 (Plaintiff's Exhibit No. 6 was marked.)
 13 MR. YOUNG: You can move No. 5 aside.
 14 MR. THOMAS: Take a minute to look through
 15 that.
 16 BY MR. YOUNG:
 17 Q. So, I'm just showing you what's been marked as
 18 Exhibit 6. Take all the time you need to look at that.
 19 And, by the way, I'm not going to go into
 20 depth with everything on the document, but I just want
 21 to get your recognition of the document.
 22 A. Yeah. I recognize it.
 23 Q. All right. So, what is this document?
 24 A. This is Store 1284's Daily Sidework Book.
 25 Q. And Store 1284 is the Detroit store, right?

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1 A. Yes, sir.
 2 Q. And so, do you know who drafted this document?
 3 A. I'm not sure which manager did it.
 4 Q. Do you think it was a manager, though?
 5 A. I'm quite sure. Yes.
 6 Q. Do you know when this document was created?
 7 A. I do not.
 8 Q. Any best estimate?
 9 A. It would just be guessing.
 10 Q. Okay. And so -- all right. I'm going to show you a
 11 series of these sidework documents, and one thing -- if
 12 you can help us, please. I've got all these documents
 13 in one big stack, and I wasn't necessarily sure which
 14 documents or which pages went with which documents.
 15 So, I've got a big stack of paper, and I had to figure
 16 out for myself potentially what was what.
 17 MR. THOMAS: And this might help you, Jesse.
 18 Our responses to the request to produce broke them out
 19 by Bates number and who, what stores they applied to,
 20 both the original and the supplemental.
 21 MR. YOUNG: Very good.
 22 MR. THOMAS: That might help.
 23 MR. YOUNG: Let's go off the record for a
 24 second.
 25 (At 10:41 a.m. to 10:42 a.m., discussion)

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1 held off the record.)
2 (Plaintiff's Exhibit No. 7 was marked.)
3 BY MR. YOUNG:
4 Q. I'll show you what we've marked as Exhibit 7.
5 Again, just take a look. I just want to know
6 if you recognize it.
7 A. Yeah, I recognize it.
8 Q. Okay.
9 A. But that's Mount Pleasant's.
10 Q. Okay. So, this is -- this Exhibit No. 7 comes from the
11 Mount Pleasant store; is that right?
12 A. I believe so. Yes.
13 Q. Again, do you know who would have drafted this
14 document?
15 A. One of the managers over the years. Yes.
16 Q. Do you have any sense of at Exhibit No. 7 how this
17 document is actually used in practice?
18 A. I can tell you that it's unrealistic, but the intent,
19 it sounds like, is that it's split up across the number
20 of servers that they have working and issued out and
21 split up over different day parts, it looks like. But
22 that's not a realistic amount of work for a restaurant
23 on a daily basis.
24 Q. So, fair to say that this is probably kind of
25 ambitious?

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1 A. Extremely. Which is how I knew it was Mount Pleasant.
2 Q. Any idea when this document, Exhibit No. 7, was
3 drafted?
4 A. I really couldn't estimate.
5 Q. All right.
6 (Plaintiff's Exhibit No. 8 was marked.)
7 BY MR. YOUNG:
8 Q. I'll show you what's been marked as Exhibit No. 8.
9 Take a look at this and let me know which
10 restaurant that goes to?
11 MR. THOMAS: Make sure you look at the whole
12 thing.
13 THE WITNESS: I will.
14 I'm not sure which location this is.
15 BY MR. YOUNG:
16 Q. So, on the -- on Trinity's discovery responses it
17 appears to indicate Saginaw?
18 A. Okay.
19 MR. THOMAS: I'll agree that's what the
20 responses say.
21 BY MR. YOUNG:
22 Q. Would that be consistent with your understanding, I
23 guess?
24 A. I'm trying to...
25 Q. Or would you have any reason to question that, I guess?

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1 A. No.
2 Q. Again, do you know who drafted this document?
3 A. It would have been a manager at the store level.
4 Q. Would you know when that document was drafted?
5 A. No, sir.
6 Q. All right. Does Trinity -- the Trinity IHOPs in
7 Michigan, do they -- is there a uniform sidework chart
8 that's in use?
9 A. No.
10 Q. Is there one that's ever been in use?
11 A. Uniform? No.
12 Q. I forget what you said.
13 Is there a written policy regarding sidework
14 for Trinity IHOP?
15 A. No. There's an expectation that the restaurant gets
16 cleaned up at the end of the shift and left in good
17 standing for the next server to come in and earn money
18 or cook or whichever position.
19 But, again, I can't stress enough because
20 each location is different, different day parts are
21 busier, number of employees, things like that, every
22 store. These are really managed on a daily by the
23 store manager. It's not something that -- it's not
24 something that I can say every store at this time is
25 going to do this because this store might be busy at

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1 that time. This one, you might say, "Great. It's slow
2 here."
3 So, we really leave the ability to create
4 these and manage these to ensure that the restaurants
5 are clean and in good standing and in good condition up
6 to the store-level management.
7 Q. So, the managers are free to, I guess, format the
8 sidework documents as they see fit, is what it looks
9 like. Is that right?
10 A. Based off what the restaurant needs are. Yes.
11 Q. And, I mean, given that the IHOP menus are the same and
12 the items are the same, it seems like the sidework
13 needs would be pretty similar across all the
14 restaurants.
15 Do you agree with that?
16 A. The stations and, you know, most of the cleaning tasks
17 would be similar. Absolutely.
18 Q. Okay. So, again, I've looked at all these documents,
19 and if you look through the sidework charts -- and we
20 can do that if you want to -- but it seems to me the
21 tasks that are involved in the sidework are all very
22 similar to the extent that, you know, there's a coffee
23 station, there's a beverage station, there's a syrup
24 shelf, there's a microwave.
25 All of these sidework things appear to be the

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1 same across all the restaurants regardless of what's
2 actually written for sidework?
3 MR. THOMAS: I'm just going to object to lack
4 of foundation.
5 BY MR. YOUNG:
6 Q. Would you agree with that?
7 A. I would agree that the tasks are similar across all
8 locations. Yes.
9 Q. Okay. At the Trinity IHOP locations, do all servers
10 need to have sign off from the managers on the
11 sidework?
12 A. No.
13 Q. Okay.
14 A. A physical one, no. Not that I'm aware of. Some
15 stores might use one that they've created but...
16 Q. Well, in the documents it looks like some stores have
17 created that requirement.
18 A. Yeah. I read that.
19 Q. So, I guess my question is: Does that happen across
20 all locations?
21 A. No.
22 Q. Do you have personal knowledge of whether it does or
23 doesn't?
24 A. I don't recall seeing every store using a sign-out
25 form.

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1 Q. Okay. It's possible that they could use a sign-off
2 form, and you wouldn't know about it, though?
3 A. Yes.
4 (Plaintiff's Exhibit No. 9 was marked.)
5 BY MR. YOUNG:
6 Q. I'll show you what's been marked as Exhibit No. 9.
7 Again, just take a look at that and let me
8 know if you recognize it.
9 A. Yeah. I just don't recall what location it's for.
10 Q. According to Trinity's supplemental discovery responses
11 this says it's Bloomfield Hills?
12 MR. THOMAS: Yes. That's correct.
13 BY MR. YOUNG:
14 Q. Any reason to disagree with that?
15 A. No.
16 Q. What is this document -- do you know? -- that Exhibit
17 No. 9?
18 A. A Pre-Shift Guide.
19 Q. And what is it used for?
20 A. It looks like assigning positions and responsibilities
21 for all of their positions in the restaurant.
22 Q. Okay. And this is the work that's supposed to be done
23 before their shifts?
24 A. No.
25 Q. Or is this filled out before their shifts?

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1 A. I believe this is filled out before their shift.
2 Q. So, if you know, how -- did you draft this document?
3 A. No.
4 Q. Do you know who drafted it?
5 A. I would assume the manager.
6 Q. Do you have any understanding of how this chart on the
7 right-hand side works with respect to the running
8 sidework?
9 A. Yeah. This is, as I explained before, of somebody
10 would be responsible for the front of the south drink
11 station. Somebody would be for the south -- they call
12 that side of the building the south side drink station.
13 Somebody is responsible for condiments, north side of
14 condiments, top salad bar, bottom salad bar.
15 So, it looks like if this staff or this shift
16 happened to have eight servers on -- is that right?
17 One, two, three, four, five, six, seven, eight. Yes --
18 then they would say, "Okay. These eight are going to
19 divide up. Here's what you're responsible for. Please
20 keep this up as we go through the shift."
21 Q. Okay. So, on the left-hand side, then, where it says
22 "SW," -- and I'm guessing that's sidework -- and they
23 put the number next to the name as far as how they're
24 being assigned?
25 A. It's what it appears. "SW," sidework. Yes.

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1 Q. What would "DC" be, if you know?
2 A. That's a good question. Probably deep clean.
3 Q. Deep clean. All right. Makes sense.
4 And do you have any understanding of how that
5 piece of this form gets filled out for deep clean?
6 A. I don't.
7 Q. Okay. All right.
8 And if you turn to the second page of Exhibit
9 No. 9, what is this document, if you know?
10 A. That's just a flowchart listing table numbers. So,
11 maybe they would be assigning sections here, assigning
12 specific tables to individual servers.
13 Q. Okay. So, would this be kind of a representative of a
14 layout of the restaurant?
15 A. It's a pretty generic one, but yes.
16 Q. Roughly speaking?
17 A. It's pretty generic. Yes.
18 Q. Where it says in the middle of the page, "Silverware is
19 a requirement to get Server checkout," that's rolling
20 silverware, I'm guessing?
21 A. Yes.
22 Q. Do you have any understanding at all what this little
23 box at the bottom is, "Last years [sic] sales,"
24 "Budgeted sales," et cetera?
25 A. That's where they set their goals for the day.

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1 Q. For the restaurant?
2 A. For each individual restaurant. Yes.
3 Q. Okay. Do you know if any other restaurants use a
4 Pre-Shift Guide like this other than Bloomfield Hills?
5 A. I don't know if anyone has anything like this, but the
6 concept of what it is of assigning sidework for the
7 shift is pretty generic, so -- yeah. I'm not sure if
8 they have something this structured.
9 Q. Is the sidework at other locations assigned out, maybe
10 not like the form on Exhibit 9, but is it all
11 preassigned to each server?
12 A. Prior to the start of their shift?
13 Q. Yes.
14 A. Yes. Should be.
15 Q. And do you know if that's typically done by documents
16 like at Exhibit 9 or if it's just verbally
17 communicated?
18 A. It's probably a combination of both. Some stores would
19 have a flowchart like this, and they might just circle
20 their sections of what the tables and servers are at
21 and say, "You're going to do Sidework No. 1," or
22 whatever it is. But, yes, they would communicate it
23 before their shift.
24 Q. Okay.
25 (Plaintiff's Exhibit No. 10 was marked.)

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1 BY MR. YOUNG:
2 Q. I've just shown you what's been marked as Exhibit 10.
3 Do you recognize that document?
4 A. It's another location's sidework chart.
5 Q. Again, Trinity's supplemental responses indicate that
6 it's from Roseville.
7 Do you have any reason to dispute that?
8 A. No.
9 MR. THOMAS: And, that's correct.
10 BY MR. YOUNG:
11 Q. And, again, do you know who drafted this document?
12 A. The manager.
13 Q. And do you know when it was drafted?
14 A. I do not.
15 (Plaintiff's Exhibit No. 11 was marked.)
16 BY MR. YOUNG:
17 Q. I'll show you what's been marked as Exhibit No. 11.
18 Same question. Take a look. Let me know if
19 you recognize it.
20 A. This is -- I do recognize it, yes. And this is a
21 store -- I believe I recognize this as Flint.
22 Q. And that's consistent with the supplemental responses,
23 so that's good.
24 Again, do you know who drafted this?
25 A. It would have been the manager. I do not recall when

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1 it was drafted. I'm sorry.
2 Q. That's all right. And it appears with respect to
3 this -- this is, again, another sidework document,
4 right?
5 A. Looks to be that way. Yes.
6 Q. And it looks like -- I'm just looking at the box
7 "Checked by Manager."
8 Do you see that?
9 A. I do.
10 Q. Is it your understanding this would need to be cleared
11 by the manager before the server left for the day?
12 A. It appears to be what it's insinuating. Yes.
13 Q. Are you familiar with the Server 10-Point Section
14 Check?
15 A. Not off the top of my head.
16 Q. Okay. Have you ever heard of it before?
17 A. No.
18 (Plaintiff's Exhibit No. 12 was marked.)
19 BY MR. YOUNG:
20 Q. I'll show you what we're marking as Exhibit No. 12.
21 Same drill. Please, let me know if you
22 recognize it.
23 MR. THOMAS: Take a look at the document.
24 MR. YOUNG: We'll go off the record.
25 (At 11:03 a.m. to 11:05 a.m., discussion

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1 held off the record.)
2 BY MR. YOUNG:
3 Q. So, we have amended Exhibit 12, and now I'm showing you
4 the revised Exhibit 12, which is Bates No. 283 through
5 294.
6 Do you recognize that document?
7 A. It appears to be a combination of multiple documents.
8 Q. Trinity's supplemental responses indicate that that set
9 of documents or that Exhibit 12 comes from the Royal
10 Oak store?
11 MR. THOMAS: That's correct.
12 BY MR. YOUNG:
13 Q. Again, take a look and let me know if you disagree with
14 that.
15 A. Again, it appears to be a combination of multiple
16 documents. So, it's from Royal Oak, then so be it.
17 But this is the server deep clean, which we've already
18 established.
19 Q. And you're pointing to the first two pages of
20 Exhibit 12?
21 A. Yes, sir. And then Page 3 and 4 of this is an excerpt
22 of Mount Pleasant's deep clean list.
23 Q. Okay.
24 A. I'm sorry. Sidework. Sidework.
25 Q. Got it.

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1 A. And then, this appears to be a store sidework chart.
 2 Q. So, for the record -- can I see this document? I just
 3 want to make sure we get this on the record.
 4 So, as Exhibit No. 12, the first two pages,
 5 Bates No. 283 and 284, are the deep clean document,
 6 correct?
 7 A. Part of the deep clean document. Yes.
 8 Q. For the servers, correct?
 9 A. Can I see the second page? Yes.
 10 Q. And the third and fourth pages at Bates No. 285 and 286
 11 you said are an excerpt of the Mount Pleasant sidework
 12 chart; is that right?
 13 A. It is page -- is that 102?
 14 Q. Okay.
 15 MR. THOMAS: Can you compare the two?
 16 MR. YOUNG: Okay.
 17 BY MR. YOUNG:
 18 Q. So, just for the record, again, on Exhibit 12, Bates
 19 Nos. 285 and 286, which were used in the Royal Oak
 20 store, is a copy of the sidework chart from the Mount
 21 Pleasant store, which we have in Exhibit No. 7 at Bates
 22 No. 102 and 104.
 23 Is that right?
 24 A. Of their deep cleans. Yes.
 25 Q. Right. The sidework and the deep clean from the Mount

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1 Pleasant store, right?
 2 A. It appears to be. Yes.
 3 Q. Okay. All right.
 4 (Plaintiff's Exhibit No. 13 was marked.)
 5 BY MR. YOUNG:
 6 Q. I'll show you what's been marked as Exhibit No. 13.
 7 And take a look at this and let me know if you
 8 recognize it.
 9 A. I'm unsure of what location it is, but it's a servers'
 10 sidework.
 11 Q. Any reason to dispute that it's from the Monroe store?
 12 A. No.
 13 MR. THOMAS: And, that's correct.
 14 BY MR. YOUNG:
 15 Q. Okay. Again, you don't know who drafted this?
 16 A. No, sir.
 17 Q. You think it was a manager, though?
 18 A. It would be my assumption. Yes.
 19 Q. And, again, you don't know when this was drafted,
 20 right?
 21 A. No, sir.
 22 (Plaintiff's Exhibit No. 14 was marked.)
 23 BY MR. YOUNG:
 24 Q. Exhibit 14. I'm showing you what's been marked as
 25 Exhibit 14.

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1 Same questions. Let me know if you recognize
 2 it.
 3 A. This looks like a location sidework chart.
 4 Q. Any reason to dispute this was used in East Lansing?
 5 A. No.
 6 MR. THOMAS: That's correct.
 7 BY MR. YOUNG:
 8 Q. Have you ever seen this document before?
 9 A. When I submitted it to -- yes.
 10 Q. So, when it was produced in the case?
 11 A. Correct.
 12 Q. Had you seen it before that?
 13 A. It may be in passing, but not that I can recall.
 14 Q. All right. Let's take a look at it real quick. This
 15 one is a little different.
 16 What is "Zone Sidework"? Do you know what
 17 that is?
 18 A. It looks like the restaurant appears to break up their
 19 dining room into different zones and has a group of
 20 servers responsible for the section versus one server
 21 being responsible for a specific number of tables.
 22 Q. Okay. I see "Zone No. 1: Cho's Apartment."
 23 What is that? Do you know?
 24 A. Cho is a long-time employee of ours, basically since
 25 we've opened, and they gracefully name that section of

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1 the restaurant "Cho's Apartment."
 2 Q. That's where he lives?
 3 A. It's a female. That's where she lives in the
 4 restaurant.
 5 Q. Okay.
 6 A. And our guest lovingly call it the same.
 7 Q. All right. Just so the record is clear, we're being
 8 sarcastic when we say "she lives in this zone," right?
 9 A. Yes. I am being sarcastic, yes.
 10 Q. Okay. So, all of the exhibits we've looked at here
 11 from Exhibit 6 all the way through 14, these are all
 12 server sidework charts.
 13 Is that your understanding?
 14 A. No. Some of them were deep clean charts.
 15 Q. Right. Let me re-ask my question.
 16 Exhibit 6 through 14, these all apply to
 17 servers; is that correct?
 18 A. Correct.
 19 Q. Were you -- I take it from your previous answer, you
 20 were involved in the document production in this case?
 21 A. Yes.
 22 Q. And were you the primary person to go find the
 23 documents and produce them?
 24 A. I simply requested them from my restaurants.
 25 Q. Okay. Tell me about that process.

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1 A. I sent an e-mail out and said, "Please provide me any
2 sidework charts, however you guys manage sidework,
3 please."
4 Q. Okay. Did you attach the discovery requests?
5 A. No.
6 Q. Did you otherwise tell them that this was for the
7 litigation?
8 A. No.
9 Q. And is Exhibit, I guess, 6 through 14 the extent of the
10 sidework and deep clean charts that you received?
11 A. It is.
12 MR. THOMAS: I think you can continue to ask.
13 I'll just note for the record, Jesse, I think one is
14 missing.
15 MR. YOUNG: Okay. Fair enough. And I'll
16 just ask the question just because of that.
17 BY MR. YOUNG:
18 Q. So, you've produced every responsive sidework chart or
19 deep clean chart that you received from your e-mail?
20 A. Yes. I produced, yes.
21 Q. To your attorneys?
22 A. Yes, I did.
23 Q. Okay. How does Trinity -- how does Trinity's IHOP
24 restaurants track its servers work time?
25 MR. THOMAS: I'm just going to object to the

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1 form of the question. It's a bit vague.
2 But answer, if you know.
3 THE WITNESS: I was going to ask for clarity
4 to your question.
5 BY MR. YOUNG:
6 Q. Sure. I can do that.
7 Are the servers at Trinity required to log in
8 and log out for their work shifts?
9 A. All employees log in. All hourly employees clock in
10 and clock out. Yes.
11 Q. Which would include servers?
12 A. All employees. Yes.
13 Q. How do the servers clock in and clock out for their
14 shifts?
15 A. Via MICROS.
16 Q. That's the POS system?
17 A. Yes, sir.
18 Q. How long have they been clocking in and clocking out
19 through MICROS?
20 A. For at least ten years.
21 Q. Can you explain to me the process that they would go
22 through to clock in and clock out?
23 A. Sure. Some stores have -- some servers have swipe
24 cards. Some servers have four-digit PIN numbers
25 assigned to them, specific to them, that basically you

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1 punch -- you clock in, type your number, or swipe your
2 card. It will ask you what position you're clocking in
3 for, and you accept the position. And there you go.
4 And then when you clock out, you swipe your
5 card or you enter your number. It's going to ask you
6 if you're taking a break. If you say "no," it's going
7 to say that you're clocking out, and you say "yes."
8 And that's it.
9 Q. Okay. We talked at the beginning of the deposition
10 about identification numbers for the servers.
11 Remember that?
12 A. Um-hmm.
13 Q. So, I think you mentioned there's an employee ID number
14 for each server, right?
15 A. Yes.
16 Q. I think you also mentioned there's a swipe card that's
17 personal to each server?
18 A. Um-hmm.
19 MR. THOMAS: Is that a "yes"?
20 THE WITNESS: Yes. Sorry.
21 BY MR. YOUNG:
22 Q. And now you just said there's also a four-digit number
23 that's associated with each server; is that right?
24 A. No. I said some servers have swipe cards. Some
25 servers use their four-digit Social -- the last four

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1 digits of, I believe, their Social Security number
2 which identifies them in MICROS.
3 Q. So, on the POS system, the servers either have a card
4 or this four-digit number?
5 A. That is correct.
6 Q. And the card or the four-digit number both serve as the
7 same purpose?
8 A. That is correct.
9 Q. Okay. Is Trinity able to print reports of servers'
10 time?
11 A. We can run payroll reports.
12 Q. If I wanted to see what Joe Johnson worked last week,
13 could I go into MICROS and print a report to see how
14 many hours he worked last week?
15 A. In the back office, yes.
16 Q. And you can do that for all servers, right?
17 A. Yes.
18 Q. And all the servers are trained through the POS system,
19 right?
20 A. I'm not sure.
21 Q. They're trained on the POS system?
22 A. How to use the POS system. Yes, they are.
23 Q. And as part of that, servers are trained how to track
24 their time?
25 A. Track their time? When they clock in -- I apologize.

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1 When they clock out, MICROS issues them a receipt of
2 how many hours they worked that shift and also an
3 ongoing tally for the pay period. So, a server would
4 probably tell them during training, "Keep your receipt
5 each day, and it shows you" -- "it tracks your hours."
6 Q. Does Trinity have access to those receipts?
7 A. No. It's one receipt, and it's for the employee.
8 Q. I see. Okay.
9 Are the servers trained on how to log in and
10 log out of the POS system?
11 A. How to clock in and clock out?
12 Q. Yes.
13 A. Yes.
14 Q. Thank you. And, again, when they're clocking in for
15 the day, they have to select what position they're in,
16 right?
17 A. Some employees have multiple positions, so some
18 employees would have multiple options. Yes.
19 Q. So, if somebody is clocking in as an expo, for example,
20 when they hit "expo" in the computer, then it knows to
21 pay them whatever their hourly rate is for that
22 position?
23 A. Correct.
24 Q. And same thing for the servers. If they're a server
25 and they punch in their four-digit number or swipe

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1 their card, the computer would know to give them the
2 tip credit or take the tip credit for that server,
3 right?
4 A. It would pay them the appropriate pay rate.
5 Q. Let's talk about servers for a minute.
6 When they clock into the MICROS system, is
7 there any distinction between regular hours worked
8 versus sidework hours?
9 A. I'm not sure I follow your question.
10 Q. Sure. If Sally Sue clocks in for her shift, and she's
11 going to spend the first 20 minutes of her shift doing
12 some sidework for some reason, does she have to make
13 that distinction in the system when she clocks in?
14 A. I don't know of any servers starting their shift doing
15 sidework.
16 Q. That's not my question. My question is: Is there a
17 distinction in the system between sidework and just
18 regular hours worked?
19 A. No.
20 Q. Does Trinity IHOP in any way distinguish between how
21 many hours are worked doing sidework versus other
22 duties?
23 A. No.
24 Q. Do you know if Trinity's MICROS system is able to make
25 that distinction?

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1 A. I don't think so. Not that I'm aware of.
2 Q. Okay. Do the Trinity IHOPs have any way whatsoever to
3 quantify the number of hours worked doing sidework by
4 the servers?
5 A. No.
6 Q. But you understand one of the issues in this case is
7 how much time the servers spend doing sidework, right?
8 A. I do understand that.
9 Q. So, it is your understanding that the only way we're
10 ever going to know how much time is spent doing
11 sidework is based on the servers own estimates?
12 MR. THOMAS: I'm going to object on
13 foundation.
14 But you can answer.
15 THE WITNESS: Can you repeat that again?
16 MR. YOUNG: I would if I could.
17 Can you repeat that?
18 (At 11:22 a.m., the record was read back.)
19 MR. THOMAS: And I'm just going to object to
20 form and foundation.
21 You may answer.
22 THE WITNESS: I would assume -- I would say
23 that it would be anybody's estimate. My estimate, the
24 employee's estimate. Yes.
25 //

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1 BY MR. YOUNG:
2 Q. Okay. My point is, though, it's going to come down to
3 people estimating what their time is, right? Their
4 sidework time.
5 A. It appears that way. Yes.
6 Q. Are you aware of any documents at Trinity IHOP related
7 to tip pooling or tip sharing?
8 A. Not that I'm aware of. No.
9 Q. What, I guess, in the past -- let's say since
10 March 2015. Okay?
11 What is your understanding of what the -- any
12 tip pooling or tip sharing process has been or practice
13 has been?
14 A. Each store was different. The stores had -- basically
15 the servers would provide a percentage of their sales.
16 At the time, the managers would -- at the time of
17 checkout, the managers would collect them, and they
18 would be disbursed amongst the server assistants. Some
19 stores would be expos as well, maybe even a host.
20 Q. So, just to make sure I heard you correctly.
21 So, the servers would provide the tip outs to
22 the managers, and then the managers would then
23 distribute those to the participants in the tip pool?
24 A. That is correct.
25 Q. Do you remember what the percentages were?

