IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

LIMECCA CORBIN, on behalf of herself and similarly situated employees, Plaintiff,	:	CIVIL ACTION
v.	:	No.: 1:15-cv-00405
CFRA, LLC, Defendant.	:	

PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION AND COURT-AUTHORIZED NOTICE PURSUANT TO 29 U.S.C. § 216(B)

PLEASE TAKE NOTICE THAT, for the reasons set forth in the Memorandum of Law in Support of Plaintiffs' Motion for Conditional Certification, and the exhibits attached thereto, Plaintiffs respectfully request that the Court enter an order:

(1) Conditionally certifying the proposed Collective pursuant to 29 U.S.C. § 216(b);

(2) Ordering CFRA to produce a computer-readable list of the names, last known mailing addresses, last known telephone numbers, last known email addresses, dates of work, and work locations for all Collective Members, and the Social Security numbers of those Collective Members whose notices are returned undeliverable;

(3) Ordering such other relief as the Court deems just and proper.

Date: March 31, 2016

Respectfully,

/s/ Nicholas A. Migliaccio
Nicholas A. Migliaccio, Esq.
Jason Rathod, Esq.
MIGLIACCIO & RATHOD LLP
412 H St. NE, Suite 302
Washington, DC 20002
Tel: (202) 470-3520
Fax: (202) 810-0081
E-mail: nmigliaccio@classlawdc.com

E-mail: jrathod@classlawdc.com

R. Andrew Santillo
WINEBRAKE & SANTILLO, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
Tel: (215) 884-2491
Fax: (215) 884-2492
E-mail: asantillo@winebrakelaw.com

/s/ Scott C. Harris
Scott C. Harris, Esq. (NC Bar # 35328)
WHITFIELD BRYSON & MASON LLP
900 W. Morgan Street
Raleigh, NC 27603
Tel: (919) 600-5000
Fx: (919) 600-5035
E-mail: scott@wbmllp.com

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	:	No.: 1:15-cv-00405
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CFRA, LLC, Defendant.	:	

PLAINTIFFS' BRIEF IN SUPPORT OF THEIR MOTION FOR CONDITIONAL CERTIFICATION

I. INTRODUCTION

Originating Plaintiff Limecca Corbin ("Corbin") and Opt-In Plaintiffs Brittany Byrd ("Byrd") and Justin Rife ("Rife") (collectively "Plaintiffs") submit this brief in the hope of obtaining "conditional certification" of the following FLSA collective: All Servers employed by Defendant CFRA, LLC at one of its IHOP restaurants during any workweek within the last three years that Defendant attempted to pay in accordance with the FLSA's tip credit provision (29 U.S.C. § 203(m)).

The FLSA's conditional certification standard is not difficult for employees to satisfy. See Sections III.A. and IIII.B. *infra*. As discussed below, Plaintiffs have satisfied this standard, allowing Defendant's other Servers to be promptly notified of their right to participate in this lawsuit.

II. PERTINENT FACTS AND PROCEDURAL HISTORY

A. Statement of the Nature of the Matter Before the Court

The FLSA requires employers to pay employees a minimum wage of $7.25/hour. See 29 U.S.C. § 206(a)(1)(C). However, in determining the minimum wage owed to a "tipped

employee," the FLSA contains a "tip credit" provision that enables an employer to pay the tipped employee as little as $2.13/hour, so long as the employee's additional tip payments bring her total pay above the $7.25/hour threshold. See id. at § 203(m); 29 C.F.R. § 531.50(a).

Generally speaking, employers can only use the FLSA tip credit in paying a tipped employee if they satisfy several requirements. These include:

- The employer affirmatively notifies the employee that it will be paid in accordance with the FLSA's 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" among employees who "customarily and regularly" receive tips. Id.; and
- The employee does not spend more than 20% of his or her time performing non-tip producing work such as, *inter alia*, washing dishes, stocking condiments, preparing salads, cleaning walls, wiping tables, rolling silverware, and cleaning the restaurant. See 29 C.F.R. § 531.56(e); Fast v. Applebee's Int'l., Inc., 638 F.3d 872, *879-82 (8th Cir. 2011); U.S. Dep. of Labor, Field Operations Handbook Ch. 30d00(e) (Dec. 9, 1988) (available at http://www.dol.gov/whd/FOH/FOH_Ch30.pdf); U.S. Department of Labor, Wage and Hour Division Fact Sheet #15: Tipped Employees Under the Fair Labor Standards Act (FLSA) (rev. Mar. 2011) ("DOL Fact Sheet #15") (available at http://www.dol.gov/whd/regs/compliance/whdfs15.htm).

In this case, Plaintiffs' FLSA claim specifically alleges that Defendant – having benefited from the tip credit in satisfying its minimum wage obligations to Plaintiffs and other Servers – has violated the FLSA's minimum wage mandate by requiring its Servers to spend more than 20% of their time performing non-tip producing work. See Complaint (Doc. 1) at ¶¶ 12, 16.

B. Concise Statement of Facts in the Pleadings, Declarations Filed by Plaintiffs, and Other Documents

Corbin initiated this lawsuit by filing the Complaint alleging violations of the FLSA on May 21, 2015 on behalf of herself and similarly situated employees pursuant to 29 U.S.C. § 216(b). See generally Complaint (Doc. 1). Defendant CFRA, LLC ("Defendant") operates over a dozen IHOP restaurants in multiple states. See Complaint (Doc. 1) at ¶ 5; Answer (Doc. 7) at ¶

5.