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1 A. I don't. Each store, from my understanding, was
2 different.
3 Q. Do you have any understanding if it was one percent of
4 their sales go to the expo, one percent goes to the
5 buser, or anything like that?
6 A. I don't. I would be speculating.
7 Q. Okay. You had mentioned the -- let's stick with tip
8 pooling or tip sharing.
9 You understand I'm talking about the same
10 thing when I say "tip pooling" or "tip sharing"?
11 A. I do.
12 Q. With respect to the tip pools, you said the servers
13 would tip out to certain other employees, right?
14 MR. THOMAS: I'm just going to object to the
15 misrepresentation of his testimony.
16 But answer, if you know.
17 THE WITNESS: Servers would tip out a
18 percentage of sales, and then that would be disbursed
19 amongst the server assistants, if there was an expo,
20 maybe a host.
21 BY MR. YOUNG:
22 Q. So, server assistants, expos, hosts, if they were
23 there?
24 A. Expos if they were there.
25 Q. Expos if they were there.

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1 Anybody else that they would split the tips
2 with?
3 A. Not that I'm aware of.
4 Q. Do you know if any of the Trinity applications required
5 the servers to participate in the tip pool?
6 A. It's my understanding that it was on a voluntary basis.
7 It kind of grew out of habit, and it was initially a
8 server suggestion. I don't recall which location it
9 was in that it started, but it was initially born in an
10 attempt of gratitude for my server assistants or
11 expeditors helping the servers make more money.
12 It wasn't a company initiative or our
13 expectation of a server to tip out anybody, but servers
14 that requested the ability to do it and some of the
15 managers allowed it. It kind of grew from that area.
16 Q. Did any of the managers forbid it? Do you know?
17 A. I believe Flint has not done it for the last year or
18 so, and that was just fine with us. It was really how
19 stores wanted to do it.
20 Q. Did the manager at Flint actually specifically prohibit
21 the tip pool?
22 A. I don't know how he and she came to the conclusion of
23 not wanting to do tip pooling, but they didn't and...
24 Q. Okay. And you have been in the restaurant industry a
25 the long time.

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1 You understand that tip pooling is a industry
2 practice that just existed before Trinity, right?
3 A. I can't speak for other companies' practices.
4 Q. That was a bad question.
5 When the servers would tip out a percentage
6 of their sales, was that somehow documented by the
7 managers or by the servers?
8 A. Not that I'm aware of.
9 Q. You said at the end of the server shift, they would get
10 some printout of their hours, right?
11 A. They would get two things. So, a server runs a server
12 report. A server -- the server report outlines what
13 their sales were, how much credit card tips they had
14 and collected, what their discounts were, what their
15 voids were, how many customers they had, what their
16 turn time was, beverage percent, dollar of beverages
17 broken down by juice and coffee and so forth.
18 It was pretty much a quot- -- for lack of a
19 better term, it was basically a cash register receipt
20 because each server does their own server banking. So,
21 it was a report of their transactions for the shift.
22 MR. THOMAS: And I'll just point a guidance
23 there. Great, you know, detail, and she's awesome but
24 she --
25 Maybe you are a superhero. I'm not sure.

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1 -- but slow down a little bit in your answer.
2 THE WITNESS: Okay.
3 BY MR. YOUNG:
4 Q. You're fine. I was waiting to let her -- I don't know
5 if she was catching up or what.
6 Okay. Let's talk about the server banking
7 for a second. How was that tracked? Is that tracked
8 through there POS system, too?
9 A. Yes.
10 Q. And that's also tracked by the same four-digit number
11 or the card?
12 A. Correct. All transactions are through the POS?
13 Q. So, with respect to the servers, they have to claim
14 their tips at the end of their shift, right?
15 A. By law, yes.
16 Q. Do they -- do they claim their tips, a fair part of
17 their tip pool, for example? Do they claim their tips
18 before the tip out or after the tip out? Do you know?
19 A. I'm not sure to be honest with you. It could be both,
20 'cause you don't need to clock out -- you don't claim
21 your tips until you actually clock out for a server.
22 They don't need to clock out in order to run their
23 report. You have to still be on the clock to run your
24 report. So, some have very well could have tipped out
25 and then calculated what tips they have, and then enter

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1 that number into the POS.
2 Q. Is it also possible that they printed off the report
3 and then tipped out after they clocked out?
4 A. I wouldn't assume that they would be doing sidework and
5 doing any cash transactions with the manager, giving
6 their money in the reports, off the clock. I would
7 assume they would still be on the clock so -- but I
8 guess it's possible.
9 Q. All right. Are there any written policies of Trinity
10 with respect to that process?
11 A. Which process?
12 Q. The server banking and the server report and the tip
13 out and all of that, just the process for --
14 A. Definitely not a tip out. Server banking might be in
15 employee handbook, cash handling. They're expected
16 to -- they're expected to submit the amount of money
17 that's stated on their server report. I think the
18 process of that would be more hands-on training as a
19 server is in training.
20 Q. Are the hourly employees at Trinity paid on a biweekly
21 basis?
22 A. Biweekly.
23 Q. Do the tips appear on the pay stubs?
24 A. The tips claimed?
25 Q. Yeah.

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1 A. I believe so. I believe so.
2 Q. We can look and just find out, right?
3 A. Sure. Yes.
4 Q. And we can go back to the POS system and look, if we
5 wanted to, at the specific server's sales and credit
6 card sales and all that information that shows up on
7 the report?
8 A. For a certain amount of time.
9 Q. Do you know how much time?
10 A. I believe it might be 30 to 90 days, somewhere between
11 there.
12 Q. The expos, do they have to run any kind of report at
13 the end of their shift?
14 A. No.
15 Q. Does Trinity track how much the expos get by way of
16 their tip outs?
17 A. No.
18 Q. Does Trinity require the expos to claim their tip out
19 moneys?
20 A. No.
21 Q. Other than the servers, does Trinity require any
22 employees to claim any trip out money they receive?
23 A. No. Can I add to that?
24 Q. Sure.
25 A. A host would be taking carryouts, and so a host would

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1 have access to the sale screen, actually, to do
2 transactions. So, a host would also be required to
3 report tips.
4 Q. Okay. So, in the instance, if a host ran some food out
5 to a car or something or gave somebody a carryout and
6 they got a tip, they would have to claim it?
7 Is that what the purpose is?
8 A. No. If a host was -- a host does carryout orders,
9 phone-in and take-out orders, so they may be tipped on
10 that.
11 Q. Okay.
12 (Plaintiff's Exhibit No. 15 was marked.)
13 BY MR. YOUNG:
14 Q. I'll show you what we've marked as Exhibit 15.
15 Do you recognize that document?
16 A. Yes, sir.
17 Q. What is that?
18 A. It's a description of an expo position.
19 Q. And would this come from the IHOP Corporate SOP similar
20 to the server description?
21 A. Possibly, yes.
22 Q. Is this the same job description that's used throughout
23 all the Trinity restaurants, the IHOP restaurants?
24 A. To the best of my knowledge, yes.
25 Q. How long has this particular description been in use,

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1 as far as you know?
2 A. I'm really not sure. It could be years, I'm assuming.
3 Q. Okay. Are you aware of any servers being disciplined
4 for not tipping out to other employees?
5 A. No.
6 MR. YOUNG: Why don't we take a couple minute
7 break.
8 (At 11:37 a.m. to 11:53 a.m., recess was
9 taken.)
10 BY MR. YOUNG:
11 Q. Just a couple follow-up questions.
12 You recognize you're still under oath, right?
13 A. Yes.
14 Q. With respect to the expos, where in the restaurant did
15 the expos physically work?
16 Did they work at the food counter?
17 A. Each shift in each restaurant is different. They -- it
18 is a combination of both interacting with the guests on
19 the floor and in, what we call, the service passbar
20 area. So, it's both.
21 Q. Do they have a station, if you will?
22 A. We call it "the window." Yes.
23 Q. The window?
24 A. Yes.
25 Q. Is it the same thing as the food counter?

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1 A. Yes.
2 Q. The heat lamps and everything?
3 A. Yes.
4 Q. What uniforms did the expos wear?
5 A. Same as the servers, minus the apron.
6 Q. Okay. Do they wear hats?
7 A. Some do. We don't have a whole lot of expos. Usually
8 it's the manager that holds the role.
9 Q. Does the Trinity IHOP restaurants contract with a
10 cleaning crew for the inside of the restaurants?
11 A. No. With the exception of carpet cleaners.
12 Q. Carpet cleaners.
13 I think you said you were involved with the
14 document production in this case, right?
15 A. Yes.
16 (Plaintiff's Exhibit No. 16 was marked.)
17 BY MR. YOUNG:
18 Q. Let's go through what's marked as Exhibit 16.
19 You've seen this document, right?
20 MR. THOMAS: Look through the entire
21 document.
22 (Plaintiff's Exhibit No. 17 was marked.)
23 THE WITNESS: It looks familiar, but I'm not
24 100 percent sure I've seen this before.
25 //

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1 BY MR. YOUNG:
2 Q. Okay. Look at, if you could, on the first page of
3 Exhibit 16, Request No. 1.
4 Do you see that?
5 A. Um-hmm.
6 Q. It says (reading):
7 "All documents concerning,
8 reflecting, describing, or pertaining
9 to the duties, responsibilities, or
10 requirements of Plaintiffs and Servers
11 during the Relevant Time Period
12 including, but not limited to, job
13 descriptions."
14 Did I read that correctly?
15 A. Yes.
16 Q. Would the -- I'm sorry.
17 Was it Dine Plate, the training program?
18 A. Yes.
19 Q. Would Dine Plate fall under this request?
20 MR. THOMAS: I'm just going to object to the
21 extent it calls for a legal conclusion.
22 But answer, if you know.
23 THE WITNESS: Would Dine Plate fall under
24 this?
25 //

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1 BY MR. YOUNG:
2 Q. And specifically I'm looking at documents concerning
3 responsibilities or requirements of the servers.
4 A. Potentially. It's a training program, yes.
5 Q. Did you at any time in this case produce the Dine Plate
6 documents or the program documents to your counsel?
7 A. It was mentioned.
8 Q. Okay. What about the Trinity employee handbooks, did
9 you at any point produce that to your counsel?
10 A. I myself did not. No.
11 Q. Okay. What about any other Trinity employee policies
12 outside of the handbook, did you produce any of those
13 to your counsel?
14 A. Not that I'm aware of. No.
15 Q. You're familiar with the job postings that were
16 produced in this case?
17 A. Yes.
18 Q. Are those all the job postings that you're aware of?
19 A. To the best of my knowledge, yes.
20 Q. I'm sorry. Where were those posted?
21 A. Some were ZipRecruiter. I believe one was
22 PeopleMatter, slash, Snagajob. One was a flier that is
23 basically a template that can be -- you know, if you
24 change the store location or the position, that could
25 be posted on Craigslist or even handed out in person

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1 to, like, local schools or things like that.
2 Q. Who's typically responsible for putting up the job
3 postings?
4 A. That would be a combination of my field recruiter and
5 even some of the restaurant managers post on, like,
6 Craigslist or Facebook or something.
7 Q. And did you ask either of the managers or the field
8 recruiter for all the job postings?
9 A. Yeah. My field recruiter provided me the flier. I
10 myself pulled ZipRecruiter, and I had IT pull the
11 descriptions off of PeopleMatter, Snagajob.
12 We contract with PeopleMatter. PeopleMatter
13 has connections with -- relationships with Snagajob. I
14 believe actually Snag a Job bought PeopleMatter, so
15 they kind of do mass postings. But we list on
16 PeopleMatter and ZipRecruiter.
17 Q. You had mentioned earlier that you sent out an e-mail
18 to your managers asking for all the sidework charts?
19 A. Yes.
20 Q. In that same e-mail, did you request any other types of
21 documents?
22 A. No.
23 MR. THOMAS: I'm just going to object to that
24 e-mail. I'm sorry. If you just give me some latitude
25 here.

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1 Was Trinity's attorneys copied on that
2 e-mail?
3 THE WITNESS: They were.
4 MR. THOMAS: I'm just going to object --
5 MR. YOUNG: That's fine.
6 MR. THOMAS: Okay.
7 BY MR. YOUNG:
8 Q. Your attorneys in this case, right?
9 A. I'm sorry?
10 Q. Your attorneys that are in this case?
11 A. Yes.
12 Q. I think we already talked about this.
13 But there's no documents showing tip pooling
14 or tip sharing of any kind?
15 A. Not that I'm aware of.
16 Q. Did you specifically ask anybody for those kinds of
17 documents?
18 A. I asked, and that would have been included in -- I
19 believe in the e-mail that I copied our attorneys on.
20 MR. THOMAS: Then don't talk about the
21 content.
22 BY MR. YOUNG:
23 Q. I don't need to know the content.
24 So, you did ask for those kinds of documents?
25 A. If anything was there, yes.

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1 Q. And you got nothing back in return?
2 A. Correct.
3 Q. Do the expos train through Dine Plate?
4 A. I'm not familiar. I really don't know.
5 Q. Okay. Do the expos go through training?
6 A. Yes. But I believe it's more geared towards the
7 service training because there's a lot of the same
8 training functions. You have to know the menu. You
9 have to interact with guests. So, I believe it mimics
10 the server training.
11 Q. You keep saying expos interact with guests. And I've
12 been to so many restaurants, and I don't think for the
13 life of me I've ever interacted with an expo.
14 Have you --
15 MR. THOMAS: I'm just going to object to --
16 MR. YOUNG: Well, I'm --
17 BY MR. YOUNG:
18 Q. So, have you ever seen a customer directly tip an expo?
19 A. Yeah.
20 Q. With money?
21 A. Yes.
22 Q. Just curious. Having discussed Exhibit 16, are there
23 any other documents that you think might exist that you
24 haven't produced in response to this response --
25 request? Excuse me.

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1 A. Not to my knowledge.
2 Q. I'm going to show you what's been marked as Exhibit 17.
3 This is supplemental responses. Take a look
4 at these and let me know if you've seen these. Have
5 you seen that before?
6 A. I don't recall.
7 Q. Okay. Exhibit 16 is dated mid August. Okay.
8 Exhibit 17 is dated early September.
9 Was there a -- I'm just curious as to why the
10 supplemental production. Were the sidework charts,
11 like, trickling in over a period of time?
12 MR. THOMAS: I'm just going to object to the
13 extent it calls for any attorney-client privileged
14 conversations.
15 BY MR. YOUNG:
16 Q. That's not what I'm looking for, but I'm just curious.
17 How did we got a supplement- -- supplemental
18 production?
19 And what I'm getting at is did you have to go
20 back and ask for more? Were these things just
21 trickling in over time that you just turned over? Or,
22 if you even know.
23 A. I don't actually recall the reason why.
24 Q. Since September -- today is September 21st.
25 Since September 5th, have you received any

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1 additional documents in response to that e-mail that
2 you sent to your managers?
3 A. No.
4 Q. Have you sent any additional e-mails to your managers
5 asking for other documents?
6 A. No.
7 MR. YOUNG: So, Counsel, I think in my
8 opinion, the training documents through Dine Plate, the
9 Employee Handbook, and any other policies probably
10 would have been responsive to our discovery requests.
11 So, I don't know if you agree with me or not, but if
12 you want us to issue, I guess, an additional discovery
13 request, we can do that. But if you agree with me,
14 maybe you can just supplement again.
15 MR. THOMAS: I disagree, so if you want to
16 submit an additional request, and I'll clarify on
17 redirect why I disagree.
18 MR. YOUNG: Great.
19 (Plaintiff's Exhibit No. 18 was marked.)
20 BY MR. YOUNG:
21 Q. I'll show you what's been marked as Exhibit 18. I hope
22 you recognize that document.
23 Go ahead and just take a look and let me
24 know.
25 A. Yeah. I recognize it.

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1 Q. Did you draft this document?
 2 A. I did not.
 3 Q. Did you review it before you signed it?
 4 A. I did.
 5 Q. After you reviewed it, did you have edits to the
 6 document?
 7 A. Clarity.
 8 Q. Okay. So, corrections, clarifications, things like
 9 that?
 10 A. Correct.
 11 Q. You signed the document. So, assuming that everything
 12 in this document you believe to be accurate; is that
 13 right?
 14 A. Yes.
 15 Q. Do you believe anything you've testified to here today
 16 changes anything that's in this declaration on
 17 Exhibit 18?
 18 A. Not to my knowledge. No.
 19 Q. On Page 3 at No. 9, you referenced the servers claiming
 20 their tips.
 21 You remember we discussed that earlier?
 22 A. Yes.
 23 Q. I think you said you were unsure if they claim their
 24 tips before any tip out or after any tip out.
 25 Do you remember that?

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1 A. I do.
 2 Q. Is that when -- in No. 9, when you say there's no
 3 policy or practice required to servers to report
 4 anything other than their actual tips received, that
 5 doesn't change anything you've already testified about?
 6 A. I'm not following your question.
 7 Q. Sure. Well, it says, "Report anything other than their
 8 actual tips received," but it doesn't make any
 9 distinction with any -- before or after any potential
 10 tip out, right?
 11 A. Correct.
 12 Q. It doesn't change what you've already testified about,
 13 right?
 14 A. Correct.
 15 Q. Has Trinity closed any restaurants since March 2015?
 16 A. No.
 17 Q. And the statements that you're making in your
 18 declaration, these are based on your personal
 19 observations; is that right?
 20 A. Yes.
 21 Q. How much of your time do you spend in the restaurants
 22 themselves, would you say?
 23 A. It varies. That -- I would say a fair assessment would
 24 be 65, 70 percent of my time is spent in the
 25 restaurants.

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1 Q. How much -- do you have an office somewhere?
 2 A. Just my home office.
 3 Q. Your home office. Okay.
 4 And how many hours a week do you typically
 5 work?
 6 A. In restaurants or just...
 7 Q. For Trinity?
 8 A. I would say I work, maybe, 80 hours a week.
 9 Q. Okay. And when you go to the -- well, when you're
 10 working out of your home, are you doing administrative
 11 type of work?
 12 A. Yes.
 13 Q. Is that accurate?
 14 A. Yes.
 15 Q. When you're in the restaurants, what are you doing in
 16 the restaurants when you're there?
 17 A. It varies. I could be supporting operations, whether
 18 I'd be cooking or expediting or help seating the door,
 19 busing tables, running the dish tank, training people,
 20 training managers, following up on maybe any action
 21 items we may have. Maybe they just received an
 22 inspection. Maybe they have an inspection coming up.
 23 I do interviews for managers when I'm in the
 24 restaurants. It's pretty wide ranging. Sometimes I'm
 25 just doing my computer work while I'm in the

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1 restaurant.
 2 Q. The inspections, who comes in to inspect?
 3 A. IHOP Corporate does and also the health department, and
 4 then IHOP actually contracts out Ecolab, which they do
 5 food safety inspection.
 6 Q. That's a private company?
 7 A. Yes.
 8 Q. How often do the inspections happen?
 9 A. Once a quarter.
 10 Q. From who?
 11 A. From everybody. They're all over the place.
 12 Q. So, Corporate comes in once every quarter to inspect?
 13 A. On average, yes.
 14 Q. What are they inspecting?
 15 A. They're looking for -- Corporate does an operational
 16 assessment, so they're looking to see how the
 17 operations are. Are the servers following the servers'
 18 steps, are the cooks making product per recipe and
 19 proper portioning, is the restaurant in good condition,
 20 is it clean, is the building in good condition, is the
 21 equipment working. I mean, that's kind of the gist of
 22 it.
 23 Q. They're trying to make sure their brand is being --
 24 A. Protected.
 25 Q. -- taken care of?

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1 A. That's correct.
 2 Q. And then you said the health department comes in once a
 3 quarter?
 4 A. Yeah. About every 90 days on average. Yes.
 5 Q. And they're checking to make sure everything is safe
 6 and clean and all of that, right?
 7 A. Yes.
 8 Q. When IHOP Corporate comes in to inspect, is there
 9 anything special that you have to do to prepare for
 10 those inspections?
 11 A. No. For the most part they're unannounced, so we don't
 12 have a whole lot of preparation time for them. And the
 13 stuff that they are looking for, our building, you
 14 know, brand image. There's not a whole lot of
 15 reactionary time that you get to do something so, no.
 16 Q. What about for the health department?
 17 A. Those are unannounced.
 18 Q. Same kind of a thing?
 19 A. It's food safety.
 20 Q. Did Trinity's IHOP store managers go through training?
 21 A. Yes.
 22 Q. Describe that to me. What is -- what do they do?
 23 A. I briefly described it when we went through the
 24 packets. They learn all hourly positions. They learn
 25 how to cook. They will learn how to serve, expedite,

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1 dish wash, host.
 2 We typically have a store, too, that is
 3 designated as our training store. They will -- as
 4 they're going through their hourly positions, that
 5 training looks just like any hourly employee. They'll
 6 be trained by the hourly employees that we use in the
 7 restaurants.
 8 And then there's management training, so
 9 they're going to be focused on the administrative part
 10 of the business: managing costs, understanding costs,
 11 how to do food orders, how to build a schedule, how to
 12 manage a schedule, what the inspections look like.
 13 Basically the entire process of running a restaurant.
 14 Q. Who conducts their training on the non-hourly work
 15 things?
 16 A. Usually the manager inside the training store, and it's
 17 also in conjunction with Cecilia Burgoa, who is listed
 18 on our org chart as our trainer.
 19 Q. Which of Trinity's IHOP stores are dedicated training
 20 stores?
 21 A. Right now it's only Saginaw. In the past, it's been
 22 Dearborn Heights.
 23 Q. When -- just out of curiosity, when was Dearborn
 24 Heights doing the training?
 25 A. I want to say two years ago.

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1 Q. That's when it stopped doing the training?
 2 A. That's when it stopped doing the training. So, prior
 3 to that, it was -- I think they held certification for
 4 about a year.
 5 Q. And then Saginaw, has that been --
 6 A. That's been about ten months.
 7 Q. Okay. It's only been training for about ten months?
 8 A. It's been certified as a training store. Yes.
 9 Q. Who certifies it?
 10 A. IHOP Corporate.
 11 Q. What makes it -- I guess, what gives it the
 12 qualifications to be certified?
 13 Is there anything -- go ahead.
 14 A. Inspection scores. That's a big piece. You have to be
 15 in compliance with IHOP's ops measurables.
 16 Tenure of management, number of managers in
 17 the building, the manager getting certified as a
 18 trainer. There's a process that they have to go
 19 through. That's pretty much it.
 20 Q. And so, all of the managers, when they're getting
 21 trained, they go to one of the training stores?
 22 A. Only if it's certified. So, unfortunately, like I
 23 said, out of our 14 years, we've only had two
 24 restaurants certified, and they were both for a short
 25 amount of time.

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1 Q. Where did they go before that?
 2 A. We just trained in-house, and we would use the top
 3 performing manager.
 4 Q. Did any of the managers ever go to corporate -- go to
 5 corporate to get any manager training?
 6 A. That used to be IHOP's Corporate's practice. They
 7 would go, and they had a program called LOB, which is
 8 an acronym for Leading Our Brand. That was kind of the
 9 final certification. But that stopped five years ago,
 10 six years ago.
 11 Q. Are servers subject to performance evaluations?
 12 A. Yes. All employees are. We're not -- our managers in
 13 our restaurants are not consistent. There's not a
 14 scheduled time period of a year when we do them, but
 15 yes.
 16 Q. And are they evaluated on the quality of their service
 17 to your customers?
 18 A. That's hard to quantify. We would evaluate them. So,
 19 I believe there might be -- like, service scores might
 20 be included on there. That might be a way we quantify
 21 that.
 22 Q. Complaints from customers would probably find their way
 23 on an evaluation, I'm guessing?
 24 A. Most likely.
 25 Q. Are they evaluated on sidework?

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1 A. Potentially, yes.
2 Q. Is there a form that's used for the evaluations?
3 A. We -- yes. Yes, there is.
4 Q. Okay. Have you ever -- you've seen those forms?
5 A. Yes.
6 Q. Is there a section on those forms for sidework?
7 A. I don't recall.
8 Q. Are they evaluated on their deep cleans?
9 A. I don't think that's listed on there.
10 Q. What else might they be evaluated on?
11 A. Maybe attendance, uniform, menu knowledge.
12 Q. Uniform compliance?
13 A. Yes, sir. That's all that I could think of at this
14 moment.
15 MR. YOUNG: I don't have any further
16 questions.
17 We are going to hold the deposition open
18 subject to the documents that probably should have been
19 produced, but for today, I don't have any other
20 questions.
21 MR. THOMAS: Pursuant to the original
22 request, that is? Your Plaintiff's original document
23 request?
24 MR. YOUNG: Yeah. Were there two of them?
25 MR. THOMAS: No. Just the one.

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1 MR. YOUNG: Yeah.
2 MR. THOMAS: Okay. Let's take a break real
3 quick and see if I have any questions.
4 MR. YOUNG: Sure.
5 (At 12:23 p.m. to 12:34 p.m., recess was
6 taken.)
7 EXAMINATION
8 BY MR. THOMAS:
9 Q. Mr. Henderson, I've just got a couple of questions to
10 go back over with you. I'm going to try to do them
11 chronologically in the same order that Mr. Young did it
12 just to kind of keep things straight.
13 Do you recall towards the beginning of your
14 deposition you went store by store and gave estimates
15 as to how many servers worked at -- or were capable of
16 working at each store?
17 A. Yes.
18 Q. Were your estimates purely guesses?
19 A. Yes.
20 Q. And do you recall kind of we've spoken -- Mr. Young
21 asked you quite a bit about tip pooling.
22 Do you recall that?
23 A. Yes.
24 Q. How long have you been working for Trinity Restaurant
25 Group?

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1 A. Thirteen years.
2 Q. Has there ever been a Trinity Corporate policy that
3 requires tip pooling for any employee?
4 A. No.
5 Q. I believe you said that tip pooling has been -- is no
6 longer a practice at any of the Trinity restaurants; is
7 that right?
8 A. That's correct.
9 Q. Was that decision made because Trinity felt that tip
10 pooling was somehow being done incorrectly or illegally
11 because of what has been alleged in this lawsuit?
12 A. No.
13 Q. And I just want to clarify this.
14 In your time at Trinity Restaurant Group, has
15 there ever been a uniform policy from Trinity to its
16 restaurants on sidework?
17 A. No.
18 Q. So, do you recall testifying when Mr. Young was asking
19 you about servers doing sidework, and I believe you
20 testified that certain sidework is done intra-shift and
21 then at the end of the shift.
22 Do you recall that?
23 A. Yes.
24 Q. Are servers required to do certain sidework at set
25 times during their shifts?

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1 A. Certain sidework, yes.
2 Q. Does Trinity require that sidework be done in a certain
3 manner at a set time for each server?
4 A. No.
5 Q. Is that going to vary based off of store need during
6 that particular shift?
7 A. Absolutely.
8 Q. You remember we went through quite a few various
9 sidework lists for some of Trinity's restaurants?
10 A. Yes.
11 Q. So, I believe that's Exhibit 6 through 14?
12 A. Yes.
13 Q. Okay. The sidework list that we reviewed, are those
14 identical across the board?
15 A. No.
16 Q. It appears that they vary restaurant by restaurant?
17 A. Yes.
18 Q. And so, the server sidework that you looked at with
19 regard to these policies, are servers the only
20 employees who do those tasks?
21 A. No.
22 Q. Okay. Who else would do those?
23 A. Managers help out. Expos would help. Dishwashers or
24 hosts, at times, help.
25 Q. Okay. The manner in which those sidework tasks are

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1 done, is that going to vary by store?
 2 A. Yes.
 3 Q. And that's going to vary based off of whatever need
 4 that particular day, that particular shift?
 5 A. Absolutely.
 6 Q. Does Trinity Restaurant Group require that servers get
 7 checked out from their manager before they're allowed
 8 to clock out for their shift with regard to their
 9 sidework?
 10 A. No.
 11 Q. Is there any policy regard to that practice, a manager
 12 checking a server's sidework before they're allowed to
 13 clock out?
 14 A. Trinity issued? No.
 15 Q. Okay. I'm going to show you Exhibit 9. Can you pull
 16 out Exhibit 9 from your little packet there?
 17 So, do you remember talking about Exhibit 9,
 18 which I believe is the sidework information for
 19 Bloomfield Hills?
 20 A. Yes.
 21 Q. So, I believe on the left-hand side on those columns,
 22 we established that "SW" stands for sidework; is that
 23 right?
 24 A. Yes.
 25 Q. And you testified that you believe that "DC" stands for

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1 deep clean?
 2 A. Yes.
 3 Q. Do you know for a fact that "DC" stands for deep clean?
 4 A. No.
 5 Q. Will you pull out Exhibit 12, please.
 6 So, do you remember testifying about
 7 Exhibit 12, which I believe is the sidework documents
 8 for the Royal Oak restaurant?
 9 A. Yes.
 10 Q. I believe you testified that some of the documents
 11 included with the Royal Oak restaurant appear to be
 12 similar or were from the Mount Pleasant restaurant?
 13 A. Yes.
 14 Q. Do you know how Royal Oak got ahold of certain
 15 documents from the Mount Pleasant restaurant?
 16 A. No. I'm not.
 17 Q. Are you aware of whether the documents that Royal Oak
 18 has that appear to be similar to Mount Pleasant, was
 19 that at the direction of Trinity Corporate to -- from
 20 Mount Pleasant to Royal Oak to provide those documents?
 21 A. No.
 22 MR. YOUNG: I'll just object on foundation.
 23 BY MR. THOMAS:
 24 Q. So, the various sidework lists that we looked at for
 25 some of the restaurants that Trinity lists, is it

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1 accurate to say that those lists with various sidework
 2 tasks that are performed at the store level; is that
 3 correct?
 4 A. Can you repeat that?
 5 Q. Yeah. Strike that. That was a poor question.
 6 The sidework list that we've looked at for
 7 some of the restaurants, Exhibits 6 through 14, those
 8 list certain sidework tasks that servers perform during
 9 their shift; is that right?
 10 A. Yes.
 11 Q. Are those sidework tasks followed verbatim every single
 12 shift?
 13 A. No.
 14 Q. Is it accurate that sidework is going to be determined
 15 based off of the specific day, the specific restaurant,
 16 the shift, certain factors like that?
 17 A. Yes.
 18 Q. So, it's not going to be the exact same every single
 19 day across every single restaurant?
 20 A. No.
 21 Q. Do you remember when Mr. Young asked you if it was one
 22 way to -- for, I guess -- strike that question.
 23 Do you remember when Mr. Young was asking you
 24 that a server estimating how much time they spend doing
 25 sidework was a method of computing the amount of time

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1 they did doing sidework?
 2 A. Yes.
 3 Q. Is it possible that there are other ways to estimate
 4 how much time a server spends doing sidework, and a
 5 server's estimation is simply one form?
 6 A. Yes.
 7 Q. Lastly, can you pull out Exhibit 16.
 8 A. Okay.
 9 Q. Do you have Exhibit 16?
 10 A. Yes.
 11 Q. So, Mr. Young was asking about Plaintiff's document
 12 request, and we focused on No. 1.
 13 You remember testifying about Dine Plate, the
 14 training module?
 15 A. Yes.
 16 Q. Is Dine Plate a virtual platform?
 17 A. Yes.
 18 Q. Or a computer-based platform?
 19 A. It's basically a website. Yes.
 20 Q. Is that a document?
 21 A. No.
 22 MR. THOMAS: I have no further questions.
 23 RE-EXAMINATION
 24 BY MR. YOUNG:
 25 Q. If you printed off the Dine Plate program, would it

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1 then be a document?
 2 A. I don't know that you can.
 3 Q. Okay. Have you tried it?
 4 A. I have not.
 5 Q. All right. You had just mentioned you were talking
 6 about how to estimate the amount of sidework done, and
 7 you said servers' estimates were not the only form of
 8 estimating that, the amount of that work?
 9 A. Yes.
 10 Q. What other forms are you aware of that you can use to
 11 estimate the amount of sidework that they perform?
 12 A. Managers estimate, my estimate. I think -- you know,
 13 anybody estimating the time is just as valid as the
 14 next.
 15 Q. Right. That's what we talked about earlier, right?
 16 A. Yes.
 17 Q. People's estimations is what we're left with, right?
 18 A. Yes.
 19 Q. We talked about the numbers of employees that work at
 20 each location.
 21 Do you remember?
 22 A. Yes.
 23 Q. And you just -- you estimated it before, and now you're
 24 saying you're just guessing. Right?
 25 A. Well, I stated multiple times in the beginning that it

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1 would be a guess.
 2 Q. Right. A guess or an estimate, right?
 3 A. I stated "guess," I believe, in the beginning.
 4 Q. It would be an educated guess, though.
 5 Wouldn't you agree with me?
 6 A. It would still be a guess.
 7 Q. Right. But would you also agree it would be an
 8 educated guess based on your experience with the
 9 company?
 10 A. Yes.
 11 Q. We talked about the company put a stop to the tip
 12 pooling practice?
 13 A. Um-hmm.
 14 Q. "Yes"?
 15 A. Yes. Sorry.
 16 Q. It's okay.
 17 Why specifically did the company stop the
 18 practice?
 19 A. It was never a company policy. We allowed it because
 20 it was per an employee's request. Based on the
 21 lawsuit, it sounded like an employee was -- it wasn't
 22 helping our moral. It wasn't helping the culture.
 23 Then we're going to remove it.
 24 Q. So, it sounds like it was removed as a potential
 25 liability or risk to the company; is that a fair --

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1 A. No.
 2 MR. THOMAS: I'm just going to object to
 3 form.
 4 But you can answer.
 5 THE WITNESS: No.
 6 BY MR. YOUNG:
 7 Q. Any other reasons why?
 8 A. I think what I stated was pretty accurate.
 9 Q. Okay. You and Mr. Thomas were looking at Exhibit 9,
 10 and specifically the sidework acronym and the DC
 11 acronym.
 12 Do you have any other explanation for what DC
 13 could be?
 14 A. No.
 15 Q. Does it make sense to you that it would be deep clean
 16 given where it is on this chart next to sidework?
 17 A. That was my first guess. Yes.
 18 Q. Okay. Last couple of questions.
 19 So, Exhibits 6 to 14, these sidework
 20 documents.
 21 A. Um-hmm.
 22 Q. You had just testified and agreed with Mr. Thomas that
 23 those documents are not verbatim of one another, right?
 24 A. Correct.
 25 Q. Or they're not identical to each other, right?

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1 A. Correct.
 2 Q. That you and I had talked about that the actual duties
 3 of the sidework from restaurant to restaurant don't
 4 really vary as far as which duties are being done,
 5 right?
 6 A. I agree that all stores have sugars, syrup caddies,
 7 coffee pots, but those forms that you produced to me
 8 are not the same forms. Those are not the same --
 9 Q. Obviously, they're not the same, correct?
 10 A. Right.
 11 Q. But the sidework itself, as far as cleaning the sugar
 12 caddies and cleaning the syrup stations and beverage
 13 stations and et cetera, et cetera, the tasks themselves
 14 are all the same across all the restaurants?
 15 A. They're not all the same.
 16 Q. Generally speaking, they're all the same?
 17 A. They're similar.
 18 Q. Yes. Thank you.
 19 MR. YOUNG: No further questions.
 20 MR. THOMAS: That's it.
 21 MR. YOUNG: Thank you, Mr. Henderson.
 22 THE REPORTER: And just to avoid having to
 23 fill out paperwork, can I get any orders on the record,
 24 please.
 25 MR. YOUNG: I'll take a rough copy in PDF, or

1 I don't care how you want to get it to me, an e-trans.
2 MR. THOMAS: E-trans mini for me. I don't
3 need a physical copy, but as long as it's that and
4 electronic form of the exhibits.

5 (At 12:48 p.m., the deposition concluded.)

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1 STATE OF MICHIGAN)
2 COUNTY OF OAKLAND) ss:
3

4 I, Sandra Apley, Certified Shorthand
5 Reporter, a Notary Public acting for the County of
6 Oakland, State of Michigan, do hereby certify that the
7 testimony of ROBERT HENDERSON, whose attached
8 deposition consisting of 132 pages, was taken before me
9 in the above-entitled matter and was by me duly sworn
10 at the aforementioned time and place; that the
11 testimony was stenographically recorded in the presence
12 of said witness and afterwards transcribed by computer
13 under my personal supervision; and that the said
14 deposition is a full, true, and correct transcript of
15 the testimony given by the witness.

16 I further certify that I am not connected by
17 blood or marriage with any of the parties or their
18 attorneys, and that I am not an employee of either of
19 them, nor financially interested in the action.
20

21
22
23 Sandra Apley, CSR-8838
24 Notary Public
25 Oakland County, Michigan
My commission expires: 06/08/2022

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	33 (2)		

Exhibit C



Server

Job Description

JOB SUMMARY

Provide prompt, efficient, courteous service to all guests. Service includes greeting, seating, taking and serving orders, clearing dishes and resetting tables.

ESSENTIAL FUNCTIONS

- Develop and maintain professional functional working relationships with restaurant employees and guests.
- Execute the "Service Success Steps" per the restaurant SOP to ensure a high-quality guest experience.
- Handle guest complaints in a timely manner, inquire about the quality of the dining experience, thank guests, and invite them to return.
- Communicate guest food orders and service requests in an accurate and timely manner.
- Memorize and apply restaurant terminology, abbreviations, methodologies, and plating and menu knowledge.
- Comply with SOP methods in regard to guest checks and maintaining cash control.
- Stock and rotate all needed supplies in the service areas and dining room.
- Comply with all local and SOP health, sanitation, and safety guidelines.
- Clear, clean, and reset tables and clean chairs, booths, and floors after guests leave.
- Perform all cleaning duties according to posted cleaning charts.
- Comply with restaurant uniform and appearance standards per SOP guidelines.
- Perform other assignments or tasks as assigned by the General Manager, Assistant Manager, or acting supervisor.

EDUCATION AND EXPERIENCE

Education, Experience required: High School Student or High School degree or equivalent

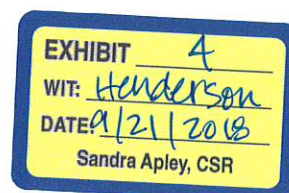


Exhibit D

Store: 1284

DAILY
SIDE WORK
BOOK

EXHIBIT 4
WIT: Henderson
DATE: 9/21/2018
Sandra Apley, CSR

BUTTERWELL STATION:

1. Fill vanilla sauce, cream cheese icing, powder sugar, and change ice. Fill one large metal pan of ice and place in butterwell.
2. Clean microwave inside and out
3. Wipe all stainless
4. Clean in, around, and behind handwashing sink.
5. Stock all togo supplies beside butterwell and togo bowls/lids.

SERVER: _____

TOP SALAD BAR STATION:

1. Stock: Change out all containers, relabel everything. All labels must be current.
(BBQ, ranch, honey mustard, cut lemons, glazed strawberries, apple sauce and yogurt must have back ups.)
2. Stock: Soufflé cups and lids, croutons, crackers, and grits.
3. Wipe all stainless, inside and out, and shelves.
4. Wipe all walls in area and behind garbage can.

SERVER: _____

POP STATION:

- 1.Fill ICE
2. Stock togo lids and cups, and wipe shelf
3. Wipe all stainless (top, side, front)
- 4.Wipe backsplash and sides of pop machine.
- 5.Wipe down shake machine and stock shake metal cups.
- 6.Clean all monion bottles and monion rack
7. Wipe all walls behind and next to station.
8. Fill straw container

SERVER: _____

BOTTOM SALAD BAR:

1. Keep all labels current
2. Fill iced coffee
3. Stock: 8 Apple juice, 6 Cranberry, 8 orange juice, 3 tubs of butter, 2 containers of creamers, 5 whip cream, 1 chocolate milk, and 2 white milks.
4. Wipe all stainless. (Inside, outside, doors, and sides.)
5. Stock soup and salad bowls.

SERVER: _____

WORKSTATION ONE:

1. Wipe inside all ketchup, mustard, and cholula lids.
2. Soak all tabasco and A1 lids, and wipe bottle necks.
3. Stock: 10 ketchup, 4 mustard, 3 sugar free syrups, 5 tabasco, 5 cholula, and 5 A1.
4. Stock napkins, tabs, and 3 back up printer paper rolls.
5. Stock sugars and jellies
6. Wipe top and shelves and clear debris.
7. Take menus to host stand, sort and put away.

SERVER: _____

WORKSTATION TWO:

1. Wipe inside all ketchup, mustard, and cholula lids.
2. Soak all tabasco and A1 lids, and wipe bottle necks.
3. Stock: 10 ketchup, 4 mustard, 3 sugar free syrups, 5 tabasco, 5 cholula, and 5 A1.
4. Stock napkins, jellies, tabs, sugars and 3 back up printer paper rolls.
5. Wipe top and shelves and clear debris.
6. Take menus to host stand, sort and put away.

SERVER: _____

SYRUP STATION:

1. Wipe all stainless from wall to sink.
(shelves, backsplash, front top) and all
large syrup containers.
2. Stock togo containers (small togo and lids
ONLY)
3. Keep sanitizer bucket label current
4. Fill any extra syrups.
5. Wipe all walls and trash can

SERVER: _____

EMPLOYEE BREAKROOM:

1. Clear off breakroom table, discard all unused cups, plates, silverware, etc.
2. Wipe down table and walls behind table.
3. Bring all high chairs and booster seats to the break room and wipe them all down
4. Sweep floor in area

ICE CREAM FREEZER:

5. Wipe down freezer doors.
6. If ice pile up occurs, melt ice with hot water. Wipe thoroughly.

SERVER: _____

COFFEE STATION:

1. Clean out coffee urns and make regular and decaf coffee.
2. Wipe all stainless in area. (Shelves, front, top, sides.) Especially underneath coffee machine.
3. Fill regular coffee and decaf coffee bags.
Change containers when necessary.
4. Stock all kettles, large specialty coffee/ hot coco cups, sundae cups, and vegetable dishes.
5. Wipe the walls behind the coffee station

SERVER: _____

Exhibit E

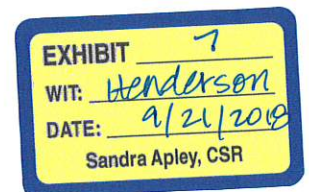
Side
Work

1

High Chairs/Boosters and Microwave Area

High Chairs/Boosters and Microwave Area

- Check ice bin and sani (*fill/change if necessary*)
- Clean the inside and outside of the microwave
- Wipe stainless steel in soup and microwave area
- Move the soup well and microwave, wipe underneath
- Clean outside/top of soup well
- Stock **soup/salad bowls, fruit dishes and soup spoons** (*remove any dirty*)
- **Label soups (4 hours), check the water level (fill if necessary), and change the soup containers!** Clean BOTH swinging doors in the pass bar entirely
- Make sure there is 8oz/ladles in soups
- Clean boosters and high chairs (deep clean highchairs with sani+floor break mixture)
- Sweep floor underneath boosters and high chairs
- **Check and label all opened monin syrups: (2 months)**
- Stock all monin syrups (*1 opened only*), no backups
- Clean monin shelf
- Remove all items from coffee/towel shelf in pass bar. Clean top, bottom, sides and legs. Empty and rinse coffee pots.
- Make sure all chemicals have a cover on them under the sink



TRINITY000089

Side
Work

2

Coffee Station

Coffee Station

- Rinse and setup all baskets *(if necessary for business)* with filters and coffee
- Clean the front, sides, top, and back of coffee brewers
- **Rinse all grounds from inside of coffee urns** *(very important!)*
- Stock ten creamer bowls, pull a creamer box and fill a 1/2 pan. Make sure the creamer bowls are clean! *Do not fill creamers in to-go bowls
- Condense coffee cups and put racks away
- Clean coffee cup rack area *(shelves, sides, top/ bottom)*
- Take apart hot cocoa machine and wash pieces *(fill if necessary)*
- Clean and rinse **ALL** hot tea pots
- Restock straws with 2 bags of straws
- Stock and label decaf coffee, regular coffee, hot coco, iced tea packets, and wipe shelves
- **Organize extra misc. stuff in bottom cubby! Really. Keep it organized. Throw anything away that is stained by coffee that leaked.**
- Check ice bin and sani *(fill/ change if necessary)*

Side Work

3

Juice Cooler

- Wipe all stainless in the area *(even under the juice machine)*
- Check ice bin and sani *(fill/ change if necessary)*
- Check accuracy of all labels in area
- Condense small glasses and wipe all stainless in the glass area
- Take apart and clean the inside/outside entire juice cooler *(send racks through dish tank)*
- Comet scrub sick closest to juice cooler
- Label all misc. items behind juice cooler
- Stock 1 can of tomato juice, 4 apple juice, and 4 Hershey's syrup on the top shelf
- **Thoroughly clean the gaskets (rubber door seal)! Let your M.O.D. know if it is damaged at all.**
- **Make sure there is a thermometer in he juice cooler. Temp the juice cooler. If it is not below 42 degrees, inform your M.O.D. immediately**

Juice Cooler

Stock and label the following as is *(if opened)*

Item	Label	Item	Label
4 gallons of White Milk	Use by date	4 Apple juice	4 days
1 gallon of Chocolate Milk	Use by date	Stock 7 Hershey's Chocolate	7 days
4 gallons of O.J.	4 days	1 Simple Syrup	2 months
2 containers of Iced Coffee	1 day	1 Vinegar	2 months
1 pitcher of Tomato Juice	4 day	Croutons	1 Month
1 backup can of Tomato Juice	----		

Side
Work

4

Expo Area

(if there is an expo, they are assigned this side work)

Expo Area

- Flip and stock containers of soufflé cups and lids, coasters, steak knives and to-go bins.
- Empty and clean butter bin. Refill with ice *(all items in ice!)*
- Change and fill all garnishment pans and restock butter
- Empty and clean both dipper wells *(change utensils)*
- Stock to go supplies: silverware, ketchup packets, syrup packets, to go lids and containers, and drink carriers
- Wipe all counters, cubbies and walls in area, and wipe down the entire cook's window.
- Clean all the heat lights/stainless above the expo window
- Check ice bin and sani *(fill/change if necessary)*
- Stock plates under expo line
- Stock: 1 stack Service Plates, 1 stack Fruit bowls, 1 stack Under Liners, 1 stack Platter Plates

Stock, Flip, Label and/or Fill *all* of the following

ITEM	LABEL	ITEM	LABEL
Powdered Sugar Shaker	1 Month	Sprinkles	1 Month
Cocoa Shaker	1 Month	Icing	7 Days
1/6 pan of Chocolate Chips	1 Day	Cupcake Icing	7 Days
1/6 pan strawberries	1 Day		

Side
Work

5

Syrup Area and Surrounding Area

Syrup Wall and Surrounding Area

- Wipe and clean all syrup containers (*lids, bottom, sides*)
- Remove all syrups and thoroughly clean shelf/wall
- Restock (*marry if necessary*) all syrups: 1 full containers of Old-Fashioned, Strawberry, Blueberry and Butter Pecan (*plus an open one of each, labeled*)
- Fill both jelly tubs (*first in-first out*)
- Organize entire back ledge
- Wipe all walls in area and comet hand sink
- Wipe exposed plumbing under hand sink
- **Change trash by hand sink and thoroughly clean it! Outside and in. Wipe the wall surrounding the trash can as well.**
- **Wipe-down wall by dish window, clean it thoroughly.**
- Label any misc. items like the salt and pepper containers. As well as any sugar containers (1 month)
- Switch out dirty storage containers (*for sugar packets*)
- Check ice bin and sani (*fill/change if necessary*)

Stock and label the following

Item	Label	Item	Label
Old-fashioned	2 months	Blueberry	2 months
Butter Pecan	2 months	Strawberry	2 months
Grape Jellies	1 month	Salt and Pepper	1 Month
Strawberry Jellies	1 month	Sugars	1 month

Side
Work

6

Beverage Station

Beverage Station

- Stock large to-go cups, kids cups, and coffee cups
- Stock each lid (*large kid, coffee*), and coffee sleeves.
- Stock a full metal cylinder of straws
- Condense glasses and put away racks. Bring up any racks of cups in dish tank
- Wipe all stainless in area (*including inside of glass rack area, under TOGO cups and behind the soda machine*)
- Take apart the soda machine and clean (*especially soda nozzles!*) when it is not disruptive to business, the nozzles have to be cleaned with Q-tips. Soaking them does nothing to clean them. Pull the rack and plastic tray and spray them clean in the dish tank. **DO NOT PUT INTO DISH MACHINE- it will melt**
- Send ice scoops and holders through dish tank
- Cut lemons, if necessary, (label **1 day** if on ice and **3 days** if refrigerated)
- **Thoroughly wipe down ALL drink trays and put them away DRY!** Do not run through dish tank!
- Use a glove and a scrubby to clean the top of the drain to the soda machine – it's a food safety violation
- Check ice bin and sani (*fill/ change if necessary*)