In her Complaint, Corbin alleged that she was employed by Defendant as a Server at its IHOP restaurant located in Gastonia, North Carolina from approximately February 2012 until August 2012, and as a Server at Defendant's IHOP location in Shelby, North Carolina from October 2014 until January 2015. See Complaint (Doc. 1) at ¶ 9. As a Server, Defendant attempted to pay Corbin under the FLSA's tip credit. See Complaint (Doc. 1) at ¶¶ 8-9, 11. Plaintiff specifically alleged that as a Server at two of Defendant's IHOP restaurants, she spent at least two or more hours each shift performing non-tip producing sidework, representing more than 20% of her total work hours. See Complaint (Doc. 1) at ¶16. Corbin has affirmed these allegations in a signed declaration. See Generally Declaration of Limecca Corbin ("Corbin Decl."), attached as Exhibit 1.

In its Answer, Defendant admits that it employs Servers at its IHOP restaurant locations and attempts to pay these individuals in accordance with the FLSA's tip credit. See Complaint (Doc. 1) at ¶¶ 8, 11; Answer (Doc. 7) at ¶¶ 8, 11. Defendant also asserted several affirmative defenses in its Answer that it alleges apply uniformly to Corbin and each member of the proposed collective. See, e.g., Answer (Doc. 7) at Third Defense ("Plaintiff and those on whose behalf she purports to complain were paid all compensation due and owing in accordance with all applicable federal law."); id. at Thirtieth Defense ("Plaintiff's claims and the claims of those on whose behalf she purports to complain are barred because 29 C.F.R. § 531.56(e) is not ambiguous as it relates to servers performing incidental duties in addition to their normal duties. As such, Plaintiff's reliance on the Department of Labor's sub-regulation regarding the "twenty-percent rule" found in Ch. 30d00(e) is inappropriate and unenforceable as a matter of law, absent Congressional action or administrative rule-making which makes this standard a formal

regulation under the FLSA."); id. at Nineteenth Defense ("This action is barred to the extent that Plaintiff and/or those on whose behalf she purports to complain seek to recover for time which is *de minimis* work time and/or time which is not a "principal activity," and thus not compensable under the Act."); id. at Eighteenth Defense ("This action is barred by section 4 of the Portal to Portal Act, 29 U.S.C. § 254(a), to the extent that Plaintiff and any individuals with whom she is allegedly "similarly situated" seek relief for non-compensable activities and/or for time not considered hours worked under that Act.").

Since the commencement of this litigation, two other Servers, Byrd and Rife, have joined this litigation. See Docs. 14, 20. Byrd worked for Defendant as a Server from approximately the Spring of 2013 until January 2014 in Shelby, North Carolina, where Defendant attempted to pay her in accordance with the FLSA's tip credit. See Declaration of Brittany Byrd ("Byrd Decl."), attached as Exhibit 2 at ¶¶ 1-2. Like Corbin, Byrd was also required to spend more than 20% of her time performing non-tipped sidework tasks. Id. at ¶¶ 4, 6-8. Byrd also observed other Servers being subject to the same work conditions. Id. at ¶ 9. Similarly, Rife worked for Defendant as a Server from approximately February 2015 until December 2015 in Winchester, Virginia, where Defendant attempted to pay him in accordance with the FLSA's tip credit. See Declaration of Justin Rife ("Rife Decl."), attached as Exhibit 3 at ¶¶ 1-2. As with Corbin and Byrd, Rife was also required to spend more than 20% of his time performing non-tipped sidework tasks. Id. at ¶¶ 4, 6-8. Rife also observed other Servers being subject to the same work conditions. Id. at ¶ 9.

Finally, Plaintiffs have obtained job descriptions for Defendant's Servers that are almost identical. See Exhibit 4. These documents demonstrate the uniform expectations that Defendant has for its Servers regardless of the restaurant location.

C. Statement of the Question Presented

Question:

Have Plaintiffs satisfied the lenient standard of demonstrating that members of the proposed collective are similarly situated for purposes of being notified of this action and provided the opportunity to join pursuant to 29 U.S.C. § 216(b).

Suggested Answer:

Yes

III. ARGUMENT

A. Conditional Certification Under the FLSA

"The FLSA 'embodies a federal legislative scheme to protect covered employees from prohibited employer conduct.'" Long v. CPI Security Systems, Inc., 292 F.R.D. 296, 298 (W.D.N.C. 2013) (*quoting* Houston v. URS Corp., 591 F. Supp. 2d 827, 831 (E.D. Va. 2008)). Corbin brings this collective action on behalf of herself and other Servers pursuant to Section 16(b) of the FLSA, which allows private civil actions to be maintained "by any one or more employees for and in behalf of himself or themselves and other employees similarly situated." 29 U.S.C. § 216(b). "No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought." Id.

"[C]ertification under the FLSA requires: (1) that the class be similarly situated, and (2) that the plaintiffs opt in by filing with the court their consent to suit." Adams v. Citicorp Credit Services, Inc., 93 F. Supp. 3d 441, 452 (M.D.N.C. 2015) (internal citations and quotations omitted); see also Robinson v. Empire Equity Group, Inc., 2009 U.S. Dist. LEXIS 107607, *5 n.8 (D.Md. Nov. 18, 2009) ("An FLSA collective action differs from a class action under Fed. R.

Civ. P. 23. Collective action plaintiffs must 'opt-in' to the suit; class action plaintiffs become members of the class unless they 'opt-out.'"). "Collective action plaintiffs are not bound by Rule 23's requirements of numerosity, commonality, typicality and adequacy; they need only demonstrate that they are 'similarly situated' to proceed as a class." Robinson, 2009 U.S. Dist. LEXIS 107607, at *5-6 n.8; accord Solais v. Vesuvio's II Pizza & Grill, Inc., 2015 U.S. Dist. LEXIS 140798, at *9 n.5 (M.D.N.C. Oct. 16, 2015); Genesis Healthcare Corp. v. Symczyk, 133 S. Ct. 1523, 1530, 185 L. Ed. 2d 636 (2013).

The "collective action" mechanism provides plaintiffs with "the advantage of lower individual costs to vindicate rights by the pooling of resources." Hoffman-La Roche Inc. v. Sperling, 493 U.S. 165, 170 (1989)); see also Evans v. Lowe's Home Centers, Inc., 2006 U.S. Dist. LEXIS 32104, *15 (M.D. Pa. May 18, 2006) (noting that collective actions enable the "lowering cost and limiting the controversy to one proceeding to efficiently resolve the common issues of law and fact."); Moss v. Crawford & Co., 201 F.R.D. 398, 410 (W.D. Pa. 2000) ("the primary objectives of a § 216(b) collective action are: (1) to lower costs to the plaintiffs through the pooling of resources; and (2) to limit the controversy to one proceeding which efficiently resolves common issues of law and fact that arose from the same alleged activity"). Furthermore, "FLSA collective actions promote enforcement of the law by empowering employees to 'join in their litigation so that no one of them need stand alone in doing something likely to incur the displeasure of an employer.'" Alderoty v. Maxim Healthcare Services, Inc., 2015 U.S. Dist. LEXIS 129565, *10-11 (D.Md. Sept. 23, 2015) (*quoting* Pentland v. Dravo Corp., 152 F.2d 851, 853 (3d Cir. 1945)).

"To effectuate the remedial purpose of the [FLSA], it is well settled that district courts have discretion, in appropriate cases, to allow such claims to proceed as a collective action and to

facilitate notice to potential plaintiffs." Quinteros v. Sparkle Cleaning, Inc., 532 F. Supp. 2d 762, 771 (D.Md. 2008). As observed by the Supreme Court, the benefits of a § 216(b) collective action "depend[] on employees receiving accurate and timely notice concerning the pendency of the collective action, so that they can make informed decisions about whether to participate." Hoffman-Laroche, 493 U.S. at 170; see also Shaffer v. Farm Fresh, Inc., 966 F.2d 142, 147 (4th Cir. 1992).

B. The "Similarly Situated" Standard Applicable to Conditional Certification

In addressing the "similarly situated" requirement of a proposed collective action under the FLSA, North Carolina district courts utilize a two-step process. See, e.g., Adams, 93 F. Supp. 3d at 452-53; McLaurin v. Prestage Foods, Inc., 271 F.R.D. 465, 469 (E.D.N.C. 2010). At the initial conditional certification stage:

> the court determines whether the putative class members' claims are sufficiently similar to merit sending notice of the action to possible members of the class. If they are, notice is sent and new plaintiffs are permitted to opt in to the lawsuit.

Adams, 93 F. Supp. 3d at 453 (internal citations and quotations omitted); see also Long, 292 F.R.D. at 298 ("at the first stage, the court makes a preliminary determination whether to conditionally certify the class based upon the limited record before the court."). Notably, plaintiffs and potential members of a FLSA collective "***need not be identical***." McLaurin, 271 F.R.D. at 469 (emphasis supplied); see also Long, 292 F.R.D. at 304 (The "relevant issue" at the conditional certification stage "'is not whether Plaintiffs and [potential opt-in plaintiffs] were identical in all respects.'"). "Difference as to time actually worked, wages actually due and hours involved are, of course, not significant to this determination." Id.; accord Romero v. Mountaire Farms, Inc., 796 F. Supp. 2d 700, 705 (E.D.N.C. 2011).

Moreover, at this initial stage, the Court "'***does not*** resolve factual disputes, decide

substantive issues on the merits, or make credibility determinations.'" Id. at 454 (emphasis supplied); accord Solais, 2015 U.S. Dist. LEXIS 140798, at *10, *35; see also Colozzi v. St. Joseph's Hosp. Health Ctr., 595 F.Supp.2d 200, 205-206 (N.D.N.Y. 2009) ("[a] plaintiff's burden at this preliminary stage is minimal" and "the court does not weigh the merits, resolve factual disputes, or make credibility determinations.") (internal citations omitted).