Side Work

7

Top of the Salad Bar

- Flip and label all dressings (*including any containers in walk-in cooler!*)
- Clean entire top of salad bar (*as well as the sides/inside lid*)
- **Make sure there is a thermometer. Check the temperature of cooler. If it is not below 42 degrees, tell your MOD!**
- Flip all other containers and re-label (*cherries, tomatoes, sour cream, cheddar cheese, onions*)
- Ensure there are backups of S.C., cheddar cheese, onions, as well as honey mustard, ranch, and our house salsa. Make backups of any other dressing if low enough (*if the ladle is not submerged in dressing*)
- House Salsa recipe: 12 oz. tomatoes, 4 oz. onions. Label for 24 hours.
- Change trash by salad bar and clean/scrub the trash can outside and in.
- **Make sure all dressings have a 2 ounce ladle!**

Stock and label the following (*First in/first out*)

Item	Label	Item	Label
Parmesan Cheese	7 days	All dressings and BBQ	7 days
Mayo bottle	14 days	Cherries (<i>Jar-14 days</i>)	7 days
Marinara	7 days	Onions	3 days
Sour Cream	1 day	Salsa	7 days
Cheddar Cheese	7 days	DICED Tomatoes	1 day
Tartar Sauce	1 week		

Top of Salad Bar

Side
Work

8

Host Stand and Lobby Area

(Assigned to host if shift has one)

Host Stand and Lobby Area

- Organize and clean all menus and promos *(throw away any that are damaged)*
- Clean out all credit card trays and remove any paper/garbage *(throw away any that are damaged)*
- Collect all menus and return to host stand
- Ensure kid's menus are folded and fully stocked *(full 1/2 pan)*
- Wipe down entire host stand *(including lobby booths and base boards)*, but especially anywhere the guests can see
- Set out two full buckets of silverware
- Clean all windows *(front doors, lobby)*
- Sweep lobby floors, especially in the winter! Mop if necessary.
- *Spot sweep entire dining room including lobby rugs!*
- Clean and organize silverware shelves *(hide all items used to roll silverware)*
- Wipe all art work in lobby and bathrooms
- Clean and stock bathrooms *(wipe counters/ kick plates, clean mirrors)*
- Stock backups of toilet paper, hand towels and hand soap under host stand
- If needed, empty the trash at the host stand
- Take apart the floor sweepers and clean them so they work forever!
Cut out the hair, dump the bin, and wipe them down so they look pretty. Make sure they are charging when you are done
- Check ice bin and sani *(fill/ change if necessary)*

Side
Work

9

Bottom of the Salad Case

Bottom Salad Case

- Clean and sanitize the entire inside of the salad cooler
- Ensure there are backups of S.C. and cheddar cheese, and onions
- **Thoroughly clean door gaskets (if torn/damaged, tell M.O.D.)**
- **Check the temperature of cooler. If it is not below 42 degrees, inform your MOD!**
- Clean and replace any dirty storage containers
- Make sure there is a enough fruit for business (i.e. tell the manager/cooks)
- Check all labels for accuracy
- Cut red onion if less than a quarter pan (1 full pan above and a backup under, plastic containers only). **Cut the onions neatly! (1/4th or less thick) Ask if you need assistance.**
- Full 1/3 pan of pre-portioned fruit- at least 1/2 pan of un-portioned cut fruit

Stock all items and label the following (First in/first out)

Item	Label	Item	Label
8 Whip Cream	---	2 pans of Lemons (refrigerated)	3 days
Pan Romaine	1 day	2 Boxes Go-Gurt	Use by Date
Pan Spring Mix	1 days	Vanilla Sauce Bottle	7 days
To-go butters	7 days	Vanilla Sauce backup	7 days
Portioned fruit (4 oz.)	1 days	Iced Coffee Concentrate	30 days
1 Butter Tub backup	---	6 Salad & Soup bowls	---
Fruit backup	2 days	6 Fruit Dishes	---

Side
Work

10

Ice Cream Case and Dessert Area

Ice Cream Case and Dessert Area

- Remove ice cream and thoroughly clean inside freezer
- Defrost freezer! NO ICE BUILD UP!
- Stock new ice cream as needed
- Empty and clean dipper well (*change utensils*)
- Scrape ice cream containers
- Clean top of freezer and the counter space surrounding it including the back splash, lid gaskets (*inform MOD if damaged!*) and the front of the cabinet as well
- Clean the shake machine (*especially underneath and any other areas not readily seen*)
- Stock and label: hot fudge, hot tea, peanut butter, honey, crackers, oatmeal, grits and brown sugar (30 days)
- Stock desert goblets, large specialty coffee mugs and shake machine containers (*check dish tank and clean dish area*)
- **Wipe and sanitize server drink trays** (*do not send through dish tank*)
- Check all labels in area
- Comet and scrub hand washing sink
- Check ice bin and sani (*fill/ change if necessary*)
- Brew unsweetened iced tea/sweet tea (1cup sugar + 4 quarts of unsweetened iced tea) every 8 hours and label and label for 8 hours. Rinse and fill ice tea basket with 1 filter and 1 bag of ice tea. Change iced tea bag everytime

Side
Work

11

Micros

Micros Stations

- Stock 4 rolls of server printer paper at each station
- Fully stock all to-go containers and lids at each station
- Wipe all server check presenters *(throw away any damaged)*
- **Remove all trash and dust, even under/behind the computers!**
- Wipe all stations counters, sides and shelving *(including cabinets)*
- Organize any other items *(napkins, silverware, etc.)*
- Wipe under and behind all computer screens and printers
- Return all menus to host stand and organize them
- Spot sweep entire dining room floor
- **Soak all lids in urn water to clean them**
- Check ice bin and sani *(fill/change if necessary)*
- ***No plastic containers in dining area***

Stock the following condiments at Area 51 *(clean lids)*

Ketchup	1 row of 6	Sugar-free syrup	1 row of 4
Mustard	1 row of 6	Jelly Caddies	4 full caddies
Tobasco	1 row of 6	A-1	1 row of 6
Cholula	1 row of 6		

Side Work

12

Condiment Station

Condiment Station

- Stock all condiment as shown below (FIFO)
- Clean all lids! This is very important! Soak them in urn water.**
- Wipe all shelves below
- Wipe all stainless in area
- Fill Jelly tubs (*first in/first out*)
- Comet syrup sink
- Check ice bin and sani (*fill/change if necessary*)
- Change trash by the server hand sink and clean wall

Stock the following condiments (*clean lids*)

Ketchup	2 rows of 10
Mustard	1 rows of 8
Cholula	1 row of 8
Tabasco	1 row of 8
A1	1 row of 8
Sugar-free Syrup	1 row of 8
Jelly Caddies	10 full caddies

Side Work

13

Restock and Employee Break Room

Restock and Employee Break Room

- Sweep dining room
- Wipe down all stainless in pass bar
- Sweep pass bar (*under counters*) and mop
- **Overnighter - deck scrub the pass bar**
- Change trash and clean garbage can if necessary
- Check ice bin and sani (*fill/ change if necessary*)
- **Clean and organize the employee break room. Take care of trash, dishes, etc. Wipe out microwave. Sweep and mop.**

Stock and label the following (*if necessary*)

Backup dressings!	Stock Marinara	Stock carry outs
Creamer bowls (10)	Stock Parm	Stock to-go lids
Fill Saltines	Stock Mayo	All soufflé cups and lids
Fill croutons	Stock whip topping	Stock glasses/mugs
Stock BBQ	Prep coffee	Stock to-go cups
Fill Juice Cooler	Iced Coffee (2)	Condense glasses/mugs
Stock/clean syrups	Fill Jelly caddies	Check all labels

Server 10-Point Section Check

- This is to be done upon arrival for your shift to prepare for your guests
- This will also be done at the end of your shift to prepare for the next servers' guests
- You will not take tables until this is completed and will not leave until it is done
- Do this for the section you were initially on the chart to be in and the section you end up departing your shift from

1	Stock and fill sugars as follows: 4 Splenda, 4 Sweet-n-Low 4 Equal, Rest Sugar
2	Clean syrup caddies and any table promos
3	Clean and fill syrup bottles and lids <i>(Dip them in HOT water, do not get water in syrup and replace any broken lids)</i>
4	Be sure you have all four types of syrups in this order, starting from the left: Old-fashioned – Blueberry – Butter Pecan - Strawberry
5	Wipe down and fill salt and pepper shakers
6	Clean table underneath syrup and sugar caddies and wall around
7	Wipe down and clean all walls around your section and Windex any glass
8	Ensure your table top is absolutely clean <i>(no stickiness, salt, pepper, etc.)</i>
9	Thoroughly clean table legs, chair legs, booth seats, and crumb catchers <i>(remove any gum on underside of table)</i>
10	Thoroughly sweep floors in your section, and MOP

		Morning	Swing	Over-Night
Server Weekly Deep Cleans – (when done, have your M.O.D. initial)	Monday	<p><u>Section Deep Cleans</u> <i>(follow server section deep clean guide on following page)</i></p>	<p><u>Juice Cooler</u> Empty entire juice cooler. Run all shelves through dish tank. Wipe down entire juice cooler (inside/out and under)</p>	<p><u>Coffee Urns</u> Empty the coffee urns. Put one packet of urn cleaner inside of the urn. Fill the rest of the urn with hot water. Let it soak for at least 10 minutes, then run the urn through the dish washer. Scub them!</p>
	Tuesday	<p><u>Sugar Caddies</u> Take all sugar packets from caddies and run through the dish tank. When dry, put them back</p>	<p><u>Passbar Trim and Walls</u> Get a mop bucket with degreaser and scrub brush. Scrub all base trim.</p>	<p><u>High Chairs and Boosters</u> THOROUGHLY CLEAN ALL marks and debris off of all high chairs and boosters. Magic erasers work wonders!</p>
	Wednesday	<p><u>Clean Coffee Pots/Lids</u> Take all coffee pots and rinse them clean <i>(not in dish machine)</i></p>	<p><u>Ice Bin</u> Empty all ice in soda area. Wipe entire chest with a clean, dry sani towel. Do not use chemicals. Refill.</p>	<p><u>Wash Salt and Pepper Shakers</u> Empty all the salt and pepper shakers into larger container. Run the shakers and lids through the dish washer twice. Leave to dry for opening server.</p>
	Thursday	<p><u>Fill Salt and Pepper</u> If dry, refill salt and pepper shakers. Put them back on tables before busy period. DON'T GET PEPPER IN THE SALT! Guests think its bugs.</p>	<p><u>Jelly Caddies</u> Take all jelly caddies, empty them, and run them through the dish tank. When dry, replace them.</p>	<p><u>Bleach Coffee Mugs</u> Load the racks of mugs into the dish washer, adding about ½ a cup of bleach. Ask your M.O.D if you are unsure about how to do this. Once all mugs have been ran through the washer, empty the water from the dish washer and run the mugs again without the bleach to rinse them. While mugs are being bleached, wipe out the shelving units, tops, sides, and bottom.</p>
	Friday	<p><u>Dust Ceiling Vents</u> Every ceiling vent in the FOH needs to be wiped of dust – Passbar, BDR, 60's, lobby, and bathrooms. Assign to multiple people</p>	<p><u>Soup Well</u> Unplug soup well, empty all water and add lime-away. Let sit 10 minutes. Wipe underneath while soaking. Scrub with a metal scrubby and rinse well. Fill and replace.</p>	<p><u>Clean the walls in the passbar</u> Take a sani bucket and wash all of the walls, top to bottom in the passbar, even behind the coffee machine.</p>
	Saturday	<p><u>Soda Glass Area</u> Pull out all cup racks and condense cups (pull any dirty glasses). Wipe all area within cup slots (insides, shelves, etc)</p>	<p><u>Stainless Shelves</u> Remove all items from shelves under butter bin and coffee area. Wipe the shelves clean. Neatly replace all items.</p>	<p><u>BDR Doors and clean under shelves in passbar</u> Clean glass and wipe down the doors, trim, kick plates and frame with a sanitized rag. DEEP sweep under all the shelving in the passbar. Throw buckets of water underneath them if necessary to get all debris OUT.</p>
	Sunday	<p><u>Flip Syrups</u> Gather all syrup caddies from your section. Empty each syrup into a separate container. Rinse out all lids, bottles, and caddies.</p>	<p><u>Condiment Shelves</u> Remove all condiments. Wipe shelves and switch out sugar packet bins. Replace condiments.</p>	<p><u>Art Work and Track Lights</u> Wipe down all of the art work throughout the entire restaurant. This includes all sections, the lobby, and the restroom. Dust all track lights and any dusty surfaces near them</p>

Server Section Deep Clean Guide

Your section should always be set up beautifully! Straight silverware, no sticky spots anywhere, coffee pot 1/2" from edge-centered

- Clean all walls making sure to get all marks, syrup, and food removed
- Move all tables and sweep underneath!
- Windex *all* glass (*remember to only use warm water on tinted windows*)
- Dust all light fixtures, window and picture frames/ledges and fan blades
- Clean all table edges and chair legs
- Clean table tops thoroughly (**if any wall paint is on the edges, clean it off!**)
- Clean booths, chair seats (*and chair legs*), crumb catchers, and scuff marks off of the wood around booth foundations.
- Complete the Server 10-point Section Check
- Scrape all gum from underneath tables! **Very important!**
- If you have tables 55, 56, 57, 71, 72, 73 you must also use a small broom to clean any debris out from between the booth seat and the windows!

Exhibit F

DATE: _____

Hand Sinks & High Chairs/Boosters:

- Thoroughly clean (with comet) the 2 hand sinks and surrounding walls.
PLACE COMET BACK ON CHEMICAL SHELF WHEN FINISHED!!
- Clean sides of trash cans
- Refill paper towels and hand soap. Wipe down both dispensers.
- Wipe down boosters and high chairs and sweep area underneath. Remove any traces of crayon.
REPORT BROKEN HIGH CHAIR STRAPS TO MOD
- Remove any blemishes on high chair legs.
- Spot sweep dining room (including lobby rugs if no host on.)
- Change ALL server sani bucket (2 hours)

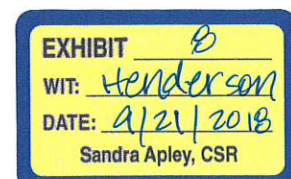
Coffee Brewer & Area plus Drink Trays:

- Brew coffee as needed for business level.
- Stock 1 (1/2) pan of both decaf and regular coffee, change if dirty (first in first out!)
- Stock filters
- Thoroughly clean both cubbies below and the counter under brewers
- Wipe down brewers (including top and bottom of burners). Don't forget to empty the used coffee grounds and clean brewing baskets. Remove red spinners on brewing tap and let soak in sani-water to deter calcium build up.
- Stock creamers
- Thoroughly clean all beverage trays.
- Stock hot chocolate and coffee sweeteners, if needed.

Pass Bar:

Only assign when there is no expo scheduled

- Clean and empty the trash can and wipe down the wall behind it.
- Empty, clean, and refill ice bin.
- Change all pans and restock butter.
- Make sure all containers are in the ice.
- Empty and clean the butter dipper well and replace the butter scoop.
- Fill soufflé cups and lids.
- Sweep pass bar and deck scrub. Place wet floor signs!



Clean & Restock Syrup Shelf:

- Clean syrup off the outside of all bottles
- Remove ALL syrups and thoroughly clean the syrup cubby including back edge.
- Fill and clean any leftover syrup caddies.
- Restock ALL syrups
- 1 opened container of vanilla fountain syrup plus back up.
- Clean ALL monin pumps to prevent clogging.

Microwave Area & Soup Wells:

- Thoroughly clean microwave inside and outside, including the door, handle, and the top both inside and outside of the microwave.
- Clean counter under the microwave and side walls. This involves moving the microwave.
- Stock soup bowls, soup spoons, iced tea spoons, under liners, and coasters.
- Make sure there is enough soup for the level of business
- Clean inside of soup wells.
- Flip the soup into new containers if its 4 hours are up.
- Wipe down counter top and front of soup wells; make sure there is enough water in wells

Coffee Pot Drying Rack & 3-Compartment Sink:

- Organize and clean the rack by the dish tank to use for drying the coffee pots.
- Ensure that ALL coffee pots and tops are clean and ready for guest use.
- Drain the 3 sinks and thoroughly clean each with comet. Don't forget to clean the faucets, sani-dispensers, outside of sinks and surrounding floors, walls, and drain.

Underside of Expo and Iced Tea Machine:

Only assign when there is no expo scheduled

- Stock all to go containers under expo counters (Large and small Styrofoam and plastic containers and their associated lids)
- Wipe down the entire shelf and underside of pass bar. You must remove everything in order to do this.
- Change the sanitizer bucket
- Wipe outside of iced tea machine
- Brew fresh iced tea if necessary
- Wash all detachable parts to machine

Pass Bar Window:

Only assign when there is no expo scheduled

- Clean the top of window ledges of the left and right pass bar window.
- Wipe the exposed wall below window.
- Wipe down the entire pass bar.
- MAKE SURE THAT ALL DISHES YOU BRING TO THE PASS BAR ARE CLEAN!!**
- Stock under liners.
- Stock service plates.
- Stock soup bowls.
- Stock monkey dishes.
- Stock steak knives.
- Stock coasters (if needed.)
- Clean all 4 doors in pass bar.
- Wipe down any cold heat lamps.

Bottom Salad Case:

- Clean and sanitize the bottom of salad cooler
- Clean and replace any dirty storage containers
- Thoroughly clean the gaskets on the doors and notify management of any breaks in the seals.***
- Both doors and outside of the bottom half of salad bar must be cleaned.
- Restock the following items and make sure that each label is correctly filled out:
 - 6 Whipped Creams
 - 4 Orange Juices
 - 2 Grapefruit Juices
 - 6 Apple Juices
 - 2 Cranberry Juices
 - 2 White / 3 Chocolate Milk
 - 1 Iced Coffee
 - 1 Tomato Juice
 - 1 butter

Soda Machine:

- Remove, clean and replace spray heads. This should be done at the end of every shift!!***
- Clean dispenser levers
- Remove grate from drain area and clean back splash, drain, and grate with hot water to remove all soda residue.
- Fill ice and **CLOSE** lid.
- Clean the ice coop and storage containers.
- Wipe down dispenser heads, top of machine, outside of machine, and all the surrounding areas.
- Remove sliding doors and thoroughly clean underside of pop machine to prevent mold.
- Label ALL moins (if needed.)
- Stock straws
- Combine all racks of all cups and free empty racks (put in dish area.)
- Wipe down both 3 tier shelves for mugs and glasses.
- Combine and bring up all mugs and glasses.

Ice Cream Cabinet:

- Remove ice cream and thoroughly clean inside freezer. (Defrost if needed.)
- Clean lid and gasket around freezer.
- Replace ice cream and make sure the lid is on, or saran wrap.
- Clean top of freezer and the counter space surrounding it including the back splash and the front of the cabinet as well.
- Stock and label Hershey's chocolate (7 days if opened; 3 months if not.)
- Clean shake machine, underneath counter and stock shake containers.
- Fill hot fudge packets
- Scrape ice cream.
- Check the dip well to make sure all utensils are clean.

Beverage wall Stock hot Cocoa Machine:

- Clean upper shelves above beverage line and above salad bar.
- Clean entire hot cocoa machine, make sure it has enough powder, remove overfill tray and clean.
- Clean ALL tea urns (Contrary to popular belief, these are dishwasher safe.)
- Refill tea bags for hot tea.
- Clean counter under hot cocoa machine and wall behind it.
- Stock all items on the top shelf and check labels. ***DON'T DOUBLE LABEL ANY CONTAINERS.***

Condiment Station A:

- Marry any condiments (Except hot sauces) that are almost empty and clean all open containers lids.
- Thoroughly clean all shelves.
- Empty the paper container.
- Organize the sugar refill containers and shelves.
- Wipe down counter and both computer and printers.
- Sweep the floor in front of the POS and mop if necessary.
- Switch the Sani-Buckets out! (Even if it hasn't reached its 2 hour limit.)

Condiment Station B:

- Marry any condiments (Except hot sauces) that are almost empty and clean all open containers lids.
- Thoroughly clean all shelves.
- Empty the paper container.
- Organize the sugar refill containers and shelves.
- Wipe down counter and both computer and printers.
- Sweep the floor in front of the POS and mop if necessary.
- Switch the Sani-Buckets out! (Even if it hasn't reached its 2 hour limit.)

Top of Salad Case:

- Clean top of lid, underside, side of the case and the front.
- Change, refill, and label all pans.
- Clean area underneath dressing, etc...
- Put lids on lemons and strawberries.
- Clean walls around the salad bar.
- Pull out salad bar and sweep and mop behind it.
- Remember FIRST IN FIRST OUT!
- DO NOT PUT TONGS IN TUBS!
- Stock croutons, crackers, coasters, and Italian dressings.

Employee Break Area:

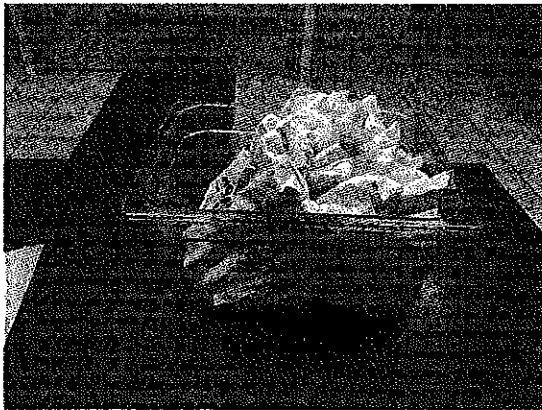
- Wipe and sanitize counter and surrounding walls
- Dispose of ALL trash including unused cups and plates to prevent pests.
- Ensure all coats hung up.
- Take any extra condiments back to the front, soak the lids, and put the, into a side station.
- Sweep floor and mop.

***THANK YOU FOR DOING YOUR
SIDEWORK CORRECTLY!! 😊***

Before Being Cashed Out!

You need 3 signatures from either the MOD or Scheduled Lead Server to prove that your side work is completed, your section is of SOP standards, and your silverware is rolled.

Correct! (60 silver ware rolled)



Incorrect!



LEADS!

Your goal is to make sure your shift is setting the next shift up for success. Never leave your shift without being 100% satisfied with the cleanliness of the pass bar and dining room. You will be held accountable for any unfinished side work, silverware, or section not to SOP standards.

Weekly Morning Side Work Assignments							
	MON	TUES	WED	THUR	FRI	SAT	SUN
Hand Sinks							
Coffee Brewers							
Pass Bar							
Syrup Shelf							
Microwave & Soup Wells							
Underside Expo & Iced Tea							
Pass Bar Window							
Bottom Salad Case							
Soda Machine							
Employee Break Area							
Ice Cream Cabinet							
Bev Wall & Hot Cocoa							
Condiments Station A							
Condiments Station B							
Top of Salad Case							
3-C Sink							
Shift Leader							

Exhibit G

Pre-Shift Guide

MGR:

Date:

Day Part:					LYS-	Goal	TYS-	AM-	PM-	MIDS-
	Time	Servers	SW	DC		Time	Combos	PM	SW	DC
1					1					
2					2					
3					3					
4					4					
6					Server Running Sidework					
7					1		OPENER/FOH DRINK STATION			
8							STOCK/DETAIL SHELF/WALL			
9							SALT & PEPPER SHAKERS			
10							MAINTAIN AREA THROUGHOUT SHIFT			
11					2		S. DRINK STATION			
12							STOCK/DETAIL SHELF/WALL			
13							SALT & PEPPER SHAKERS			
14							MAINTAIN AREA THROUGHOUT SHIFT			
15					3		CONDIMENTS			
16							Fill & stock condiments, clean			
							Fill syrups, clean			
							stock printer paper			
	Time	Expo	SW	DC						
1					4		N. CONDIMENTS			
2							Fill & stock condiments, clean			
							Fill syrups, clean			
	Time	Host	SW	DC						
1					5		TOP SALAD BAR			
2							LABEL & STOCK ALL ITEMS			
3							wipe down doors inside & out			
4							fill & wipe sugar caddies on tables			
5					6		BOTTOM SALAD BAR			
6							Stock & wipe doors inside & out			
							milkshake machine & soup area			
							fill & wipe sugar caddies on tables			
	Time	Cooks AM	SW	DC						
1					7		PASSBAR/ MICROWAVE			
2							CLEAN, STOCK, & MAINTAIN			
3							LABELS & SANITIZER			
4							MICROWAVE AREA			
5							BREAKROOM			
6					8-Jan		BOOSTERS/HIGH CHAIRS/TO-GO ITEMS			
7							SWEEP FLOORS			
8							STOCK & CLEAN			

EXHIBIT 9
 WIT: Henderson
 DATE: 9/21/2018
 Sandra Apley, CSR

TRINITY000254

DATE _____

16	15	14	12	11	32	33	34	35	38	51
17	20	13	10	31	41	42	43	44	46	52
18	19	28	<p style="text-align: center;"><u>ALL TEAM MEMBERS are responsible for RUNNING SIDEWORK that is assigned on Pre-Shift guide by Manager on Duty</u> <u>Silverware is a requirement to get Server Checkout.</u> <u>SHOW A BIN, GET A SWIPE!</u></p>				44	54	55	
21	27	46					47			
22	26	56								
23	24	25	26							

Last years sales\$ _____ Budgeted sales\$ _____ labor _____ % beverage goal _____ %
 Sales per shift: AM\$ _____ PM\$ _____ Sales per server: AM\$ _____ PM\$ _____ table check average \$ _____

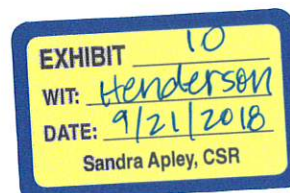
TRINITY000265

Exhibit H

TRINITY000256

RIGHT BUTTERWELL STATION:


- *Wipe all stainless from microwave to soup. (top, front, shelves, window, and backsplash)
- *Keep soup labels currant.
- *Fill sugar, pink, blue, and yellow sweeteners.
- *Fill honey, strawberry, and grape jellies.
- *Organize shelves
- *Stock and wipe down jelly caddies.
- *Wipe down all walls in station.
- *combine silverware caddies. (if necessary)
- *Stock soup and salad bowls.