While the Fourth Circuit has yet to specifically define "similarly situated" for purposes of the conditional certification, courts within this circuit have held that employees only have to make a "'relatively modest factual showing' [] that a common policy, scheme, or plan [that violated the law] exists" for notice to be sent to potential members of the collective. Adams, 93 F. Supp. 3d at 453 (internal citations omitted); accord Solais, 2015 U.S. Dist. LEXIS 140798, at *10; see also McLaurin, 271 F.R.D. at 469 ("The standard for conditional certification is fairly lenient and requires nothing more than ***substantial allegations*** that the putative class members were together the victims of a single decision, policy, or plan") (internal quotations and citations omitted, emphasis supplied); Long, 292 F.R.D. at 298 (recognizing that conditional certification "'requires nothing more than substantial allegations that the putative class members were together the victims of a single decision, policy or plan.'"). To do so:

> Plaintiffs must set forth more than vague allegations with meager factual support regarding a common policy to violate the FLSA. Their evidence need not, however, enable the court to determine conclusively whether a class of similarly situated plaintiffs exist, and it need not include evidence that the company has a formal policy of refusing to pay [in accordance with the FLSA].

Id.; see also Long, 292 F.R.D. at 298-99 ("The primary focus in this inquiry is whether the potential plaintiffs are similarly situated with respect to the legal, and to a lesser extent, the factual issues to be determined.") (internal quotations omitted).

Because the record is sparse at the initial stage, the burden on plaintiffs is minimal, and

"although certainly not a 'rubber-stamp approach,' remains ***relatively modest***." Adams, 93 F. Supp. 3d at 453 (emphasis supplied); Solais, 2015 U.S. Dist. LEXIS 140798, at *10 ("Although not a 'rubber-stamp approach,' the conditional certification standard is '***fairly lenient***'") (emphasis supplied); Long, 292 F.R.D. 298 ("Consistent with the underlying purpose of the FLSA's collective action procedure, this initial inquiry proceeds under a ***fairly lenient standard and requires only minimal evidence***") (emphasis supplied and internal quotations omitted); Byard v. Verizon W. Va., Inc., 287 F.R.D. 365, 369 (N.D.W. Va. 2012) ("[P]laintiffs seeking conditional certification need only submit evidence establishing '***a colorable basis*** for their claim that a class of 'similarly situated' plaintiffs exist[s].'" (quoting, *inter alia*, Faust v. Comcast Cable Communications Management, LLC, No. WMN-10-2336, 2011 U.S. Dist. LEXIS 125949, 2011 WL 5244421, at *2 (D. Md. Nov. 1, 2011) (emphasis supplied). As the District of Maryland observed, "[b]ecause there is minimal evidence at this stage, the 'determination is made using a fairly lenient standard, and ***typically results in conditional certification of a representative class***." Robinson, 2009 U.S. Dist. LEXIS 107607, at *6-7 (internal citations and quotations omitted, emphasis supplied).

Moreover, discovery need not be completed or even undertaken prior to conditionally certifying the class and sending notice to potential class members. See Gordon v. TBC Retail Grp., Inc., No. 2:14-cv-03365-DCN, 2015 U.S. Dist. LEXIS 132490, at *8 (D.S.C. Sep. 30, 2015) ("Courts determine whether conditional certification is warranted by examining the parties' pleadings and affidavits."); Aquilino v. The Home Depot, Inc., 2006 U.S. Dist. LEXIS 66084, *5 (D.N.J. Sept. 6, 2006); Bernal v. Vankar Enters., 2008 U.S. Dist. LEXIS 22814, *11 (W.D. Tex. Mar. 24, 2008); Clarke v. Convergys Customer Mgmt. Group, Inc., 370 F. Supp. 2d 601, 605 (S.D. Tex. 2005); see also Dietrich v. Liberty Square, L.L.C., 230 F.R.D. 574, 579

(N.D. Iowa 2005) (noting that "[b]ased upon the allegations set forth in the plaintiffs' motion and the two supporting affidavits, the court finds that the plaintiffs have provided 'some factual basis from which the court can determine if similarly situated potential plaintiffs exist.'"). This is because the initial conditional certification state is not "fact-intensive." Long, 292 F.R.D. at 303.

The ultimate determination of whether the members of the class are similarly situated to proceed to trail together in a single action takes place at the more rigorous second stage after discovery is complete. See Adams, 93 F. Supp. 3d at 453; McLaurin, 271 F.R.D. at 469; Robinson, 2009 U.S. Dist. LEXIS 107607, at *8. As one district court explained:

> The burden in this preliminary certification [stage] is light because the risk of error is insignificant: should further discovery reveal that the named positions, or corresponding claims, are not substantially similar the defendants will challenge the certification and the court will have the opportunity to deny final certification.

Craig v. Rite Aid Corp., 2009 U.S. Dist. LEXIS 114785, *9 (M.D. Pa. Dec. 9, 2009); see also Mueller v. CBS, Inc., 201 F.R.D. 425, 429 (W.D. Pa. 2001) ("to require conclusive findings of 'similar situations' before providing notice [under § 216(b)] to absent class members 'would condemn any large class claim . . . to a chicken and egg limbo in which the class could only notify all its members to gather after it had gathered together all its members"); Evans v. Lowe's Home Centers, Inc., 2004 U.S. Dist. LEXIS 15716, *7 (M.D. Pa. June 17, 2004) ("unless and until the Plaintiffs know after discovery who the potential opt-in plaintiffs are, the Court cannot determine whether Plaintiffs are similarly situated").

C. Plaintiffs' FLSA Claim Should be Conditionally Certified

Applying the above principles, this Court should conditionally certify Plaintiffs' FLSA claim. As discussed below, based on the current court record, Plaintiffs have satisfied their minimal burden of demonstrating that the proposed collective of Servers are sufficiently similarly situated to justify being notified of this action.

First, prompt notice to potential opt-in plaintiffs is consistent with the Supreme Court's teachings in Hoffman-LaRoche and furthers the legislative purpose of both §216(b) and the FLSA. See Section III.A., *supra*.

Second, notice should be sent because the statute of limitations for the FLSA claims of potential opt-in plaintiffs is not tolled by the filing of Plaintiff's complaint, see 29 U.S.C. § 256(b); Robinson, 2009 U.S. Dist. LEXIS 107607, *7 n.10 ("Courts permit so-called 'conditional certification' and notice early in the case because the statute of limitations continues to run on unnamed class members' claims until they consent to join the collective action."). Thus, delay in notifying class members will cause serious prejudice to non-party class members. See Taylor v. Pittsburgh Mercy Health System, Inc., 2009 U.S. Dist. LEXIS 40080, *2 (W.D. Pa. May 11, 2009) ("'time [is] of the essence' for purposes of FLSA notice '[b]ecause the . . . statute of limitations is not tolled [until] a potential plaintiff opts in[to]' the proposed collective action) (citations omitted). This fact weighs heavily in favor of early notification."); see also Lorenzo v. Prime Communs., L.P., No. 5:12-CV-69-H, 2014 U.S. Dist. LEXIS 93123, at *9 (E.D.N.C. May 8, 2014) ("Claims of putative opt-in plaintiffs may become time barred prior to those individuals having received notice of the action.").

Third, the record contains ample evidence that the proposed class is bound together by certain common facts. Defendants admit that it attempted to pay Corbin and the Servers at its IHOP restaurants in accordance with the FLSA's tip credit. See Answer (Doc. 7) at ¶¶ 5, 8, 11. Plaintiffs have also obtained two sworn declarations from other Servers corroborating the assertions in Corbin's Complaint about the substantial amount of non-tipped sidework tasks performed by themselves and other Servers at Defendant's IHOP restaurants. See generally Byrd Decl. (Ex. 2); Rife Decl. (Ex. 3). This is sufficient evidence at this early stage to

demonstrate that Plaintiffs and members of the proposed collective are victims of a common scheme of Defendant that violated the FLSA. Moreover, Defendant utilizes an almost identical job description for the Server position regardless of the restaurant location, see Exhibit 4, further supporting its uniform treatment of Servers.

Fourth, Defendant asserts various legal defenses to the claims of Plaintiff and other Servers that ultimately must be resolved through common legal analysis that impacts the FLSA rights of each member of the proposed collective. See Section II.B., *supra*. This further supports a finding that Corbin and members of the proposed collective are similarly situated.

Based on the above, the Court should make a preliminary finding that the collective is similarly situated to justify court-supervised notice. Indeed, district courts frequently conditionally certified similar collectives in which restaurant workers allege that their employers failed to adhere to each of the requirements necessary to utilize the FLSA tip credit against their minimum wage obligations. See, e.g., Fast v. Applebee's Int'l, Inc., 243 F.R.D. 360 (W.D. Mo. 2007); Robbins v. Blazin Wings, Inc., 2016 U.S. Dist. LEXIS 35446 (W.D.N.Y. Mar. 18, 2016); McCoy v. RP, Inc., 2015 U.S. Dist. LEXIS 142521 (D.S.C. Oct. 19, 2015); Walter v. Buffets Inc., 2015 U.S. Dist. LEXIS 82507 (D.S.C. June 25, 2015); Flood v. Carlson Rests., Inc., 2015 U.S. Dist. LEXIS 6608 (S.D.N.Y. Jan. 20, 2015); Chhab v. Darden Rests., Inc., 2013 U.S. Dist. LEXIS 135926 (S.D.N.Y. Sep. 19, 2013); Alequin v. Darden Rests., Inc., 2013 U.S. Dist. LEXIS 99458 (S.D. Fla. July 12, 2013); Haschak v. Fox & Hound Rest. Grp., 2012 U.S. Dist. LEXIS 162476 (N.D. Ill. Nov. 14, 2012); Dorsey v. Greene Turtle Franchising, Corp., 2010 U.S. Dist. LEXIS 95791 (D. Md. Sep. 14, 2010); Rousseau v. Frederick's Bistro, Ltd., 2010 U.S. Dist. LEXIS 34271 (W.D. Tex. Apr. 7, 2010).

IV. CONCLUSION

For all the above reasons, the Court should grant this Motion, pursuant to 29 U.S.C. §216(b), so that additional employees can be promptly notified of their right to participate in this lawsuit.

Date: March 31, 2016

Respectfully,

/s/ Nicholas A. Migliaccio
Nicholas A. Migliaccio, Esq.
Jason Rathod, Esq.
MIGLIACCIO & RATHOD LLP
412 H St. NE, Suite 302
Washington, DC 20002
Tel: (202) 470-3520
Fax: (202) 810-0081
E-mail: nmigliaccio@classlawdc.com
E-mail: jrathod@classlawdc.com

R. Andrew Santillo
WINEBRAKE & SANTILLO, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
Tel: (215) 884-2491
Fax: (215) 884-2492
E-mail: asantillo@winebrakelaw.com

/s/ Scott C. Harris
Scott C. Harris, Esq. (NC Bar # 35328)
WHITFIELD BRYSON & MASON LLP
900 W. Morgan Street
Raleigh, NC 27603
Tel: (919) 600-5000
Fx: (919) 600-5035
E-mail: scott@wbmllp.com

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

LIMECCA CORBIN, on behalf of herself and similarly situated employees, Plaintiff,	:	CIVIL ACTION
	:	No.: 1:15-cv-00405
v.	:	
CFRA, LLC, Defendant.	:	

DECLARATION OF LIMECCA CORBIN

I, Limecca Corbin, an adult resident of the state of North Carolina, hereby state under penalty of perjury that the following facts are true and correct to the best of my knowledge, information, and belief:

1. I worked for Defendant as a Server at its IHOP restaurant located in Gastonia, North Carolina from approximately February 2012 until August 2012, and as a Server at Defendant's IHOP location in Shelby, North Carolina from October 2014 until January 2015.