TRINITY000256

TRINITY000257

COFFEE STATION:



- *Break down left coffee machine (if necessary), clean out urns.
- *Clean all baskets out, set up next pot.
- *Wipe all stainless in area. (shelves, front, top, sides.)
- *Fill coffee, hot tea, cream, hot chocolate. Change containers when necessary.
- *Stock all tea kettles, sundae bowls, and large coffee cups from the dish area.
- *Wipe the walls behind coffee station.
- *Marry and stock coffee mugs, and wipe shelves.

TRINITY000257

TRINITY000258

(5)

SYRUP STATION:

- *Wipe all stainless from wal to sink. (shelves, cubbies, front, top, backsplash)
- *Wipe down shake machine and stock shake cups.
- *Stock togo containers. (small, large and lids)
- *Stock togo syrups, butter, ketchup, utensils, and bags.
- *Keep sanitizer bucket label currant.
- *Fill any extra syrups.
- *Wipe all walls and the wall behind the trash can.
- *Clean in, around, and behind handwashing sink.

TRINITY000258

TRINITY000259

(4)

WORK STATION ONE:

- *Wipe all ketchup, mustard, and cholula lids inside.
- *Soak all tabasco and A1 lids, and wipe bottle necks.
- *Stock:
 - 8 ketchup, 6 mustard, 8 cholula, 8 tobasco,
 - 8 A1, 6 sugar free syrup.
- *Stock napkins, tabs, and 3 back up printer papers.
- *Wipe top and shelves and clear debris.
- *Take menus to host stand and sort and put away.
- *Marry hot sauces and sugar free syrup. (if necessary)

TRINITY000259

TRINITY000260

WORK STATION TWO:



- *Wipe all ketchup, mustard, and cholula lids inside.
- *Soak all tabasco and A1 lids, and wipe bottle necks.
- *Stock:
 - 8 ketchup, 6 mustard, 8 cholula, 8 tobasco,
 - 8 A1, 6 sugar free syrup.
- *Stock napkins, tabs, and 3 back up printer papers.
- *Wipe top and shelves and clear debris.
- *Take menus to host stand and sort and put away.
- *Marry hot sauces and sugar free syrup. (if necessary)

TRINITY000260

TRINITY000261

BOTTOM SALAD BAR STATION:



* Keep all labels currant.

*Fill iced coffee.

*Stock:

3 orange juice, 2 milk, 1 chocolate milk

10 whipped cream, 1 tomato juice, 1 vanilla sauce

8 apple juice, 3 cranberry, 3 grapefruit

*Fill ranch, honey mustard, and bbq to full

*fill caesar, balsamic, blue cheese, and orange halfway.

*Wipe all stainless, inside, outside, doors, and sides.

*Wipe all gaskets and handles.

* STOCK 2 MAYO

TRINITY000261

TRINITY000262

7

POP STATION:

- *Fill ice.
- *Stock kids and togo lids and cups, and wipe shelf.
- *Wipe all stainless. (top, side, and front)
- *Wipe backsplash and sides of pop machine.
- *Clean all Monin bottles and Monin rack.
- *Wipe walls behind and next to station.
- *Marry and fill all glasses and wipe shelves.
- *Fill sundae spoon/straw container. (15 wraps)

TRINITY000263

(8)

TOP SALAD BAR STATION:



*Keep all labels current.

*Stock:

4 bbq, 4 ranch, 4 honey mustard

6 2oz. salads, 1 bin cut lemons, 1 bin strawberries

1 box yogurt, 1 bin red onions, 4 tomatoes, 4 cheese

1 bin light Italian, 1 bag cream cheese icing

*Change out all dirty containers, relabel

*Stock:

Small and large togos and lids, chocolate sauce,

Soufflé cups and lids, croutons, apple sauce,

Crackers, and grits

*Wash cutting board in 3 compartment sink.

*Wipe down all dressings.

*Wipe all stainless, inside and out, and shelves

*Wipe all walls in area and behind garbage can.

*If you need more lettuce, PLEASE PORTION OUT A WHOLE BAG.

Store in a 1/3 pan, labeled, in the walk in.

TRINITY000264

LEFT BUTTERWELL:



*Fill cherries, choc. Chips, vanilla sauce, cream cheese icing, powder sugar, doiles, cupcake icing, LTO items, and ice.

*Change out all pans.

*Keep all labels current.

*Clean microwave inside and out.

*Wipe all stainless. (top, shelves, cubbies, window, and backsplash)

*Wipe all walls in station.

*Stock large syrup containers. (2 of each kind)

TRINITY000264

TRINITY000265

EXPO SIDEWORK:



- *Drain the ice in the butter well, clean out the butter well, and refill. (both butter wells, every shift)
- *wipe down the entire foodservice window from the wall to the egg station.
- *Clean all walls in your area. Including the backsplash under the foodservice window and anywhere food may have splattered during your shift.
- *sweep your half of the passbar, including under your butter well.
- *empty all extra utensils out of the butter well.

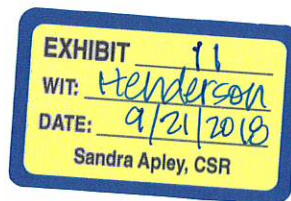
TRINITY000265

Exhibit I

MICROWAVE/SOUP WELLS

- Clean out both microwaves inside & out. move microwaves and clean underneath.
- check soup well/ make sure both soup wells are clean/ stock crackers & soup spoons & bowls
- change out soup container if necessary i.e. looking burnt
- stock clear lids/clamshells/to go cups/kid cups/white to go cups and lids/grits/hot chocolate/applesauce/hot tea
- wipe down all trays and send the ones that are needed though the dish machine and dry them all before putting them back
- remove all items from coffee shelf/pass bar make sure self is clean and free of any debris clean and rinse out coffee pots making sure there are no grounds inside

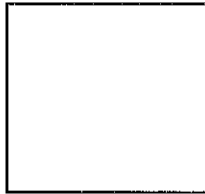
Checked by Manager:



COFFEE STATION AND POP MACHINE

- combine all glasses and coffee cups and stock full racks
- clean rack area shelves, sides, top and bottom
- take apart pop machine/send through dish tank/ take pop nozzles, take apart, wipe inside and send through dish tank
- take a glove and a scrubby and clean the entire pop machine while sending the parts through the dish machine. Make sure to clean behind the top behind the levers.
- stock creamer/creamer bowls/coffee/ straws/ice tea bags
- send ice scoop and holders through the dish tank
- send all coffee filter baskets through dish washing machine
- pour sweet and unsweet tea into bins and clean the urns. Take the spigots off and take them apart and clean thoroughly

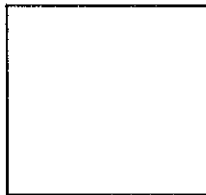
Checked by Manager:



SALAD BAR

- stock all dressings including daily back up with one full container full at all times in the walk-in cooler(PLEASE ROTATE DAILY) make sure clear plastic container is changed while doing this.
- switch out strawberry pan/ fill and fruit pan
- while everything is out getting changed over wipe out entire top of the salad case
- take cutting board off and rise off with dish tank sprayer and clean the whole top of salad bar
- clean and sanitize the whole inside of salad bar.
- completely stock inside: 3 chocolate milks/3 milks/3 orange juice/ 4 apple juice/ 3-5 whip cream/1 tomato juice/ice coffee/yogurt/Hershey syrup
- thoroughly clean the gaskets (rubber door seal) and wipe out entire inside of cooler and organize everything neatly/ wipe all stainless steel
- making sure everything has and is within proper dates and date anything without a date
- cut and stock lemons leaving a container at least ¼ filled ready to be cut
- If there is no vanilla sauce in the walk in, pull one out of the freezer to thaw

Checked by Manager:



PASS BAR TOP

- Restock any powdered sugar, spiced pancake seasoning, cherries, butter, whipped cream, or vanilla sauce that is low throughout your shift
- refill the ice in on the expo line whenever needed
- empty and clean the water wells sending utensils though the dish machine and changing the water often though your shift
- clean all heat lamp areas and all stainless steal above expo windows
- clean the whole pass bar top shelf
- send the container holding the steak knives, soup spoons and tea spoons through the dishwasher
- change trash on the line. Ensure nothing is left in the bins after you remove the bags

Checked by Manager:

PASS BAR BOTTOM

- wipe and clean and remove all syrups making sure there is one of all 4 on the shelf restock if empty
- clean entire pass bar shelf moving everything and cleaning with fresh sani water. Completely stock pass bar shelves with to go bags/ salt/ pepper/ honey/peanut butter/ sugars all 3 white, blue pink/ changing out plastic containers as you are filling them/change all containers
- refill all jelly containers remember FIFO
- organize bottom shelf
- clean both sinks on server line using COMET and the plumbing and walls behind and around sinks
- sweep entire server line

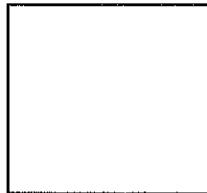
Checked by Manager:



ICE CREAM CASE/ICE MACHINE

- remove ice cream from cooler and clean entire inside defrost (NO ICE BUILD UP)/ restock if needed
- empty and clean water well sending all utensils through dish tank and refilling with hot water
- clean the entire pass bar around ice cream cooler including the walls behind it and outside ice machine
- clean the shake machine and pull it out and clean under it
- stock all ice cream cups/shake makers/spoons
- clean out both sinks with comet and plumbing
- stock ice tea /filters/clean tea areas pass bar
- Wipe down the entirety of the ice machine
- Open the ice machine and wipe the lip directly above the opening. If you're not sure where the lip is, ask a manager

Checked by Manager:



CONDIMENT STATIONS

- stock all 4 stations with printer paper 4 rolls each station
- fully stock clear lids and clamshells containers at each station
- empty all garbage at each station wipe down all stations / take menus to host stand
- completely stock each station/10 ketchup/8 mustard/8 tabasco/8 cholula/8 AI /10 full jelly caddies at each station/napkins
- spot sweep entire dining room
- soak all lids in HOT URN WATER and wipe down all bottles
- wipe all shelves and organize all condiments
- refill all jelly caddies

Checked by Manager:

2ND & 3RD SHIFT SIDE WORK

1ST OFF STOCK HOT CHOCOLATE/ HOT TEAS BAGS/ TO-GO CUPS AND LIDS/ TO-GO BOXES AND BROWN BAGS/NAPKINS/STAWS/ FILL ICE/ WIPE DOWN ENTIRE PASS BAR/WIPE ALL TRAYS

2ND OFF STOCK SALAD CASE BOTH TOP AND BOTTOM/ REFILE BACK UP DRESSING HAVING A FULL CONTAINER IN WALK-IN/ WIPE OUT THE ENTIRE TOP PULLING OUT CONTAINERS AND WIPING THE INSIDE/ WIPE THE ENTIRE INSIDE PULL ALL MILK AND JUICES WIPING DOOR AND ALL SHELF AND OUTSIDE DOORS/ FILL ICE AND CHANGE SANI BUCKETS

3RD OFF WIPING THE SYRUP PASS BAR PULL EVERYTHING OFF SHELF WIPING ALL STAINLESS STEEL / WIPING SYURP BOTTLES AND STOCKING MAKING SURE ONE OF EACH IS ON THE LINE AT ALL TIMES/ REFILL JELLY CONTAINERS CHANGING CONTAINERS WHEN NEEDED AND DIRTY/RESTOCKING EXPO AREA AND CONDIMENTS MAKING SURE YOU ARE CHANGING OUT CONTAINERS WHEN REFILLING AND NEEDED / CHANGING THE ICE THE CONDIMENTS GO IN

4TH OFF STOCKING AND CONDENCING ALL COFFEE CUPS AND GLASSES AND STOCKING/ CLEANING THE SHELF THE RACKS SIT IN/ CHANGE BOTH TRASH CANS/ BREAKING DOWN HOST STAND AND PULLING THE GARABGE / EMPTY ALL 3 OF THE SERVER STATION TICKET BUCKETS AND WIPING DOWN STATIONS/FILL ICE AND CHANGE SANI BUCKETS

CLOSER IS TO GO BACK OVER EVERYTHING AND RE STOCK AND RE CLEAN AND WIPE EVERYTHING DOWN. TO GO THROUGH ENTIRE FOH AND MAKE SURE EVERY TABLE IS SOP AND CLEANED. EMPTY THE TRASH AT HOST STAND AND MAKE SURE ALL SERVER STATIONS ARE CLEANED AND ALL MENUS ARE TAKEN TO HOST STAND.

**YOUR SECTION SHOULD ALWAYS BE SET UP
BEAUTIFULLY!! STRAIGHT SILVERWARE, NO STICKY
SPOTS ANYWHERE, COFFEE POT ½ " FROM EDGE-
CENTERED, AND ALL SYURPS FILLED (IF YOU CAN SEE
LIGHT PLEASE FILL) SUGARS FILLED, AND SALT &
PEPPER!!**

CLEAN ALL WALLS MAKING SURE TO GET ALL MARKS,SYURPS, AND FOOD REMOVED

MOVE ALL TABLES/ CHAIRS IF NEEDED AND SWEEP ENTIRE SECTION

CLEAN BOOTHS, CHAIRS SEATS, AND CHAIR LEGS, CRUMB CATHCERS

Complete the 10-point section check

Exhibit J

Server Deep Cleans

Day Morning Swing Overnight

Section Syrups: Dump syrups into containers and rinse out entire syrup container and lid with hot water. Wipe down license plate and replace sign if needed. Then refill and place back on the table.

Coffee Urns: Giving ample time for urns to cool off, soak the urns with a cleanser and thoroughly rinse, wipe down, and clean. Then, put through dish machine. **Detail Ice Cream Freezer**

Soup Wells: Making sure the wells are turned off, deep clean the inside and surrounding area of the wells with stainless steel cleaner. **Microwave:** lift microwaves and clean inside, outside, and surrounding area.

Salts and Peppers: Empty salt/pepper separately into bins/cover the bins. Send glass portion through dish tank, separately send tops through (make sure tops are covered with second rack!)

Glass Dividers/Windows/Door Glass: Using glass cleaner for ONLY the dividers and door glass, wipe clean of marks, dirt, and fingerprints. Only use HOT WATER for dining room windows.

Light Fixtures: Wipe down hanging, light fixtures inside and out and wipe any fallen dust on tables that has fallen to the surrounding area. Clean all **Windowsills** throughout restaurant

- Run sugar caddies through dish tank
- Clean sugar caddies should have no evidence of food, smudges, or food debris
- Use sugar caddies that were originally there unless they have evidence of being contaminated with
- If missing a sugar caddie please notify MOD

Bottom of Salad Case: Remove items from within salad case. Wipe out shelves, walls, roof, gaskets, and floor. **Ice Cream Cooler:** Allow to defrost then scrape sides of cooler of extra ice and frost.

Condiment Stations: Soak all condiment bottle lids in hot water and condense condiments that have only the same date. Wipe out shelves and wipe bottles down and replace.

Monday

Tuesday

Wednesday

EXHIBIT 12
 WIT: Henderson
 DATE: 9/21/2018
 Sandra Apley, CSR

Sections/Zone Gunt: Scrape the bottom of each table and the surrounding area in the section for gum and remove. Chair and Table Legs and Bases: Wipe down table bases and legs and chair legs completely from dirt, debris, and any markings. **Coffee Pots:** Cleanse, allow to soak slightly, and wipe out the inside and outside of coffee pots.

Booth Cleaning: Take them out and clean inside. **Crumb Catchers:** Wipe out crumb catchers and in-between seats completely to be free of debris.

High Chairs/Boosters: Completely wipe down and sanitize the booster seats and the high chairs. All syrup, chocolate, crayon, and more does come off!

Jelly Caddies: Empty jellies into bins and send caddies through the dish tank. Allow to dry, then refill. **Walls in Passbar:** Scrub foreign stains and marks on the passbar and surrounding area walls. **Soda Machine:** Spak nozzles and take apart completely, wiping out the entire machine.

Soup Wells: Making sure the wells are turned off, deep clean the inside and surrounding area of the wells using stainless steel cleaner. **Passbar Shelves:** empty shelves and wipe out all throughout the passbar.

Equipment detail: take apart and detail your assigned running sidework station

Section/Zone Walls: Any markings and dirt of any kind is to be scrubbed clean. Things like crayon and such needs to come off of the walls.

TBD by Manager on shift

TBD by Manager on shift

Passbar Shelves & FOH and Passbar garbage cans

Hanging Pictures/Frames: Wipe down all hanging pictures and their frames with a damp cloth. They should be free of syrup, dust, and any other markings and dirt.

TBD by Manager on shift

TBD by Manager on shift

Thursday

Friday

Saturday

Sunday

Server 10-Point Section Check

- This is to be done upon arrival for your shift to prepare for **your** guests
- This will also be done at the end of your shift to prepare for the next servers' guests
- You will not take tables until this is completed and will not leave until it is done
- Do this for the section you were initially on the chart to be in and the section you end up departing your shift from

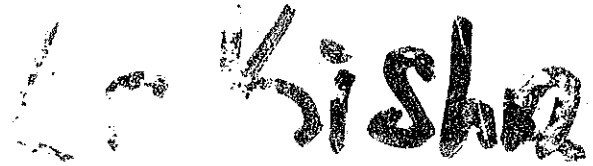
1	Stock and fill sugars as follows: 4 Sweet-n-Low, 4 Splenda, 4 Equal, Rest Sugar
2	Clean syrup caddies and any table promos
3	Clean and fill syrup bottles and lids <i>(do not get water in syrup and replace any broken lids)</i>
4	Be sure you have all four types of syrups in this order, starting from the left: Old-fashioned – Blueberry – Butter Pecan - Strawberry
5	Wipe down and fill salt and pepper shakers
6	Clean table underneath syrup and sugar caddies and wall around
7	Wipe down and clean all walls around your section and Windex any glass
8	Ensure your table top is absolutely clean <i>(no stickiness, salt, pepper, etc.)</i>
9	Thoroughly clean table legs, chair legs, booth seats, and crumb catchers <i>(remove any gum on underside of table)</i>
10	Thoroughly sweep floors in your section

Server Section Deep Clean Guide

Your section should always be set up beautifully! Straight silverware, no sticky spots anywhere, coffee pot 1/2" from edge-centered

- Clean all walls making sure to get all marks, syrup, and food removed
- Move all tables and sweep underneath!
- Dust all light fixtures, window and picture frames/ledges and fan blades
- Clean all table edges and chair legs
- Clean table tops thoroughly (if any wall paint is on the edges clean it off!)
- Clean booth and chair seats (*and chair legs*), crumb catchers, and wood around booth foundations
- Complete the Server 10-point Section Check
- Scrape all gum from underneath tables! **Very important!**

Side work 1) HOST/ EXPO-



1. Check ice bin and Sani bucket (*fill if necessary*)
2. Clean pass bar entirely
3. Clean High Chairs and Booster seats
4. Sweep floor underneath boosters and high chairs
5. Stock To-Go supplies: bags, container's, silverware, ketchup packets, syrup packets, and drink carriers
6. Fold kids menus
7. Clean and stock regular menus
8. Stock server paper and wet naps
9. Wipe down entire host stand (*including lobby booths, base boards and lobby floors/ rugs*)
10. Clean all windows (*front doors, lobby*)
11. Wipe all art work in lobby and near bathrooms
12. Clean and stock bathrooms (*wipe counters and clean mirrors*)
13. Clean inside and outside of the microwave

Side work 3) _____

Juice Cooler

- Wipe all stainless in the area
- Check ice bin and sani (*fill/ change if necessary*)
- Check accuracy of all labels in Juice Cooler
- Take apart and clean the inside/ outside entire juice cooler

(send racks through dish tank)

stock and lable the following as is (if opened)

item	label	item	label
1 gallon of white milk	use by date	2 Cranberry Juice	4 days
1 gallon of Chocolate Milk	use by date	2 Grapefruit Juice	4 days
2 gallons of O.J.	4 days	10 Apple Juice	4 days
1 container of Iced Coffee	1 day	Stock 4 Hershey's Chocolate	2 months
1 pitcher of Tomato juice	4 days	Strawbermies	24 hours

Notes

Side work 2)

Coffee Station

- Rinse and setup all baskets
- Clean the front, sides, and back of coffee brewers
- **Rinse all grounds from inside of coffee urns**
- Stock 15 creamer bowls, pull an creamer box and fill a ½ pan
- Check and label all opened monin syrups (*with cap – 6 months, with pump – 2 months*)
- Wipe off monin syrups, clean wall, and change towel
- Clean coffee cup rack area (*shelves, sides, top/ bottom, and drainer of coffee station*)
- Clean and rinse **ALL** hot tea pots
- Stock 16 each of both decaf and regular coffee packets and wipe shelves
- Clean Shake machine
- Check ice bin and sani (*fill/change if necessary*)

Bev #5

Bev #5

Side work 4)

Butter Bin

- Fill souffle cups and lids
- Empty and clean butter bin. Refill with ice (*all items in ice!*)
- Change and fill all garnish pans (lemons, cherries, chocolate chips)
- Restock whip cream (8), refill vanilla sauce (7 days), Lemons (3 days), 2 boxes of yogurt, and Cherries (14 days)
- Wipe all counters, cubbies and walls in area
- Check ice bin and sanit (*fill if necessary*)

Stock and lable the following as is (if opened)

item	label	item	label
Cinnamon Sugar	6 months	Icing	use by date
Powder Sugar	1 month	Cocoa shaker	1 month
Caramel	1 month	1/6 pan of chocolate	1 day
Lemons		Chips	
	Bakays		

Plates:

- 1 stack of Under Liners
- 1 Stack of Service Plates
- 1 stack of Fruit Bowls
- 1 stack of Soup Bowls

Side work 5) _____

Beverage Station

- Roll 10 iced tea spoons with 1 straw
- Check ice bin and Sani (fill/ change if necessary)
- Wipe all stainless in area, clean sink, wipe off pop machine, and top of freezer
- Replace/ restock (2 bags) straws
- Stock 1/3 pan of each lid (large and kid)
- Stock 3 rows of large to-go cups and kids cups
- Stock: brown sugar (1 month), hot fudge packets (date on box), coasters, hot teas (1 month), new ice cream as needed, specialty mugs, and under liners, grits, oatmeal, and hot chocolate
- Check all labels in area
- Wipe and sanitize server drink trays (do not send through dish tank)
- Remove ice cream and thoroughly clean inside freezer
- Wipe off morin syrups clean wall
- Clean shake machine

Side Work 6)

Salad Bar

- Label soups if needed.
- Flip and label all dressing (*including any containers in walk-in cooler!*) **CHECK ALL LABELS**
- Clean entire top/ bottom of salad bar (*as well as the sides/ inside lid*)
- Flip all other containers and re-label
- Ensure there are 32 soufflé cups of each Ranch, BBQ, and Honey Mustard
- Make sure you cut red onion, diced tomatoes, and prep salad

Item	Label	Item	Label
2oz. salad lettuce	2 days	Balsamic	7 days
Diced Tomatoes	2 days	Orange Vinaigrette	7 days
Crackers	5 months	Honey-Lime Vinaigrette	7 days
Crountons	1 month	Onions	2 days
Honey Mustard	7 days	Ranch	7 days
BBQ	7 days		

portion 10 4oz bags fruit in top of salad bar - label for 2 days -

Side work 7)