2. During my time working for CFRA as a server, I was paid a tipped minimum wage, which amounted to $2.13 an hour, or less when they provided me a meal and deducted that amount from my tipped minimum wage.

3. Neither at the beginning of employment, nor any time after, did CFRA explain to me how the tipped minimum wage worked. For example, they did not explain that, with tips, I must still earn the federally-mandated minimum wage of $7.25 an hour when paid the tipped minimum wage, that my sidework should be limited when I was paid the tipped minimum wage, or that my overtime rate should be calculated at a rate of 1.5 x the federally-mandated minimum wage ($7.25) when I worked over 40 hours and had been paid the tipped minimum wage.

4. During my time at CFRA as a server, I typically worked an average of 6 -7 hours each shift, and sometimes more. During my shift and at the end of my scheduled shift, I performed sidework that did not produce tips, including, but not limited to, cleaning and replenishing the salad bar, coffee station, and soda station; stocking condiments; rolling silverware; putting silverware out; wiping the tables; and cleaning the restaurant by, among other things, sweeping and mopping. I would typically spend at least 25% of my time doing this sidework.

5. After my scheduled shift ended, I earned no money from tips.

6. Regardless of the amount of time I spent on sidework during my time as a server at CFRA, I was still paid the tipped minimum wage, rather than the federally-mandated minimum wage of $7.25 an hour.

7. I was required to perform the sidework during and after my shift and, if I did not, I would be disciplined by the shift supervisor. When I raised concerns regarding the sidework that I and other servers were doing, I was ignored by my supervisors and the restaurant manager.

8. Based on my daily interaction with, and work alongside of, other servers at the CFRA IHOP locations at Gastonia and Shelby, I believe the work that all servers performed, and the amount that CFRA paid them, was similar, regardless of the shift they had or the supervisor who was working.

9. Based on my daily interaction with, and work alongside of, other servers at the CFRA IHOP locations at Gastonia and Shelby, I believe that CFRA also did not explain how the tipped minimum wage worked to other servers.

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: 03/28/2016

Limecca Corbin

Limecca Corbin

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

LIMECCA CORBIN, on behalf of herself and similarly situated employees, Plaintiff,	:	CIVIL ACTION
v.	:	No.: 1:15-cv-00405
CFRA, LLC, Defendant.	:	

DECLARATION OF BRITTANY BYRD

I, Brittany Byrd, an adult resident of the state of North Carolina, hereby state under penalty of perjury that the following facts are true and correct to the best of my knowledge, information, and belief:

1. I worked for CFRA from between the Spring of 2013 until approximately January 2014 as a server at an IHOP restaurant in Shelby, North Carolina.

2. During my time working for CFRA as a server, I was paid a tipped minimum wage, which amounted to $2.13 an hour, or less when they provided me a meal and deducted that amount from my tipped minimum wage.

3. Neither at the beginning of employment, nor any time after, did CFRA explain to me how the tipped minimum wage worked. For example, they did not explain that, with tips, I must still earn the federally-mandated minimum wage of $7.25 an hour when paid the tipped minimum wage, that my sidework should be limited when I was paid the tipped minimum wage, or that my overtime rate should be calculated at a rate of 1.5 x the federally-mandated minimum wage ($7.25) when I worked over 40 hours and had been paid the tipped minimum wage.

4. During my time at CFRA as a server, I typically worked an average of 12-14 hours each shift. At the end of my scheduled shift, I almost always was made to stay late and perform sidework that did not produce tips, including, but not limited to, cleaning and replenishing the salad bar, coffee station, and soda station; stocking condiments; rolling silverware; putting silverware out; wiping the tables; and cleaning the restaurant by, among other things, sweeping and mopping.

5. After my scheduled shift ended, I earned no money from tips.

6. Even during my scheduled shift, I would typically spend 40 percent of my time performing the sidework described in paragraph 4 above.

7. Regardless of the amount of time I spent on sidework during my time as a server at CFRA, I was still paid the tipped minimum wage, rather than the federally-mandated minimum wage of $7.25 an hour.

8. I was required to perform the sidework during and after my shift and, if I did not, I would be disciplined by the shift supervisor.

9. Based on my daily interaction with, and work alongside of, other servers at the CFRA IHOP location I worked, I believe the work that all servers performed, and the amount that CFRA paid them, was similar, regardless of the shift they had or the supervisor who was working.

10. Based on my daily interaction with, and work alongside of, other servers at the CFRA IHOP location I worked, I believe that CFRA also did not explain how the tipped minimum wage worked to other servers.

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.