Condiment Station

- Stock all condiment as shown below
- Marry condiments if necessary
- Wipe all shelves below and take out trash
- Fill Jelly tubs
- Stock small to-go boxes
- Check Ice bin and sani (fill/ change if necessary)

Ketchup	4 rows of 4
Mustard	2 rows of 4
Cholula	2 rows of 4
Tabasco	2 rows of 4
A1	2 rows of 5
Sugar-Free Syrup	1 row of 5
Jelly Caddies	4 caddies
Napkins	4 total
Straws	2 total

Side work 8)



Stock and Syrup

- Wipe down all stainless in pass bar
- Change trash
- Check ice bin and sani (*fill/ change if necessary*)
- Wipe and clean all syrup containers (*lids, bottom, sides*)
- Restock (*marry if necessary*) all syrups: 3 Old-fashion, 3 Blueberry, 3 Butter Pecan, 3 Strawberry
- Fill jelly tubs: Grape, Strawberry, Honey, Peanut Butter

Old Fashion	2 months
Blueberry	2 months
Butter Pecan	2 months
Strawberry	2 months
Honey	1 month
Grape jelly	1 month
Strawberry jelly	1 month
Peanut Butter	1 month

Exhibit K

SERVER SIDEWORK

Sinks/Walls/Trash can areas

- ❖ Clean all 3 handwashing sinks
- ❖ Clean walls in passbar area
- ❖ Empty trash (if full) clean stainless

Bottom Passbar

- ❖ Wipe and stock syrup jugs
- ❖ Stock To-Go boxes, lids and bags
- ❖ Fill Jelly and sugar caddies.
- ❖ Wipe backsplash and pass through window

Top Passbar

- ❖ Stock Ice, chocolate chips cherries etc.
- ❖ Clean pass through window, backsplash, and counter space
- ❖ Check all labels

Soup/Pop Station

- ❖ Set up soup, check labels
- ❖ Clean Microwave and beverage trays
- ❖ Detail Pop machine, keep ice bin full
- ❖ Clean and restock glass racks
- ❖ Spoon straws

Salad Bar

- ❖ Flip and fill pans on top
- ❖ Stock juice, milk, ice coffee, fruit, whip cream etc.
- ❖ Check all labels
- ❖ Stock crackers, croutons, and organize/wipe top shelf

Coffee Station

- ❖ Brew coffee!
- ❖ Clean burners, baskets, and urns
- ❖ Clean and stock mug racks

Iced Tea

- ❖ Brew Fresh Iced Tea and Label
- ❖ Clean Iced Tea Container(s) with Urn Cleaner Nightly
- ❖ Monin syrups

Ice Machine/Dessert station

- ❖ Clean ice machine and blender
- ❖ Stock ice cream, hot tea, and coffee creamers

P.O.S./Condiments

- ❖ Stock condiments, thermal paper, To-Go boxes etc.
- ❖ Clean condiment lids and marry bottles

Soak Coffee Pots

- ❖ 2 Pots in the a.m. (use urn cleaner)
- ❖ 2 Pots in the p.m. (use urn cleaner)



Exhibit L

ZONE SIDEWORK

Zone #1: Cho's Apartment

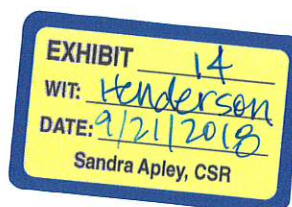
- Black Caddie
 - Stock
 - Wipe down
 - Wipe under
 - Clean grate in front
- Stainless (Top)
 - Remove all items from counter
 - Wipe down counter
 - Comet sink
 - Pour water down drain
 - Wipe down walls around counter
 - Flip trash
 - Wipe down trash can
- Stainless (Bottom)
 - Stock condiments
 - Clean condiment lids/caps
 - Remove excess items
 - Replace silverware buckets
 - Polish stainless (aerosol polish)
- MICROS Station
 - Wipe down MICROS computers
 - Wipe under computers
 - Replace/stock paper
 - Replace/stock staples
 - Remove excess items
- To-Go Items/Extras
 - Stock to-go boxes and lids
 - Stock moist towelettes
 - Stock to-go utensils
 - Sweep area
 - Wipe down walls
 - Check sani-bucket

Suggested P/S Sidework

- Stock black caddie
- Flip trash/sani
- Wipe down trash can
- Stock to-go boxes

Suggested Running Sidework

- Sani
- Trash
- Thermal paper
- Keep clean



ZONE SIDEWORK

Zone #2: Beverage Station

- Pepsi Machine
 - Soak nozzels
 - Wipe down machine
 - Flip ice bin
 - Flip ice scoops (and catch)
 - Clean ice bin lid
 - Stock to-go cups and lids
- Specialty Area
 - Clean shake maker
 - Clean monin bottles (and stand)
 - Retire and clean pitchers
 - Wipe down wall and timer
 - Remove grate and clean
- Hot Cocoa Machine
 - Stock
 - Flip container
 - Clean inside
 - Clean catch at bottom
 - Add extra cocoa to drawers
 - Wipe down sides of machine
- Bunn Coffee Makers
 - Clean burners
 - Clean spray heads
 - Retire coffee
 - Clean urns
 - Wipe down outside of machine
 - Clean under
- Cups & Stainless
 - Consolidate mugs
 - Stock mugs
 - Wipe down and polish stainless
 - Flip small trash
 - Wipe down server trays
 - Polish stainless
- Syrup Shelf
 - Stock syrups (1 open; 2 extra)
 - Clean open syrup jugs
 - Wipe down shelf
 - Flip bus tub (if present)

Suggest P/S Sidework

- Wipe down server trays
- Stock syrups
- Consolidate mugs
- Get ice

Suggested Running Sidework

- Ice
- Cups
- Bus tub
- Coffee

ZONE SIDEWORK

Zone #3: Window

- Butter Bin
 - Flip ice
 - Stock garnishments
 - Check labels
- Butter Well
 - Flip entirely
 - Wash utensils
- Clean Drain
 - Take cover to dish tank
 - Clean inside
- Miscellaneous
 - Sweep under passbar
 - Stock straws
 - Comet handsink
 -

Exhibit M



**Trinity Restaurant Group
JOB DESCRIPTION**

POSITION TITLE: Expo

Department: Operations

Directly Report

To: General Manager

JOB SUMMARY: Expeditors ensure customer orders are being cooked in a timely manner, food is delivered to the table quickly, assist in running the food to the tables, provide any needed garnishes, focus on food safety.

ESSENTIAL FUNCTIONS:

- Develop and maintain professional functional working relationships with IHOP employees and customers.
- Ensure orders are being cooked in a timely manner.
- Ensure orders are ready at the same time for delivery to table.
- Assist in running food to the tables when needed.
- Comply with all local and SOP health, sanitation, and safety guidelines.
- Perform all cleaning duties according to posted cleaning charts.
- Comply with IHOP uniform and appearance standards per SOP guidelines.
- Perform other assignments or tasks as assigned by the General Manager, Assistant Manager, or acting supervisor.

EDUCATION AND EXPERIENCE:

**Education, Experience
required:**

High School Student or High School degree or equivalent

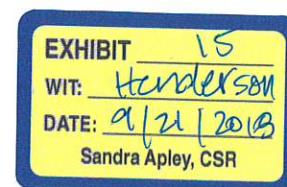


Exhibit N

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MERCEDES WHITFIELD, on behalf of
herself and similarly situated employees,

v.

TRINITY RESTAURANT GROUP,
LLC,

Case No. 2:18-cv-10973-DML-EAS

Hon. David M. Lawson

DECLARATION OF JESSE L. YOUNG

I, Jesse L. Young, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I have personal knowledge of the matters described herein and am competent to testify on those matters if necessary.

2. I submit this declaration in support of Plaintiff's motion for class certification and appointment as class counsel.

3. I am not under any investigation nor have I ever been sanctioned for any professional misconduct by any state bar, professional association, or court.

4. I am a partner at Kreis, Enderle, Hudgins & Borsos, P.C. and work out of its Kalamazoo, Michigan office. My practice primarily involves wage-and-hour litigation under federal law (the Fair Labor Standards Act) and various state laws.

5. My credentials are attached hereto and identify many of my professional achievements and activities.

6. Prior to joining Kreis Enderle, I was a partner at Sommers Schwartz, P.C. in Southfield, Michigan where I practiced for approximately 10 years and handled the same type of litigation.

7. Throughout my career, I have acted as class counsel for plaintiffs in dozens of wage-and-hour class and collective actions across the United States, including but not limited to:

- *Matthews v. Hyatt Corporation* (W.D.N.C., Case No. 17-cv-0413)
- *Oullette v. Ameridial, Inc.* (N.D. Ohio, Case No. 16-cv-2144)
- *Anderson v. The Minacs Group (USA), Inc.* (E.D. Mich., Case No. 16-cv-5363)
- *Gullage v. Cognosanto, LLC* (M.D. Tenn., Case No. 16-cv-2816)
- *Serbay v. DialogDirect, Inc.* (E.D. Mich., Case No. 16-cv-12716)
- *Armstrong v. Concentrix Corporation* (N.D. Cal., Case No. 16-cv-5363)
- *Brown v. Permanente Medical Group, Inc.* (N.D. Cal., Case No. 16-cv-5272)
- *Owens et al. v. GLH Capital Enterprise, Inc.* (S.D. Ill., Case No. 16-cv-1109)
- *Wengerd et. al. v. Self-Reliance, Inc.* (S.D. Ohio, 15-cv-0293)
- *Lee v. Asurion Insurance Services et al.* (D. Ariz., Case No. 15-cv-2606)
- *Downard v. Reno, Inc. et al.* (W.D. Mich., Case No. 16-cv-0927)
- *Bourne v. Ansara Restaurant Group et al.* (E.D. Mich., Case No. 16-cv-10332)
- *Rangel v. Compliance Staffing Agency, LLC et al* (M.D. Ga., Case No. 15-cv-0008)
- *Padan v. West Corporation* (D. Nev., Case No. 15-cv-0394)
- *Kie v. iVox Solutions* (S.D. Fla., Case No. 15-cv-14296)
- *Alderoty v. Maxim Healthcare Services* (D. Md., Case No. 14-cv-2549)
- *Atkinson v. TeleTech, LLC* (S.D. Ohio, Case No. 14-cv-0253)
- *Tarrant v. Sutherland Global Services* (W.D.N.Y., Case No. 15-cv-6320)
- *Wright v. Jacob Transportation Services, LLC et al.* (D. Nev, Case No. 15-cv-0056)
- *Wilson v. Maxim Healthcare Services* (W.D. Wash., Case No. 14-cv-0789)
- *Cardoza v. Bloomin' Brands Inc. et al.* (D. Nev., Case No. 13-cv-1820)
- *Matthews v. Convergys Corp. et al.* (W.D.N.C., Case No. 14-cv-0125)
- *Ingram v. Passmore Towing & Recovery* (N.D. Ala., Case No. 14-cv-0004)
- *Terry v. TMX Finance LLC et al.* (N.D. Ill., Case No. 13-cv-6156)
- *Lawrence vs. Maxim Healthcare Services, Inc.* (N.D. Ohio, Case No. 12-cv-2600)
- *Stelmachers vs. Maxim Healthcare Services, Inc.* (N.D. Ga., Case No. 13-cv-1062)
- *Williams vs. Sykes Enterprises, Inc.* (D. Minn., Case No. 13-cv-0946)
- *Flores vs. Velocity Express, Inc.* (N.D. Cal., Case No. 12-cv-5790)

8. I am the lead lawyer from the Kreis Enderle firm and have worked on this case since its inception and throughout its pendency. I have been in regular contact with the named Plaintiff, Mercedes Whitfield.

9. As co-lead plaintiffs' counsel in this case, I, along with my experienced and skilled co-counsel, seek appointment as Class Counsel under Rule 23(g). My co-counsel's declarations are being submitted to the Court contemporaneously.

10. I am committed to the full preparation of this case through the performance of necessary and reasonable discovery and am willing to take this case to trial should that become necessary. I am committed to acting in the best interest of the class, and understand my duties in that regard under applicable law.

Dated: September 25, 2018



Jesse L. Young



Jesse Young

Jesse Young is an employment litigation attorney. As a member of Kreis Enderle's Business and Employment Group, he represents individuals and businesses involved in serious employment disputes including but not limited to issues of severance negotiations, discrimination, retaliation, whistleblowing activity, employment contracts, terminations, and compliance.

In addition, Jesse also has extensive experience with – and is probably best known for – handling wage and hour disputes arising under the Fair Labor Standards Act (FLSA) and similar state laws. In this regard, he has represented businesses and individuals nationwide dealing with the payment of minimum wages and/or overtime, classification of employees, “off the clock” work, meal breaks, donning and doffing of work equipment, recordkeeping, and other issues peculiar to a wide variety of industries.

Jesse has been appointed to leadership positions in dozens of complex class action litigation matters across the country. In these positions, he has helped secure multi-million dollar recoveries in class actions involving thousands of plaintiffs.

Jesse's dynamic practice has taken him around the country to represent his clients. He has briefed and argued cases in Michigan state courts, the Michigan Court of Appeals, the U.S. Court of Appeals for the Sixth Circuit, and dozens of federal U.S. District Courts nationwide. He has also attended several arguments before the U.S. Supreme Court.

Notable Results

- \$6.25 million class settlement on behalf of “advice nurses” who were not properly paid wages and overtime for off-the-clock work in violation of the Fair Labor Standards Act.
- \$6.55 million collective action settlement on behalf of exotic dancers working at a Déjà Vu gentleman's clubs that misclassified them as independent contractors, forced them to pay “rent,” and failed to pay minimum wage.
- \$680,000 class action settlement involving restaurant employees who alleged they were forced to share tips with ineligible employees.
- \$3.0 million class action settlement involving restaurant employees who alleged they were not properly paid minimum wage and overtime.
- \$3.5 million class action settlement on behalf of home-based customer service agents who claimed their employer unlawfully withheld compensation in violation of the Fair Labor Standards Act.

Practice Areas:

Employment Law
Civil Litigation

Bar Admissions:

Michigan
U.S. Supreme Court
U.S. Court of Appeals
for the Sixth Circuit
U.S. District Court,
Eastern District of
Michigan
U.S. District Court,
Western District of
Michigan
U.S. District Court of
Colorado

Memberships:

American Bar
Association
Federal Bar Association
National Employment
Lawyers Association
State Bar of Michigan
American Association
for Justice

Contact Information:

Shareholder

JYoung@kehb.com

vCard

LinkedIn

Education:

- Western Michigan University Cooley Law School, J.D.
 - Cum Laude
 - Member of Law Review
- Western Michigan University, B.A., Kalamazoo, Michigan
- Residential Builders License, State of Michigan No. 2101171400

Community Involvement:

- Habitat for Humanity Board of Directors – 2012 to present
- Habitat for Humanity – 2011 Volunteer of the Year

Assistant

Kazmira M. Ruhland

(269) 321-2312

KRuhland@kehb.com

- \$7.5 million settlement in nationwide wage and hour collective action involving call center employees who were not paid for their pre-shift computer login and boot-up time.
- \$4.5 million settlement in nationwide wage and hour class action involving at-home call center employees who alleged they were not paid for their pre-shift computer login and boot-up time and for time spent working “off-the-clock” while experiencing system downtime.
- \$1.1 million settlement in nationwide wage and hour class action involving at-home call center employees who alleged they were not paid for their pre-shift computer login and boot-up time and for time spent working “off-the-clock” while experiencing system downtime.
- \$1.075 million class action settlement for at-home customer service representatives who alleged that their employer failed to pay wages and overtime for “off the clock” work.
- \$1.4 million wage and hour collective action settlement involving call center employees who alleged they were not paid for their pre-shift computer login and boot-up time.
- \$1.6 million settlement in a collective action on behalf of hundreds of salaried recruiters who alleged they were not paid overtime after their employer misclassified them as exempt employees.
- \$11.3 million collective action settlement on behalf of exotic dancers working at a Déjà Vu gentleman’s clubs in an action brought in Michigan under the Fair Labor Standards Act (FLSA) for failure to pay minimum wage.
- \$3.6 million Equal Protection lawsuit: Jesse Young assisted Andrew Kochanowski in obtaining a jury verdict against a city that discriminated against a property owner in violation of the 14th Amendment’s Equal Protection clause.

Honors/Awards

- The American Society of Legal Advocates – Top 40 Under 40 Labor & Employment Lawyers – 2018
- Michigan Lawyers Weekly “Up & Coming Lawyers” – 2014
- Super Lawyers Rising Stars (Michigan) – 2012 to present

Seminars/Lectures

- Speaker, 2018 FLSA Update, Institute of Continuing Legal Education, 43rd Annual Labor & Employment Law Institute Seminar, Plymouth, MI
- Panelist, 2017 FLSA Developments, Institute of Continuing Legal Education, Ann Arbor, MI
- Speaker, 2017 FLSA Update, Institute of Continuing Legal Education, 42nd Annual Labor & Employment Law Institute Seminar, Plymouth, MI
- Panelist, “Who is the Employer and Who is an Employee? Recent Legal Developments Defining the Workforce in the Gig Economy,” State Bar of Michigan Labor and Employment Law Section, 2016 Mid-Winter Meeting, Detroit, MI
- Faculty and Speaker, “Defending a Deposition,” 2015 Deposition Skills Workshop, Institute of Continuing Legal Education, Plymouth, MI
- Moderator, 2014 FLSA Update, Institute of Continuing Legal Education, Ann Arbor, MI
- Speaker, 2014 Ohio Association for Justice Advanced Wage and Hour Seminar, Proving an “Off the Clock” Case Without Documentary Evidence, Park City, UT
- Speaker, 2013 American Association for Justice Annual Convention, The Fair Labor Standards Act: Making New Client Intake a Success, San Francisco, CA
- Speaker, 2013 Great Lakes Mass Torts Institute, An Overview of the Fair Labor Standards Act, Detroit, MI
- Speaker, 2012 Mentor Jet: Taking Networking to New Heights, Cooley Law School program, Auburn Hills, MI





Posts by or including Jesse Young



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Michigan saw a number of employment law developments in the first six months of 2018 as Governor Snyder and the Michigan Legislature addressed several issues ...

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800 Port St
St. Joseph, Michigan
49085



Exhibit O

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MERCEDES WHITFIELD, on
behalf of herself and similarly
situated employees,

v.

TRINITY RESTAURANT
GROUP, LLC,

Case No. 2:18-cv-10973-DML-
EAS

Hon. David M. Lawson

**DECLARATION OF NICHOLAS A. MIGLIACCIO IN SUPPORT
OF PLAINTIFF’S MOTION FOR CLASS CERTIFICATION**

I, Nicholas A. Migliaccio, declare as follows:

1. I am a Partner at the law firm of Migliaccio & Rathod LLP (“M&R”) and co-lead counsel for Plaintiff and the putative class and collective in the above-captioned matter. I submit this declaration in support of Plaintiff’s Motion to for Class Certification. I have personal knowledge of the information contained herein, and if called as a witness could and would testify competently thereto.

2. My law firm, M&R, is a four-attorney class action firm with a national practice and has recovered millions of dollars on behalf of its clients since its founding. Attorneys at our firm have extensive experience litigating

complex class action litigation – including wage and hour cases – as further detailed below.

3. On March 26, 2018, my firm and co-counsel filed in this Court. Prior to filing this action, attorneys at M&R investigated the underlying facts and thoroughly researched the relevant law.

4. Since filing the Action, attorneys at M&R have continued to devote significant time to pursuing the interests of the Class, including communicating with the named Plaintiff and other opt-in plaintiffs; researching viable legal theories to be brought and filed against Defendant; assisting with the drafting of Plaintiff's motion for conditional certification; assisting with the drafting of written discovery; reviewing documents produced in response to Plaintiff's discovery requests; assisting with the drafting of the instant motion for class certification; and coordinating litigation efforts to ensure the efficient progress of the litigation.

5. With respect to the standing of counsel in this case, I have been in practice for 17 years. Over the past 10 years have I have devoted a significant portion of my practice to wage and hour litigation as detailed herein.

6. I recently serving as co-counsel along with attorneys at Winebrake & Santillo, LLC, in *Corbin v. CFRA, LLC*, 1:15-cv-00405

(E.D.N.C.) in which the court conditionally certified a collective of approximately 1,500 servers employed by another IHOP franchisee predominantly in North and South Carolina. The parties engaged in extensive discovery in the *Corbin* action and they case ultimately settled for \$1.725 million.

7. I also recently served as co-counsel in *Snodgrass v. Bob Evans*, Civil No. 12-cv-768 (S.D. Ohio), which involved class and collective action claims brought on behalf of assistant managers against Bob Evans. After extensive litigation, the *Snodgrass* action settled on a collective and class-wide basis for \$16.5 million. In issuing the order granting final approval, the court took special note of the “competence of class counsel in prosecuting this complex litigation, and the risks associated with the prosecution of the claims of the settlement class.”

8. I additionally recently served as co-counsel in *Bland v. Calfrac*, Civil No. 2:12-cv-1407 (W.D. Pa.), which involved class and collective action claims brought on behalf of field operators who worked in the oil and gas industry. After extensive litigation, the *Bland* action settled on a collective and class-wide basis for \$6 million.

9. I also served on the trial team in *Stillman v. Staples, Inc.*, 07-cv-849 (D.N.J.), in which, after a six-week jury trial, a unanimous jury returned

a verdict for almost \$2.5 million against Staples on behalf of 342 current or former Staples "sales managers" for unpaid overtime under the FLSA. After the verdict, I played a central role in the nearly one dozen wage and hour cases against Staples that were consolidated into a single multidistrict litigation, *In re: Staples, Inc., Employment Practices Wage & Hour Litigation*, MDL No. 2025 (D.N.J.), which later settled for \$42 million.

10. Over the course of my legal career, attorneys at my firm have played a significant role in the prosecution of numerous other class action lawsuits, including the certification of multiple litigation classes under Rule 23. A copy of the firm resume of M&R is annexed hereto.

11. M&R has the resources necessary to effectively prosecute this case on behalf of Plaintiff and putative class members, and if my firm is appointed as class counsel in this case my firm could and would devote them to doing so.

I declare pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed in Washington, D.C., on September 25, 2018.

/s/ Nicholas A. Migliaccio
Nicholas A. Migliaccio



SUMMARY

The attorneys at Migliaccio & Rathod LLP (“M&R”) have been collectively practicing for over 30 years and have successfully prosecuted a number of noteworthy consumer protection, environmental contamination, civil rights, privacy, and wage and hour cases. The firm’s attorneys, located in Washington D.C. and California, focus primarily on class or collective actions and take all of their cases on a contingent basis. The attorneys at the firm have litigated cases leading to recoveries of hundreds of millions of dollars in recoveries for consumers, workers, and other victims of corporate misconduct. M&R has a track record of investing the time, energy, and resources necessary to develop cases like this one, which implicate significant economic, societal, and health concerns.

NOTABLE CURRENT MATTERS AND SUCCESSES

- *Beture v. Samsung Electronics America*, Case No. 17-cv-05757 (D.N.J.). M&R serves as co-lead interim class counsel in action brought on behalf of a nationwide class arising from a hardware defect affecting hundreds of thousands of Samsung Galaxy Note 4 smartphones.
- *Wheeler et al. v. Lenovo (United States) Inc.*, Case No. 13-0007150 (D.C. Sup. Ct.) and *Kacsuta v. Lenovo (United States), Inc.*, Case No. 13-00316 (C.D. Cal.). Represented plaintiffs in a class action brought on behalf of purchasers of Lenovo laptops that suffered from Wi-Fi connectivity problems. Served among the Court-appointed class counsel in a nationwide settlement where Lenovo agreed to refund \$100 cash or issue a \$250 voucher (which required no purchase to use) to owners of the laptops.
- *In Re: Apple Inc. Device Performance Litigation*, 18-md-2827 (N.D. Cal.). M&R is serving in an advisory role to a member of the Plaintiff’s Steering Committee on this action arising out of Apple’s alleged reduction of iPhone performance in order to conceal a latent hardware defect.
- *Restaino et al. v. Mario Badescu, Inc.*, Case No. MID-L-5830-14 (N.J. Super. Ct.). Represented 36 individuals who had become physically addicted to undisclosed corticosteroids in a purportedly botanical face cream, and sought damages for personal injuries arising from the symptoms of topical steroid withdrawal. After three years of litigation, the case settled for significant relief to the plaintiffs.
- *Peppler, et al. v. Postmates, Inc.*, Case No. 2015 CA 006560 (D.C. Sup. Ct.) and *Singer, et al. v. Postmates, Inc.*, 4:15-cv-01284-JSW (N.D. Cal.). Represented plaintiffs in a wage theft class action against application-based courier startup company, alleging that the couriers were misclassified as independent contractors. M&R was named class counsel in the settlement agreement providing for \$8.75 million in relief to a nationwide class.



- *Bland v. Calfrac Well Services*, Case No. 2:12-cv-01407 (W.D. Pa.). Represented oil field workers in a nationwide collective and class action lawsuit against Defendant Calfrac Well Services for its alleged failure to properly pay overtime to its field operators. After extensive litigation, the case settled for \$6 million, which provided a gross recovery per class member of between \$250 and approximately \$11,500.
- *Matthews v. TCL Communications et al.*, Case No. 3:17-cv-95 (W.D.N.C.). Represent plaintiffs in a class action brought on behalf of purchasers of Alcatel OneTouch Idol 3 smartphones who allege that a firmware update removed Band 12 LTE functionality from their phones, greatly reducing their functionality. The Court has granted preliminary approval of a class action settlement which provides class members with either the reinstatement of Band 12 LTE functionality on their phones, or new phones with LTE Band 12 functionality.
- *Walsh et al. v. Globalstar, Inc.*, Case No. 3:07-cv-01941 (N.D. Cal.), represented Globalstar satellite telephone service customers who brought claims that Globalstar knew that it was experiencing failures in its satellite constellation and its satellite service was rapidly deteriorating and was no longer useful for its intended purpose, yet failed to disclose this information to its potential and existing customers. Served as Court-appointed class counsel in a nationwide settlement that provided an assortment of benefit options, including, but not limited to, monetary account credits, free minutes, or cash back for returned equipment.
- *Snodgrass v. Bob Evans*, Case No. 2:12-cv-768 (S.D. Ohio). Represented Bob Evans' Assistant Managers in a case alleging that Bob Evans, a restaurant chain with hundreds of locations predominantly in the Midwest, had misclassified its Assistant Managers as exempt from federal and state overtime laws. After a landmark ruling on the application of the so-called "fluctuating workweek" method of payment, the lawsuit settled for \$16.5 million. The gross recovery per class member was approximately \$6,380. In issuing its order approving the settlement, the court took special note of the "competence of class counsel in prosecuting this complex litigation."
- *Delandro v. County of Allegheny*, Case No. 06-927 (W.D. Pa.). Represented pre-trial detainees who were subjected to unlawful strip searches prior to their admission at Allegheny County Jail, located in Pittsburgh, PA. After winning class certification, partial summary judgment on liability, and an injunction, the case settled for \$3 million.
- *Nnadili v. Chevron*, Case No. 02-1620 (D.D.C.). Represented owners and residents of properties in the District of Columbia that were contaminated with gasoline constituents from leaking underground storage tanks that were installed by Chevron. The plaintiffs, who resided in over 200 properties in the Riggs Park neighborhood of Northeast Washington, D.C., alleged that Chevron's contamination interfered with the use and enjoyment of their property, impacted their property values, constituted a trespass on their land, and caused fear and emotional distress. The United States



- Environmental Protection Agency conducted an extensive investigation into the contamination. After approximately five years of litigation, the case settled for \$6.2 million.
- *Corbin v. CFRA, LLC*, Case No. 1:15-cv-00405 (M.D.N.C.). Represented 1,520 servers in collective action against major IHOP franchise for wage theft violations, culminating in \$1.725 million settlement.
 - *Craig v. Rite Aid*, Case No. 4:08-CV-2317 (M.D. Pa.). Represented Rite Aid Assistant Managers in a case alleging that Rite Aid had misclassified its Assistant Managers as exempt from federal and state overtime laws. Plaintiffs alleged that their primary duties involved manual labor such as loading and unloading boxes, stocking shelves, cashiering and other duties which are not exempt under federal and state overtime laws. After extensive litigation, the case settled for \$20.9 million, covering over 1,900 current and former assistant store managers. In issuing its order approving the settlement, the court stated that the settlement “represents an excellent and optimal settlement award for the Class Members” resulting from “diligent, exhaustive, and well-informed negotiations.”
 - *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 535 (6th Cir. 2012). Represented classes of insureds against several major insurance companies for the failure to use technological advances in verifying the addresses of insureds, leading to overcharges. Litigation culminated in multi-million dollar settlements.
 - *Ousmane v. City of New York*, Case No. 402648/04 (NY Sup. Ct.). Represented New York City street vendors in a pro bono class action suit against the City of New York for excessive fines and helped secure a settlement with a value of over \$1 million.
 - *Stillman v. Staples*, Case No. 07-849 (D.N.J.). Represented Staples Assistant Managers in Fair Labor Standards Act Claims for unpaid overtime. Served as a member of the trial team where the plaintiffs won a nearly \$2.5 million verdict against Staples for unpaid overtime on behalf of 342 sales managers after a six-week jury trial. After the verdict, nearly a dozen wage and hour cases against Staples from across the country were consolidated in a multi-district litigation. Served in a central role in the consolidated litigation, which lasted nearly two years after the *Stillman* verdict. The consolidated litigation ultimately settled for \$42 million.
 - *In re National Security Agency Telecommunications Records Litigation*, Case No. 3:06-md-01791 (N.D. Cal.). Represented Sprint subscribers in privacy suit against telecom companies to enjoin the alleged disclosure to the National Security Agency of telephone calling records. Appointed, with co-counsel, interim lead counsel for the Sprint subscriber class in the MDL proceedings. The litigation was ultimately dismissed after Congress granted retroactive immunity to the telecom companies.



ATTORNEYS

Nicholas A. Migliaccio

Nicholas Migliaccio has been practicing for over 16 years, and litigates across the firm's practice areas. He has successfully prosecuted numerous noteworthy class and mass action cases over the course of his career, and has been appointed class counsel in both litigation and settlement classes. He has been recognized by his peers as a Superlawyer in 2016, 2017, and 2018.

Mr. Migliaccio graduated from the State University of New York at Binghamton in 1997 (B.A., *cum laude* in Environmental Studies and Philosophy) and received his law degree from Georgetown University Law Center in 2001, where he was an Editor of the Georgetown International Environmental Law Review. Mr. Migliaccio played a significant role in the prosecution of the following notable cases:

- Represented assistant managers in a Fair Labor Standards Act misclassification case and served as a member of the trial team for a six-week jury trial that resulted in a \$2.5 plaintiffs' verdict. After the verdict, nearly a dozen wage and hour cases against the defendant from across the country were consolidated in a multi-district litigation. Served in a central role in the consolidated litigation, which ultimately settled for \$42 million.
- Represented worker class in wage theft assistant manager misclassification case against national restaurant chain that culminated in a \$16.5 million settlement
- Represented worker class in wage theft rate miscalculation case against multinational fracking company, resulting in \$6 million settlement
- Represented plaintiffs in a consumer class in defective laptop case against multinational computer manufacturer, resulting in a nationwide settlement where defendant agreed to refund \$100 cash or issue a \$250 voucher (which required no purchase to use) to owners of the laptops.
- Represented pre-trial detainees who were subjected to unlawful strip searches prior to their admission at Allegheny County Jail, located in Pittsburgh, PA. After winning class certification, partial summary judgment on liability, and an injunction, the case settled for \$3 million.
- Represented owners and residents of properties in the District of Columbia that were contaminated with gasoline constituents from leaking underground storage tanks that were installed by a major oil company. The plaintiffs alleged that the contamination interfered with the use and enjoyment of their property, impacted their property values, constituted a trespass on their land, and caused fear and emotional distress. After extensive litigation, the case settled for \$6.2 million.
- Represented New York City street vendors in a pro bono class action suit against the City of New York for excessive fines and helped secure a settlement with a value of over \$1 million.



Admissions:

- New York
- Washington, D.C.
- United States Court of Appeals for the Third Circuit
- United States Court of Appeals for the Fourth Circuit
- United States Court of Appeals for the Sixth Circuit
- United States District Court for the District of Colorado
- United States District Court for the District of Columbia
- United States District Court for the District of Maryland
- United States District Court for the Eastern District of Michigan
- United States District Court for the Eastern District of New York
- United States District Court for the Northern District of New York
- United States District Court for the Southern District of New York
- United States District Court for the Western District of New York
- United States District Court for the Western District of Pennsylvania

Education:

- Georgetown University Law Center, J.D., 2001
- State University of New York at Binghamton, BA, 1997

Publications and Speaking Engagements:

- Co-authored “Environmental Contamination Treatise: Overview of the Litigation Process,” in R. Simons, Ph.D, *When Bad Things Happen to Good Property* (Environmental Law Institute, 2005).
- Presentation on *The Motor Carrier Act Exception to the FLSA’s Overtime Provisions - 13(b)(1) and the SAFETEA-LU Amendments*, Worker’s Injury Litigation Group / Ohio Association of Justice Meeting, Winter 2014.
- Presentation on *Litigating Fair Labor Standards Act Collective Action Cases*, Worker’s Injury Litigation Group / Ohio Association of Justice Convention, Fall 2011.

Awards:

- SuperLawyers, 2016, 2017 and 2018



Jason S. Rathod

Jason Rathod litigates class actions across the firm's areas of practice, including consumer protection, worker rights, and civil rights. Mr. Rathod has been appointed class counsel in a number of noteworthy class actions and has been the principal brief writer in several critical submissions, before trial and appellate courts, that resulted in favorable rulings concerning class certification and summary judgment.

Mr. Rathod has been recognized as a leader in his field beyond the courtroom. He is the author of several published works, including a law review article on aggregate litigation in poor countries. Another recent law review article that he co-authored, comparing public and private enforcement in the United State and Europe, was cited by the Consumer Financial Protection Bureau in its proposed rule prohibiting class action waivers in the fine print of consumer contracts.

Mr. Rathod graduated from Grinnell College in 2006 (B.A. with honors in Political Science and Religious Studies). After college, he traveled to Fiji, Mauritius, South Africa, Trinidad & Tobago, Guyana, and Suriname on a Watson Fellowship, studying the Indian Diaspora. He graduated law school from the Duke University School of Law in 2010, where he was an Articles Editor of the Duke Law Journal. In law school, he also worked for the Self-Employed Women's Association in Ahmedabad, India on behalf of street vendors seeking an injunction against the city government for unlawful harassment and evictions.

Notable Cases Include:

- Representing consumers at trial in product defect class action;
- Represented consumer classes in insurance overcharge cases, including by drafting appellate briefs about the propriety of class certification. The Sixth Circuit Court of Appeals affirmed order for the classes 3-0, leading to several multi-million-dollar settlements;
- Represented worker class in wage theft assistant manager misclassification case against national restaurant chain that culminated in a \$16.5 million settlement;
- Represented worker class and collective against multinational startup company for Independent contractor misclassification claims, resulting In \$8.75 million settlement;
- Represented worker class in wage theft rate miscalculation case against multinational fracking company, resulting in \$6 million settlement;
- Represented over 1,500 servers In multistate collective action, resulting n \$1.72 million settlement;
- Represented consumer class in defective laptop case against multinational computer manufacturer; and
- Represented consumer class in defective construction case against multinational home builder, drafting key briefs leading to class certification and maintenance of suit in court, rather than arbitration.



Education:

- Duke University School of Law, J.D. 2010
- Grinnell College, B.A., 2006

Admissions:

- Illinois
- Washington D.C.
- United States District Court for the District of D.C.
- United States District Court for the District of Maryland
- United States District Court for the Western District of Pennsylvania
- United States District Court for the District of Colorado
- United States District Court for the Eastern District of Michigan

Publications and Speaking Engagements:

- *Trying the Class Action: Practical Tips from the Pros* (June 4, 2015) (panelist)
- *The Arc and Architecture of Private Enforcement Regimes in the United States and Europe: A View Across the Atlantic*, 14 U.N.H. L. Rev. 303 (2016) (co-authored)
- *Emerging Markets, Vanishing Accountability: How Populations in Poor Countries Can Use Aggregate Litigation to Vindicate Their Rights*, 24 Transnat'l L. & Contemp. Probs. 69 (2014)
- *Note: Not Peace, But a Sword: Navy v. Egan and the Case Against Judicial Abdication in Foreign Affairs*, 59 Duke L.J. 595 (2009)

Awards:

- SuperLawyers Rising Stars, 2017 and 2018



Esfand Y. Nafisi

Esfand Nafisi worked for several years at a corporate law firm before joining the plaintiffs' bar. During that time, he quickly demonstrated an aptitude for high-stakes trial work and innovation in complex electronic discovery, including the development of statistical sampling models, database discovery, and marshaling these tools to develop trial theory. As part of a trial team in an antitrust matter brought on behalf of a small corporation, Esfand was responsible for managing a team of seven attorneys, preparing witness examinations, creating trial demonstratives, and developing case theory and themes. Esfand also represented a Fortune 100 company in parallel criminal investigations from the U.S. Department of Justice, U.S. Postal Inspectors, numerous states' attorneys general, and FinCEN. In that matter, he played an extensive role, including managing a group of 32 attorneys, developed technology-assisted review protocols that were vetted and approved by DOJ officials, and developing and drafting presentations for high-ranking meetings in a matter that resulted in \$100,000,000 settlement.

Now, as an advocate for consumers and others impacted by corporate misconduct, Esfand's practice focuses on class actions, with a focus on corporate misconduct arising from emerging or new technologies.

Notable Cases Include:

- Represented corporate plaintiff in antitrust litigation that settled at trial for \$125,000,000. *Insignia Sys. V. News America Marketing In-Store*, Case No. 04-cv-4213 (D. Minn.).
- Represented Fortune 500 company in parallel wire fraud and money laundering investigations by federal authorities, which settled on favorable terms.
- Represented consumers in case alleging unlawful concealment of defective graphical processing units that led to nationwide repair and reimbursement program. *Book v. Apple*, Case No. 14-cv-04746 (N.D. Cal.).
- Represented three dozen individuals in consolidated personal injury action arising from undisclosed corticosteroids in an over-the-counter face cream. Worked closely with leading experts to develop theory of injury arising from topical steroid withdrawal. After three years of litigation, achieved more than \$16,000,000 in relief to 36 plaintiffs. *Restaino et al. v. Mario Badescu, Inc.*, Case No. MID-L-5830-14 (N.J. Super. Ct.).
- Represented consumers in case against NVIDIA, Inc. related to misrepresentations concerning performance of graphics cards.

Education:

- Northwestern University School of Law, J.D. 2009
- George Mason University, B.S., 2006

Admissions:

- California
- New York



- Washington D.C.
- United States District Court for the Northern District of California
- United States District Court for the Eastern District of California
- United States District Court for the District of Columbia

Publications and Speaking Engagements:

- *Daubert and its Discontents* 76 BROOK. L. REV. 131 (2010) (co-authored)
- *Developing Case Theory in Complex Litigations*, New York (2011)
- *Of Wheat and Chaff: Predictive Coding in Federal Biomet Case*, 159 Chicago Daily Law Bulletin 101 (May 22, 2013)

Exhibit P

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MERCEDES WHITFIELD, on behalf of
herself and similarly situated employees,

v.

TRINITY RESTAURANT GROUP,
LLC,

Case No. 2:18-cv-10973-DML-EAS

Hon. David M. Lawson

DECLARATION OF R. ANDREW SANTILLO

I, R. Andrew Santillo, declare, under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the following facts are true and correct:

1. I am an attorney at Winebrake & Santillo, LLC (“W&S”) and am personally familiar with the firm’s involvement in this litigation.
2. I submit this declaration to provide the Court with information concerning W&S’s qualifications to be appointed co-class counsel pursuant to Fed. R. Civ. P. 23(g).

W&S’s Experience in the Field of Wage and Hour Litigation

3. Since its founding in January 2007, W&S has exclusively represented plaintiffs in employment rights litigation. W&S is a pure contingency fee law firm and is “at risk” in every matter it handles. W&S never requires a client to pay an hourly fee or retainer. If a matter does not result in a money recovery, W&S recovers

nothing. This is a very risky business. While W&S has enjoyed substantial success over the years, it also has invested thousands of dollars and attorney hours and on litigation adventures that have fallen flat and resulted in no recovery.

4. At the Third Circuit Court of Appeals, W&S lawyers have argued cases resulting in the following precedential opinions in the area of wage and hour law:

Mazzarella v. Fast Rig Support, LLC, 823 F.3d 786 (3d Cir. 2016); *Resch v. Krapf's Coaches, Inc.*, 780 F.3d 869 (3d Cir. 2015); *McMaster v. Eastern Armored Services*, 780 F.3d 167 (3d Cir. 2015); *Knepper v. Rite Aid Corp.*, 675 F.3d 249 (3d Cir. 2012).

5. Many of W&S's cases are class or collective actions seeking damages on behalf of groups of employees. To date, W&S has resolved **154** separate class/collective actions in courts throughout the United States which are identified on the attached list. Various judges have issued opinions favorably commenting on W&S's work in class/collective action lawsuits.¹

¹ See, e.g., *Wolfe v. TCC Wireless, LLC*, 2018 U.S. Dist. LEXIS 40596, *2 (N.D. Ill. Mar. 12, 2018) (W&S and its co-counsel "have significant experience representing parties in complex class actions"); *Schaub v. Chesapeake & Delaware Brewing Holdings*, 2016 U.S. Dist. LEXIS 157203, *11 (E.D. Pa. Nov. 14, 2016) (W&S "provided highly competent representation for the Class"); *Tavares v. S-L Distribution Co., Inc.*, 2016 U.S. Dist. LEXIS 57689, *43 (M.D. Pa. May 2, 2016) (W&S and its co-counsel "are skilled and experienced litigators who have handled complex employment rights class actions numerous times before"); *Lapan v. Dick's Sporting Goods, Inc.*, 2015 U.S. Dist. LEXIS 169508, *7 (D. Mass. Dec. 11, 2015) (W&S and its co-counsel "have an established record of competent and successful prosecution of large wage and hour class actions."); *Kiefer v. Moran Foods, LLC*, 2014 U.S. Dist. LEXIS 106924, *49 (D. Conn. Aug. 5, 2014) (W&S and its co-counsel are "experienced class action employment lawyers with good reputations among the employment law bar"); *Young v. Tri County Sec. Agency, Inc.*, 2014 U.S. Dist. LEXIS 62931, *10 (E.D. Pa. May 7, 2014) (W&S "has particular experience with wage and overtime rights litigation," "has been involved in dozen of class action lawsuits in this area of law," and "have enjoyed great success in the field."); *Craig v. Rite Aid Corp.*, 2013 U.S. Dist. LEXIS 2658, *45 (M.D. Pa. Jan 7, 2013) (W&S and its co-counsel "are experienced wage and hour class action

6. In addition, W&S has successfully resolved hundreds of “individual” employment rights actions in which a single plaintiff (or a small group of named plaintiffs) alleges violations of federal or state employment laws. In many of these cases, W&S severely discounts its attorney’s fee in order facilitate settlement. In October 2016, W&S received the “Guardian Award” from Friends of Farmworkers in recognition of its work on behalf of low-wage workers in individual wage actions in and around Philadelphia.

W&S Attorneys’ Individual Experience

7. **Pete Winebrake** (“Winebrake”) graduated in 1988 from Lehigh University (*magna cum laude*) and in 1991 from Temple University School of Law (*cum laude*), where he served as a Managing Editor of the *Temple Law Review*. Winebrake has been a member of the New York bar since 1993 and the Pennsylvania bar since 1997. He also is admitted in the following federal courts: (i) the United States Supreme Court; (ii) the United States Courts of Appeals for the First, Second, Third, Seventh, and Tenth Circuits; and (iii) the United States District Courts for the Eastern District of Pennsylvania, Middle District of Pennsylvania, Western District of Pennsylvania, Eastern District of New York, Northern District of New York, Southern District of New York, Western District of New York, Northern District of

litigators with decades of accomplished complex class action between them and that the Class Members have benefitted tremendously from able counsel’s representation”); *Cuevas v. Citizens Financial Group*, 283 F.R.D. 95, 101 (E.D.N.Y. 2012) (W&S has “been appointed class counsel for dozens of wage and hour class claims across the country”).

Ohio, Northern District of Illinois, District of Colorado, Southern District of Texas, and Eastern District of Michigan.

8. Prior to founding W&S in January 2007, Winebrake held the following positions: (i) Law Clerk to Justice William R. Johnson of the New Hampshire Supreme Court (9/91-8/92); (ii) Assistant Corporation Counsel at the New York City Law Department's General Litigation Unit (9/92-2/97); (iii) Associate at the Philadelphia law firm of Ballard Spahr Andrews & Ingersoll, LLP (2/97-12/98); (iv) Deputy City Solicitor and, later, Chief Deputy City Solicitor at the Philadelphia Law Department (12/98-2/02); and (v) Non-Equity Partner at the Philadelphia law firm of Trujillo Rodriguez & Richards, LLC (3/02-1/07).

9. Winebrake has personally handled hundreds of civil actions in the United States District Courts and has tried at least 15 federal cases to verdict. The great majority of these civil actions have arisen under the Nation's civil rights or employment rights laws.

10. Winebrake serves *pro bono* on the Mediation Panel of the United States District Court for the Middle District of Pennsylvania. The Martindale-Hubbell Peer Review Rating System gives him an "AV-Preeminent" rating, and the well-known "Super Lawyer" publication ranks him as one of Pennsylvania's "Top 100" lawyers. He has lectured on employment law at many organizations, including: Vanderbilt University School of Law; the Wharton School of Business at the University of Pennsylvania; the Beasley School of Law at Temple University; the University of

Pennsylvania Law School; the Earle Mack School of Law at Drexel University; the Pennsylvania Bar Institute; the Workplace Injury Law & Advocacy Group; the American Association of Justice; the National Employment Lawyers Association; the National Employment Lawyers Association of New York; the Ohio Association of Justice, and the Society for Human Resources Management.

11. **R. Andrew Santillo** (“Santillo”) graduated in 1998 from Bucknell University and in 2004 from the Temple University School of Law, where he served as Editor-in-Chief of the *Temple Political & Civil Rights Law Review*. Santillo has been a member of the Pennsylvania and New Jersey bars since 2004. He also is admitted to the following federal courts: (i) the United States Court of Appeals for the Third Circuit and (ii) the United States District Courts for the Eastern District of Pennsylvania, Middle District of Pennsylvania, Western District of Pennsylvania, District of New Jersey, Northern District of Illinois, District of Colorado, and Eastern District of Michigan.

12. Prior to joining W&S as an equity partner in 2008, Santillo was an associate at the firm of Trujillo Rodriguez & Richards, LLC, where he participated in the litigation of complex class action lawsuits arising under federal and state wage and hour, securities, and antitrust laws.

13. The Martindale-Hubbell Peer Review Rating System gives Santillo an “AV-Preeminent” designation. Santillo has lectured on wage and hour law topics for Bloomberg BNA; the Pennsylvania Bar Institute; the National Employment Lawyers

Association; the Workers' Injury Law & Advocacy Group; the Ohio Association of Justice; and the Philadelphia Chinatown Development Corporation. In 2017, Santillo was certified as an Arbitrator by the U.S. District Court for the Eastern District of Pennsylvania.

14. **Mark Gottesfeld** ("Gottesfeld") graduated in 2006 from Lehigh University (*magna cum laude*) and in 2009 from Drexel University Earle Mack School of Law (*cum laude*), where he served as an editor on the *Drexel University Earle Mack School of Law Review*. During law school, Gottesfeld served as a Judicial Intern to Pennsylvania Superior Court Judge Jack A. Panella.


15. Gottesfeld has been a Member of the Pennsylvania and New Jersey bars since 2009 and a member of the New York bar since 2010. He also is admitted to the United States District Courts for the Eastern District of Pennsylvania, Middle District of Pennsylvania, Western District of Pennsylvania, District of New Jersey, and Eastern District of Michigan.

16. Prior to joining W&S in 2010, Gottesfeld worked at the Philadelphia firm of Saltz, Mongeluzzi, Barrett & Bendesky, P.C.