03/25/2016

Dated: _____

_____
Brittany Byrd

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

LIMECCA CORBIN, on behalf of herself and similarly situated employees, Plaintiff, v. CFRA, LLC, Defendant.	:	CIVIL ACTION No.: 1:15-cv-00405

DECLARATION OF JUSTIN RIFE

I, Justin Rife, an adult resident of the state of West Virginia, hereby state under penalty of perjury that the following facts are true and correct to the best of my knowledge, information, and belief:

1. I worked for CFRA from between February 2015 to December 2015 as a server at a 24-hour IHOP restaurant in Winchester, Va.

2. During my time working for CFRA as a server, I was paid a tipped minimum wage, which amounted to $2.13 an hour, or less when they provided me a meal and deducted that amount from my tipped minimum wage.

3. Neither at the beginning of employment, nor any time after, did CFRA explain to me how the tipped minimum wage worked. For example, they did not explain that, with tips, I must still earn the federally-mandated minimum wage of $7.25 an hour when paid the tipped minimum wage, that my sidework should be limited when I was paid the tipped minimum wage, or that my overtime rate should be calculated at a rate of 1.5 x the federally-mandated minimum wage ($7.25) when I worked over 40 hours and had been paid the tipped minimum wage.

4. During my time at CFRA as a server, I was typically scheduled for shifts of five to seven hours. At the scheduled end of my shift, though, I almost always was made to stay late and perform sidework that did not produce tips, including, but not limited to, cleaning and replenishing the salad bar, coffee station, and soda station; stocking condiments; rolling silverware; putting silverware out; wiping the tables; and cleaning the restaurant by, among other things, sweeping and mopping. I typically had to stay two hours after my shift to perform sidework of this kind, though it could end up being as long as four hours.

5. After my scheduled shift ended, I earned no money from tips.

6. Even during my scheduled shift, I would typically spend more than 20 percent of my time performing the sidework described in paragraph 4 above.

7. Regardless of the amount of time I spent on sidework during my time as a server at CFRA, I was still paid the tipped minimum wage, rather than the federally-mandated minimum wage of $7.25 an hour.

8. I was required to perform the sidework during and after my shift and, if I did not, I would be disciplined by the shift supervisor.

9. Based on my daily interaction with, and work alongside of, other servers at the CFRA IHOP location I worked, I believe the work that all servers performed, and the amount that CFRA paid them, was similar, regardless of the shift they had or the supervisor who was working.

10. Based on my daily interaction with, and work alongside of, other servers at the CFRA IHOP location I worked, I believe that CFRA also did not explain how the tipped minimum wage worked to other servers.

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: 01/28/2016

Justin Rife

_____
Justin Rife

IHOP Servers job in Gastonia, NC

Company	IHOP
Job Title	Servers
Job Type	Full-time, Part-time
Hours	Not Specified
Location	504 Cox Rd Gastonia, NC 28054

Servers

What do you seek in your career path? An opportunity for growth? A chance to succeed? A fun, exciting work environment? Blending all of these together is the difference between a good job and a great career. At IHOP you'll discover a balance between work life and personal life, as well as a wealth of benefits for your health, future, family and happiness.

We strive to encourage, enrich and celebrate our associates every day. Why? It's simple – we found it's the best way to help people reach their potential. It all starts with our inclusive culture, which welcomes and embraces collective differences ... and the strengths these differences create.

If this sounds like the kind of workplace you would enjoy, please apply now!

Primary Responsibilities: To take and place our guests' orders, to serve food and drinks to our guests, and to accommodate guests' needs in a courteous and timely manner.

Specific Functions and Duties:

- Greets guests, answers questions, and makes suggestions regarding food, drinks and service.
- Delivers food and beverages to guests using IHOP's team delivery and service excellence

standards.

- Interacts verbally with all guests, creating a friendly, inviting and upbeat atmosphere.
- Relays orders to service area and kitchen via POS computerized register system.
- Observes guests and responds to additional requests/needs.
- Presents guest check to each table.
- Properly manicures tables as needed.
- Participates in the cleaning and resetting of dining room tables.
- Completes assigned side-work as directed.
- Other duties as needed.

(the above is not an all-inclusive job description).

Qualifications are:

- Ability to wipe down table tops, table legs, pick up debris off the floor and wipe down booth seats in all areas of the restaurant.
- Transport plates, glasses and other service-ware to and from the dining room, service bar and kitchen
- Reading, writing and verbal communication skills required.
- Mobility required during the entire shift.
- Must be available to work days, nights, weekends and holidays.

Additional Info

Minimum Age
18+ years old

Job Benefits

- Competitive pay
- Flexible Hours
- Paid Training
- Meal Discounts
- Real Advancement opportunities commensurate with performance

Job Industries

- Food & Restaurant

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IHOP Servers job in Virginia Beach, VA

Company	IHOP
Job Title	Servers
Job Type	Full-time, Part-time
Hours	Not Specified
Location	3300 Princess Anne Road Suite 711 Virginia Beach, VA 23456

Servers

What do you seek in your career path? An opportunity for growth? A chance to succeed? A fun, exciting social environment? Blending all of these together is the difference between a good job and a great career. At IHOP You'll discover a balance between work life and personal life, as well as a wealth of benefits for your health, future, family and happiness.

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Primary Responsibilities: To serve food, drinks, and to accommodate guests' needs in a courteous and timely manner.