17. Gottesfeld has lectured on wage and hour issues at the Ohio Association of Justice.

**I HEREBY DECLARE, UNDER PENALTY OF PERJURY AND
PURSUANT TO 28 U.S.C. § 1746, THAT THE ABOVE FACTS ARE TRUE
AND CORRECT:**

September 25, 2018
Date



R. Andrew Santillo

Winebrake & Santillo, LLC - Class/Collective Wage and Overtime Settlements and Judgments

<u>Case Name</u>	<u>Court/Forum</u>	<u>Judge/Arbitrator</u>	<u>Date of Approval or Judgment</u>	<u>Type</u>	<u>Co-Counsel?</u>
Otto v. Pocono Medical Center, 4:06-cv-01186-JEJ	M.D. Pa.	John E. Jones, III	5/4/2007	Collective	No
Rodriguez-Fargas v. Hatfield Quality Meats, Inc., 2:06-cv-01206-LS	E.D. Pa.	Lawrence F. Stengel	5/29/2007	Class	Yes
Miller v. Antenna Star Satellites, Inc., 3:06-cv-00647-ARC	M.D. Pa.	A. Richard Caputo	5/29/2007	Collective	Yes
Sisko v. Wegmans Food Markets, Inc., 3:06-cv-00433-JMM	M.D. Pa.	James M. Munley	8/27/2007	Class	No
Evans/Smith, v. Lowe's Home Centers, Inc., 3:03-cv-00438/3:03-cv-00384-ARC	M.D. Pa.	A. Richard Caputo	9/4/2007	Collective	Yes
Diehl/Smith v. Lowe's Home Centers, Inc., 3:06-cv-01464/3:03-cv-00384-ARC	M.D. Pa.	A. Richard Caputo	1/4/2008	Class	Yes
Malec v. Kost Tire & Muffler, et al., 3:07-cv-00864-ARC	M.D. Pa.	A. Richard Caputo	1/2/2008	Collective	No
Dunn v. National Beef Packing Company, LLC, 4:07-cv-01599-JEJ	M.D. Pa.	John E. Jones, III	5/27/2008	Collective	No
Blasi v. United Financial Management Group, Inc., 3:06-cv-01519-JMM	M.D. Pa.	James M. Munley	6/19/2008	Collective	No
Palmer v. Michael Foods, Inc., 3:07-cv-02136-TIV	M.D. Pa.	Thomas I. Vanaskie	11/25/2008	Collective	No
Colucco v. U.S. Remodelers, Inc., 1:09-cv-00819-JHR	D.N.J.	Joseph H. Rodriguez	12/15/2009	Collective	No
Shabazz v. Asurion Corporation, 3:07-cv-00653-AT	M.D. Tenn.	Aleta A. Trauger	2/26/2009	Collective	Yes
In re Cargill Meat Solutions Corp. Wage and Hour Litig., 3:06-cv-00513-WJN	M.D. Pa.	William J. Nealon	3/6/2009	Collective	Yes
Golpe v. The Wedge Medical Center, P.C., 2:08-cv-04504-JF	E.D. Pa.	John P. Fullam	3/11/2009	Collective	No
Banks v. New Vitae, Inc. and Tri County Respite, Inc., 5:08-cv-04212-LS	E.D. Pa.	Lawrence F. Stengel	3/26/2009	Collective	No
Weatherly v. Michael Foods, Inc., 8:08-cv-00153-JFB	D. Neb.	Joseph F. Bataillon	4/15/2009	Collective	Yes
Gallagher v. Bayada Nurses, Inc., No. 071000392	Phila.C.C.P.	Idee C. Fox	4/21/2009	Class	No
Ray v. Krapp's Coaches, Inc., 2:08-cv-05097-DS	E.D. Pa.	David R. Strawbridge	9/10/2009	Collective	No
Miller v. Titanium Metals Corporation, 2:07-cv-04759-GP	E.D. Pa.	Gene E.K. Pratter	9/30/2009	Collective	No
Mayan v. Rydboom Express, Inc., 2:07-cv-02658-LS	E.D. Pa.	Lawrence F. Stengel	12/2/2009	Collective	No
Herd v. Specialty Surfaces International, Inc., 2:08-cv-01790-JCJ	E.D. Pa.	J. Curtis Joyner	1/26/2010	Collective	No
Morales v. Aaron Healthcare, Inc., 2008-C-5128	Lehigh.C.C.P.	Brian Johnson	2/1/2010	Class	No
In re Pilgrim's Pride Fair Labor Standards Act Litig., 1:06-cv-01832-HFB	W.D. Ark.	Harry F. Barnes	4/2/2010	Collective	Yes
Williams v. Owens & Minor, Inc., 2:09-cv-00742-JD	E.D. Pa.	Jan E. Dubois	7/28/2010	Collective	No
Crisostomo v. Exclusive Detailing, Inc., 2:08-cv-01771-SRC-MAS	D.N.J.	Michael A. Shipp	9/15/2010	Collective	Yes
Gallagher v. Lackawanna County, 3:07-cv-00912-CCC	M.D. Pa.	Christopher C. Connor	10/5/2010	Collective	No
Herrarte v. Joe Jurgielewicz & Sons, Ltd., 5:09-cv-02683-RK	E.D. Pa.	Robert F. Kelly	10/27/2010	Collective	No
King v. Koch Foods of Mississippi, LLC, 3:06-cv-00301-DPJ	S.D. Miss.	Daniel P. Jordan	11/29/2010	Collective	Yes
McEvoy v. The Container Store, Inc., 1:09-cv-05490-KMW	D.N.J.	Karen M. Williams	12/17/2010	Collective	No
Hilborn v. Sanofi Pasteur, 3:09-cv-02032-ARC	M.D. Pa.	A. Richard Caputo	1/18/2011	Collective	No
Alexander/Campbell/Marrero v. KRA Corporation, 09-cv-02517/10-cv-01778/09-cv-02516-JF	E.D. Pa.	John P. Fullam	1/28/2011	Collective	Yes
Duvall v. Tri County Access Company, Inc., 2:10-cv-00118-RCM	W.D. Pa.	Robert C. Mitchell	3/30/2011	Class	No
Gibbons v. V.H. Cooper & Company, Inc., 3:10-cv-00897-JZ	N.D. Ohio	Jack Zouhary	4/18/2011	Class	Yes
Turner v. Mercy Health System, No. 080103670	Phila.C.C.P.	Idee C. Fox	4/20/2011	Class	Yes
Vanston v. Maxxis Healthy System, No. 080605155	Phila.C.C.P.	Idee C. Fox	4/20/2011	Class	Yes
Dixon v. Dunmore Oil Company, 3:09-cv-00064-ARC	M.D. Pa.	A. Richard Caputo	4/27/2011	Collective	No
In re Tyson Foods, Inc., 4:06-cv-00143-CDL	M.D. Ga.	Clay D. Land	9/15/2011	Collective	Yes
Cover v. Feesers, Inc., 1:10-cv-00282-JEJ	M.D. Pa.	John E. Jones, III	10/11/2011	Collective	No
Muschultz v. Holcomb Behavioral Health Systems, 5:11-cv-02980-JKG	E.D. Pa.	James K. Gardner	12/15/2011	Collective	No
Johnson v. Krapp's Coaches, Inc., 2:11-cv-06974-BMS	E.D. Pa.	Berle M. Schaller	2/22/2012	Collective	No
McCray v. The Progressions Companies, Inc., 2:11-cv-07364-HB	E.D. Pa.	Harvey Bartle, III	3/2/2012	Collective	No
Slator v. Allscripts-Misys Healthcare Solutions, Inc., 1:10-cv-01069-GLS-RFT	N.D.NY	Gary L. Sharpe	4/4/2012	Collective	No
Smith v. Ameriplan Corporation, 4:10-cv-00075-ALM	E.D. Tx.	Amos L. Mazzant	8/9/2012	Collective	Yes
In re Creditron Financial Corp. (Lepkowski v. Creditron Financial Corp.), 08-11289-TPA	W.D. Pa. Bkr.	Thomas P. Agresti	8/31/2012	Collective	No
Fazio v. Automotive Training Center, 2:11-cv-06282-DS	E.D. Pa.	David R. Strawbridge	9/24/2012	Collective	No
Jean-Charles v. AAA Warman Home Care LLC, No. 110702236	Phila.C.C.P.	Mary Collins	9/28/2012	Class	No
Thomas v. Cescaphe Limited, LLC, 1:11-cv-04359-BMS	E.D. Pa.	Berle M. Schaller	10/3/2012	Class	No
Harkin v. LA Weight Loss, LLC, 2:12-cv-01411-AB	E.D. Pa.	Anita Brody	11/8/2012	Collective	No
Grajales v. Safe Haven Quality Care, LLC, 2010-cv-15102	Dauphin C.C.P.	Andrew H. Dowling	11/8/2012	Class	No
Grayson v. Register Tapes Unlimited, Inc., et al., 8:11-cv-00887-RWT	D. Md.	Roger W. Titus	11/26/2012	Collective	Yes
Craig v. Rite Aid Corporation, 4:08-cv-02317-JEJ	M.D. Pa.	John E. Jones, III	1/7/2013	Class	Yes

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<u>Case Name</u>	<u>Court/Forum</u>	<u>Judge/Arbitrator</u>	<u>Date of Approval or Judgment</u>	<u>Type</u>	<u>Co-Counsel?</u>
Knecht v. Penn Psychiatric Center, 2:12-cv-00988-CSMW	E.D. Pa.	Carol S. Moore Wells	3/6/2013	Collective	No
Thompson v. RGT Management, Inc., 2:11-cv-02573-AJT	W.D. Tenn.	Arthur J. Tarnow	3/21/2013	Collective	Yes
Kelsh v. First Niagara Financial Group, Inc., 2:12-cv-01202-PBT	E.D. Pa.	Petrese B. Tucker	4/8/2013	Class	No
Stewart v. World Communications Charter School, 2:12-cv-04993-RB	E.D. Pa.	Ronald L. Buckwalter	5/9/2013	Class	No
Edelen v. American Residential Services, LLC, 8:11-cv-2744-DK	D. Md.	Deborah K. Chasnaw	7/22/2013	Class	Yes
Ciarrochi v. Neshaminy Electrical Contractors, Inc., 2:12-cv-06419-JHS	E.D. Pa.	Joel H. Slomsky	9/5/2013	Collective	No
LeClair v. Diakon Lutheran Social Ministries, Case No. 2010-C-5793	Lehigh C.C.P.	Michele A. Varricchio	8/14/2013	Class	Yes
Essame v. SSC Laurel Operating Company, LLC, 8:10-cv-03519-WGC	D. Md.	William G. Connelly	10/16/2013	Class	Yes
Ming v. SNL Enterprises, L.P., 5:11-cv-03873-RBS	E.D. Pa.	Barclay R. Surrick	11/29/2013	Collective	No
Bollettino v. Cellular Sales of Knoxville, Inc. 3:12-cv-00138-TC-HBG	E.D. Tenn.	Tena Campbell	11/29/2013	Collective	Yes
Wagner v. Cali, 5:12-cv-03226-JLS	E.D. Pa.	Jeffrey L. Schmehl	1/23/2014	Collective	No
Ginter/Robinson-Gibbs v. RBS Citizens, NA., 1:12-cv-00008-M-PAS/1:13-cv-00182-PAS	D.R.I.	John J. McConnell, Jr.	2/4/2014	Class	Yes
Glatts v. Crozer-Keystone Health System, No. 090401314	Phila.C.C.P.	Mark I. Bernstein	2/6/2014	Class	Yes
Galowitch v. Wells Fargo Bank, N.A., No. 130302298	Phila.C.C.P.	Mark I. Bernstein	3/5/2014	Class	No
Young v. Tri County Security Agency, Inc., 2:13-cv-05971-BMS	E.D. Pa.	Berle M. Schiller	5/7/2014	Class	No
Cuevas v. Citizens Financial Group, Inc., 1:10-cv-05582-RM	E.D.N.Y.	Robert M. Levy	5/7/2014	Class	Yes
Sakalas v. Wilkes-Barre Hospital Company, LLC, 3:11-cv-00546-RDM	M.D. Pa.	Robert D. Mariani	5/8/2014	Class	Yes
Kershner v. Hat World, Inc., No. 120803352	Phila.C.C.P.	Jacqueline F. Allen	5/29/2014	Class	No
Sacknoff v. Lehigh County, 5:13-cv-04203-EGS	E.D. Pa.	Edward G. Smith	7/18/2014	Collective	No
Oliver v. Abercrombie & Fitch Stores, Inc., No. 121102571	Phila.C.C.P.	Jacqueline F. Allen	7/21/2014	Class	No
Kiefer v. Moran Foods, Inc., 3:12-cv-00756-WGY	D. Conn.	Jacqueline F. Allen	7/31/2014	Class	Yes
Lynch v. Lawrenceburg NH Operations, LLC, 1:13-cv-00129-WJH	M.D. Tenn.	William G. Young	9/26/2014	Collective	Yes
Farley v. Family Dollar Stores, Inc., et al., 1:12-cv-00325-RPM	D. Colo.	William J. Haynes	10/30/2014	Class	Yes
Warcholak v. Payless ShoeSource, Inc., No. 130901010	Phila.C.C.P.	Raymond P. Moore	10/30/2014	Class	Yes
Young v. Catherines, Inc., 2:13-cv-03288-CMR	E.D. Pa.	Idee C. Fox	11/30/2014	Class	Yes
Morrow v. County of Montgomery, 2:13-cv-01032-DS	E.D. Pa.	Cynthia M. Rufo	11/12/2014	Collective	Yes
Anderson v. The Scotts Company, LLC, No. 131100504	Phila.C.C.P.	David R. Strawbridge	11/26/2014	Collective	Yes
Euceda v. Millwood, Inc., 3:12-cv-00895-MEM	M.D. Pa.	Idee C. Fox	12/3/2014	Class	Yes
Reid v. Newalta Environmental Services, Inc., 1:13-cv-03507-CMA-CBS	D. Colo.	Malachy E. Mannion	12/9/2014	Class	Yes
Stallard v. Fifth Third Bank, 2:12-cv-01092-MRH	W.D. Pa.	Christine M. Arguello	2/19/2015	Collective	Yes
Magloire v. The Ellison Nursing Group, LLC, No. 120203202	Phila.C.C.P.	Mark R. Hornak	2/25/2015	Collective	Yes
Beal v. Claire's Stores, Inc., No. 131001989	Phila.C.C.P.	Jacqueline F. Allen	3/12/2015	Class	No
Beck v. Bed Bath & Beyond Inc., No. 131100176	Phila.C.C.P.	Idee C. Fox	3/18/2015	Class	Yes
Jones v. Alliance Inspection Management, LLC, 2:13-cv-01662-NBF-CRE	W.D. Pa.	Idee C. Fox	3/18/2015	Class	Yes
Menendez v. Precise Point, Inc., et al., No. 140300610	Phila.C.C.P.	Nora Barry Fischer	3/23/2015	Collective	No
Calarco v. Healthcare Services Group, Inc., 3:13-cv-00688-RDM	Phila.C.C.P.	Mary Collins	3/25/2015	Class	No
Keikis v. TruGreen Limited Partnership, No. 121101024	M.D. Pa.	Robert D. Mariani	4/7/2015	Collective	No
Chung v. Wyndham Vacation Resorts, Inc., 3:14-cv-00490-RDM	Phila.C.C.P.	Jacqueline F. Allen	5/14/2015	Class	Yes
McMaster v. Earstern Armored Services, Inc., 3:11-cv-05100-TJB	M.D. Pa.	Robert D. Mariani	6/15/2015	Collective	No
Valincius v. Express, Inc., No. 140702282	D.N.J.	Tonianna J. Bongiovanni	6/24/2015	Collective	No
Hoeilsworth v. New York & Company, Inc., No. 140403750	Phila.C.C.P.	Idee C. Fox	6/24/2015	Class	No
Puglisi v. TD Bank, N.A., 2:13-cv-00637-GRB	Phila.C.C.P.	Patricia A. McInerney	7/27/2015	Class	No
Mazzarella v. Fast Rig Support, LLC et al. 3:13-cv-02844-MEM	E.D.N.Y.	Gary R. Brown	7/30/2015	Class	Yes
Lappas v. The Scotts Company, LLC, No. 140904450	M.D. Pa.	Malachy E. Mannion	7/31/2015	Collective	No
Pew v. Finley Catering Co., Inc., 2:14-cv-04246	E.D. Pa.	Idee C. Fox	8/5/2015	Class	Yes
James v. Ann, Inc., et al., No. 140903652	Phila.C.C.P.	Marilyn Heffley	8/10/2015	Collective	No
Carroll v. Guardian Home Care Holdings, Inc., 3:14-cv-01722-WJH	E.D. Pa.	Gary S. Glazer	8/17/2015	Class	No
Morris v. M.D. Enterprises, et al. 3:15-cv-00018-ARC	M.D. Tenn.	William J. Haynes, Jr.	8/31/2015	Class	Yes
Worthington v. Kymarr Home Care, Inc. et al., No. 141203411	M.D. Pa.	A. Richard Caputo	10/5/2015	Class	No
Acevedo v. Moon Site Management, Inc., 2:13-cv-06810	Phila.C.C.P.	Gary S. Glazer	10/9/2015	Class	No
Neal v. Air Drilling Associates, Inc., 3:14-cv-01104-JMM	E.D. Pa.	Timothy R. Rice	10/15/2015	Class	Yes
	M.D. Pa.	James M. Muntley	12/8/2015	Collective	No

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Ross v. Baha Petroleum Consulting Corp., 4:14-cv-00147-DLH-CSM	D.N.D.	Daniel L. Hovland	1/8/2016	Collective	Yes
Pacheco v. Vantage Foods, Inc., 1:14-cv-01127-CCC	M.D. Pa.	Christopher C. Connor	2/11/2016	Class	Yes
Ford et al v. Lehigh Valley Restaurant Group, Inc., 3:14-cv-00227-JMM	M.D. Pa.	James M. Munley	3/11/2016	Class	No
LaPan v. Dick's Sporting Goods, Inc., 1:13-cv-11390-RGS	D. Mass.	Richard G. Stearns	3/25/2016	Class	Yes
Stanek v. Keane Frac NC, LLC, 3:15-cv-01005-RDM	M.D. Pa.	Robert D. Mariani	3/25/2016	Class	No
Harrison v. Flint Energy Services, Inc., 4:15-cv-00962-MWB	M.D. Pa.	Matthew W. Brann	4/15/2016	Collective	No
Tavarez v. S-L Distribution Co., Inc., 1:13-cv-01313-JEJ	M.D. Pa.	John E. Jones, III	5/2/2016	Class	Yes
Eld v. TForce Energy Services, Inc., Inc., 2:15-cv-00738-CB	W.D. Pa.	Cathy Bissoon	5/17/2016	Collective	No
Metzler, et al. v. Weis Markets, Inc., CV-15-2103	Northumberland,C.C.P.	Charles H. Saylor	6/6/2016	Class	Yes
Alvarez, et al. v. KWLT, LLC, 5:14-cv-07075-JFL	E.D. Pa.	Joseph F. Leeson	6/9/2016	Collective	Yes
Hughes v. ACHIEVA Support, GD-15-003562	Allegheny C.C.P.	R. Stanton Wittick, Jr.	7/7/2016	Class	No
DiClemente v. Adams Outdoor Advertising, Inc., 3:15-cv-00596-MEM	M.D. Pa.	Malachy E. Mannion	7/8/2016	Collective	No
Johnson v. Kestrel Engineering, Inc., 2:15-cv-02575-EAS-EPD	S.D. Ohio	Edmund A. Sargus, Jr.	9/22/2016	Collective	Yes
Iwaskow v. JLLJ, Inc., 3:15-cv-01934-ARC	M.D. Pa.	A. Richard Caputo	9/28/2016	Collective	No
Fischer et al. v. Kmart Corporation, 3:13-cv-04116-DEA	D.N.J.	Douglas E. Arpert	11/2/2016	Class	Yes
Sikra et al v. Lami Products, LLC, 2:15-cv-06166-WB	E.D. Pa.	Wendy Beeststone	11/10/2016	Class	Yes
Schaub v. Chesapeake & Delaware Brewing Company, LLC, 2:16-cv-00756-MAK	E.D. Pa.	Mark A. Kearney	11/14/2016	Class	No
Wajert v. Infocision Management Corporation, 2:15-cv-01325-DSC	W.D. Pa.	David S. Cercone	12/1/2016	Collective	No
DeLair v. CareAll Management, LLC, 3:15-cv-01095-AAT	M.D. Tenn.	Aleta A. Trauger	12/14/2016	Collective	Yes
Waggoner v. U.S. Bancorp, 5:14-cv-01626-SL	N.D. Ohio	Sara Liol	12/26/2016	Collective	Yes
Loveland-Bowe v. National Healthcare Corporation, 3:15-cv-01084-WDC	M.D. Tenn.	Waverly D. Crenshaw, Jr.	1/5/2017	Collective	Yes
Paine v. Intrepid U.S.A., Inc., 3:14-cv-02005-WDC	M.D. Tenn.	Waverly D. Crenshaw, Jr.	1/6/2017	Collective	Yes
Flatt v. LHC Group, Inc. et al, 2:16-cv-00014-KHS	M.D. Tenn.	Kevin H. Sharp	3/1/2017	Collective	Yes
Smith et al v. Miller Flooring Company, Inc., 2:16-cv-00330-LAS	E.D. Pa.	Lynne A. Sitariski	3/13/2017	Collective	No
Crevatas v. Smith Management and Consulting, LLC, 3:15-cv-02307-MEM	M.D. Pa.	Malachy E. Mannion	3/22/2017	Collective	Yes
Hodzic v. FedEx Package System, Inc., 2:15-cv-00956-NBF	W.D. Pa.	Nora Barry Fischer	3/28/2017	Collective	Yes
Kelly v. FedEx Ground Package System, Inc., 3:08-cv-00336-RLM	N.D. Ind.	Robert L. Miller	4/28/2017	Class	Yes
Brackley v. Red Robin Gourmet Burgers, Inc., 2:16-cv-00288-GRB	E.D.N.Y.	Gary R. Brown	6/6/2017	Class	Yes
Kampfer v. Fifth Third Bank et al, 3:14-cv-02849-JJH	N.D. Ohio	Jeffrey J. Helmiick	6/15/2017	Collective	Yes
Gauger v. Brothers, Inc., 2:16-cv-00603-DS	E.D. Pa.	David R. Strawbridge	6/19/2017	Collective	No
Simpson, et al. v. CareSouth HHA Holdings, LLC, 3:16-cv-00079-AAAT	M.D. Tenn.	Aleta A. Trauger	6/22/2017	Collective	Yes
Sowder v. CareSouth HHA Holdings, LLC, 3:16-cv-00906-AAAT	M.D. Tenn.	Aleta A. Trauger	6/22/2017	Collective	Yes
Waltz v. Aveda Transportation and Energy Services, Inc., 4:16-cv-00469-MWB	M.D. Pa.	Matthew W. Brann	7/7/2017	Collective	No
Bland v. Harvest Chadds Ford, LLC, 2:16-cv-04773-NIQA	E.D. Pa.	Nitza I. Quinones Alejandro	8/9/2017	Collective	No
Derrick v. Cenergy International Services, LLC, et al., 4:16-cv-1352	S.D. Tex.	David Hittner	8/9/2017	Collective	Yes
Bankalter v. S-L Distribution Company, Inc., 2017-SU-000549	York,C.C.P.	Richard K. Renn	8/23/2017	Class	Yes
Kuhn v. Branch Banking & Trust Corporation, 160500229	Phila.C.C.P.	Nina Wright Padilla	9/8/2017	Class	No
Breauchy v. CareGivers America, LLC, 16-cv-3638	Lack.C.C.P.	Margaret Bisignani Moyle	9/14/2017	Class	Yes
Molina v. Perfection Foods Company, Inc., et al, 2:16-cv-00859-JPH	E.D. Pa.	Jacob P. Hart	10/23/2017	Collective	Yes
Peters v. Zahav, LLC, 2:16-cv-06637-TR	E.D. Pa.	Timothy R. Rice	10/24/2017	Class	No
Roxberry et al v. Snyders-Lance, Inc. et al., 1:16-cv-02009-JEJ	M.D. Pa.	John E. Jones, III	11/15/2017	Class	Yes
Corbin v. CFRA, LLC, 1:15-cv-00405-CCE-JEP	M.D.N.C.	Catherine C. Eagles	2/5/2018	Collective	Yes
Sexton v. JDK Management Company, L.P., et al, 1:16-cv-01594-JEJ	M.D. Pa.	John E. Jones, III	2/5/2018	Collective	No
Wolfe v. TCC Wireless, LLC, 1:16-cv-11663	N.D. Ill.	Maria Valdez	3/12/2018	Class	Yes
Santos v. El Gallito Mexican Bakery II LLC, et al., 5:16-cv-06309-EGS	E.D. Pa.	Edward G. Smith	3/12/2018	Collective	Yes
Trevorah v. Linde Corporation, 3:16-cv-00492-JMM	M.D. Pa.	James M. Munley	4/13/2018	Collective	Yes
Persing, et al. v. Ideal Concepts Inc., 5:16-cv-03825-JLS	E.D. Pa.	Jeffrey L. Schmehl	7/17/2018	Collective	No
Kreamer v. Grant Production Testing Services Inc., 4:15-cv-01075-MWB	M.D. Pa.	Matthew W. Brann	7/17/2018	Class	Yes
Underwood v. Harvest Moorestown LLC, 1:17-cv-00550-JS	D.N.J.	Joel Schneider	7/24/2018	Collective	No
Broach v. CK Franchising, Inc., et al., AAA No. 01-16-0000-2234	American Arbitration Association	Edith Dinneen	8/14/2018	Class	Yes
Teixeira v. Walters & Mason Retail, Inc., 2:18-cv-00717-RK	E.D. Pa.	Robert F. Kelly	9/6/2018	Collective	No

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Carpenter v. Allpoints Courier Service, Inc., 1:17-cv-02043-JBS-AMD	D.N.J.	Jerome B. Simandle	9/11/2018	Collective	No