Specific Functions and Duties:

- Delivers food and drinks to guests using IHOP's team delivery system.
- Greet guests, answers questions, makes suggestions regarding food, drinks, and service.
- Interacts verbally with all guests creating a friendly and upbeat atmosphere.
- Relays orders to service bar and kitchen via the point-of-sale computerized register system.
- Observes guests and responds to any additional requests.
- Presents guest check to each table and accepts a form of payment. Makes correct change and/or completes the proper charge card procedure.
- Participates in the clearing and resetting of dining room tables.

Qualification Standards:

- Ability to wipe down table tops, table legs, pick up debris off of the floor and wipe down booth seats in all areas of the restaurant.
- Transports plates, glasses and baskets to and from dining room, service bar, and the kitchen about 30 times per shift.
- Reading, writing, basic math and verbal communication skills required.
- Mobility required during the entire shift.
- Other duties as needed.

Additional Info

Job Benefits

- Competitive Pay
- Flexible Hours
- Extensive Training
- Meal Discounts
- Real Advancement Opportunities

Job Industries

- Food & Restaurant

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IHOP Servers job in Shelby, NC

Company	IHOP
Job Title	Servers
Job Type	Full-time, Part-time
Hours	Not Specified
Location	700 E Dixon Rd Shelby, NC 28150

Servers

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- Delivers food and beverages to guests using IHOP's team delivery and service excellence

standards.

- Interacts verbally with all guests, creating a friendly, inviting and upbeat atmosphere.
- Relays orders to service area and kitchen via POS computerized register system.
- Observes guests and responds to additional requests/needs.
- Presents guest check to each table.
- Properly manicures tables as needed.
- Participates in the cleaning and resetting of dining room tables.
- Completes assigned side-work as directed.
- Other duties as needed.

(the above is not an all-inclusive job description).

Qualifications are:

- Ability to wipe down table tops, table legs, pick up debris off the floor and wipe down booth seats in all areas of the restaurant.
- Transport plates, glasses and other service-ware to and from the dining room, service bar and kitchen
- Reading, writing and verbal communication skills required.
- Mobility required during the entire shift.
- Must be available to work days, nights, weekends and holidays.

Additional Info

Minimum Age
18+ years old

Job Benefits

- Competitive pay
- Flexible Hours
- Paid Training
- Meal Discounts
- Real Advancement opportunities commensurate with performance

Job Industries

- Food & Restaurant

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IHOP Servers job in Winchester, VA

Company	IHOP
Job Title	Servers
Job Type	Full-time, Part-time
Hours	Not Specified
Location	170 Front Royal Pike Winchester, VA 22602

Servers

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About Snagajob

IHOP Servers job in Newport News, VA

Company	IHOP
Job Title	Servers
Job Type	Full-time, Part-time
Hours	Not Specified
Location	11745 Jefferson Ave Newport News, VA 23606

Servers

We have an immediate opening for a Servers.

Must be able to work various shifts per week.

Additional Info

Additional

What do you seek in your career path? An opportunity for growth? A chance to succeed? A fun, exciting social environment? Blending all of these together is the difference between a good job and a great career. At IHOP You'll discover a balance between work life and personal life, as well as a wealth of benefits for your health, future, family and happiness.

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- Observes guests and responds to any additional requests.
- Presents guest check to each table and accepts a form of payment. Makes correct change and/or completes the proper charge card procedure.
- Participates in the clearing and resetting of dining room tables.

Qualification Standards:

- Ability to wipe down table tops, table legs, pick up debris off of the floor and wipe down booth seats in all areas of the restaurant.
- Transports plates, glasses and baskets to and from dining room, service bar, and the kitchen about 30 times per shift.
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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

LIMECCA CORBIN, on behalf of herself and similarly situated employees, Plaintiff,	:	CIVIL ACTION
	:	No.: 1:15-cv-00405
v.	:	
CFRA, LLC, Defendant.	:	

[PROPOSED]
ORDER GRANTING PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION AND COURT-AUTHORIZED NOTICE PURSUANT TO 29 U.S.C. § 216(B)

On this __ day of _____ 2016, the Court having considered Plaintiffs' Motion for Conditional Certification pursuant to Section 16(b) of the Fair Labor Standards Act of 1938, 29 U.S.C. § 216(b), and having considered said motion and the accompanying papers in support thereof, any responses and replies, the arguments of counsel, and all related evidence, hereby

GRANTS Plaintiffs' Motion for Conditional Certification, and it is

THEREFORE, ORDERED, ADJUDGED, AND DECREED that a collective action consisting of current and former Servers employed by Defendant CFRA, LLC at one of its IHOP restaurants during any workweek within the last three years that Defendant attempted to pay in accordance with the FLSA's tip credit provision, is hereby certified,

And IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, within 21 days of the effective date of this order, Defendant is directed to produce to Plaintiffs' counsel a computer-readable list of the names, last known mailing addresses, last known telephone numbers, last known email addresses, dates of work, and work locations for all Collective

Members, and the Social Security numbers of those Collective Members whose notices are returned undeliverable;

And IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, within 14 days of the effective date of this order, the parties are ordered to meet and confer and report back to the Court as to a form of notice and to provide the same to the Court and, if they disagree, each side is to provide their proposed order to the Court with no more than a three-page letter explaining that party's position as to any disputed issues.

Date:_____ _____