

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

Case no.: 1:21-cv-1507-TWP-MG

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

PLAINTIFFS’ MOTION FOR CONDITIONAL CERTIFICATION

COMES NOW the Plaintiffs, on behalf of themselves and all others similarly situated, and hereby move this Court for an order granting conditional class certification under § 216(b) of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”) on behalf of all persons holding the job title of “Manager” who work, or have worked, for Defendants for three years from the date of the Court’s order. The Plaintiffs have simultaneously filed a *Memorandum in Support of Plaintiffs’ Motion for Conditional Certification*.

WHEREFORE, the Plaintiffs respectfully request that this Court issue an order for the following:

- a. Granting conditional class certification regarding the Plaintiffs’ claims under §216(b) of the FLSA on behalf of all “Manager” employees who worked for Defendants within three years from the date of the Court’s order;

- b. Directing the Defendants to provide a list of names of these persons within fourteen (14) days of the Court's order along with their last known home addresses, phone numbers, and personal email addresses, in Microsoft Excel format for mailing purposes;
- c. Provide the last four digits of social security numbers for all class members whose mailed notices are returned undeliverable so Plaintiff can locate a viable mailing address;
- d. Approval and authorization for the Plaintiff to send the notice of claims and consent to become party plaintiff forms attached to the supporting Memorandum as Exhibits O and P;
- e. Approval for the Plaintiffs to create a website providing the same information and forms contained in Exhibits O and P referenced above and text messages referring class members to this website;
- f. Approval for the Plaintiffs to send a reminder post card twenty-one days after the initial mailing of the notice; and
- g. Granting such other relief the Court deems just and proper.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on **September 14, 2021**, a copy of the foregoing was filed electronically. Service of this filing will be made on all ECF-registered counsel by operation of the court's electronic filing system. Parties may access this filing through the court's system.

/s/ Brendan J. Donelon
Attorney for Plaintiff

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**MEMORANDUM IN SUPPORT OF
PLAINTIFFS’ MOTION FOR CONDITIONAL CERTIFICATION**

I. Introduction

The Defendants Steak N Shake, Inc. (“SnS”) and Sardar Biglari operate retail restaurants across the country under the name “Steak N Shake by Sardar Biglari.”¹ At each of these restaurants, Defendants employ a “General Manager,” a “Restaurant Manager” (not at all locations), and usually more than one “Manager.”² All of these positions are treated by Defendants as exempt from overtime pay under the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* (“FLSA”) and applicable state laws. The position at issue in the Amended Complaint—and this motion—is the third level “Manager.” The named Plaintiffs Wilmoth, Scott and Diana worked as Managers in Indiana, Illinois and Ohio, respectively. They are requesting that this Court grant conditional certification under § 216(b) of the FLSA so notice can be sent to all

¹ Defendants also have numerous fully franchised restaurants operating under the same name. The Managers at those locations are not subject to this Motion. However, any location identified as a franchise partner—a restaurant working its way to earn full franchise status—is included.

² These are the job titles utilized by Defendants in their job description documents.

Managers who worked within the past three years at all corporate owned Steak N Shake restuarants.

In addition to their own testimony, the three Plaintiffs present testimony from six other Managers, one General Manager, and one Restaurant Manager. All these witnesses testify that Managers' primary job duties were the same—spending the vast majority of their time performing hourly employees' tasks. All had the same limited job authority, were subject to companywide policies that controlled every aspect of the restaurant's operation, and worked well in excess of forty hours per week. Defendants' uniform job description and policy of being overtime exempt applied to all Managers. In turn, Managers meet the lenient "similarly situated" requirement under § 216(b) of the FLSA. This Court is familiar with this lenient standard at the conditional certification stage. *See e.g., Imel v. DC Constr. Services, Inc.*, 1:19-CV-0634-TWP-MPB, 2020 WL 2840022, at *2 (S.D. Ind. June 1, 2020) (Pratt, T.) ("The modest factual showing required at the first step of the proceedings may be lenient, but it is not a mere formality.") (citation omitted). Given the Plaintiffs' factual allegations—and an identical case receiving the same certification in the past—the Court should grant conditional certification and approve the additional requests made herein.

II. The Required "Modest Factual Showing" is Easily Met

Again, the Plaintiffs are only required to present a "modest factual showing" at this "first step of the proceedings" which is considered "lenient." *Parra v. UHS Home Sols., Inc.*, 1:19-CV-01638-TWP-DLP, 2020 WL 2748191, at *2 (S.D. Ind. May 27, 2020) (Pratt, T.) (quoting 29 U.S.C. § 216(b)).

A. General Background Allegations.

1. Defendant Steak N Shake, Inc. (“SNS”) is an Indiana corporation that, during the timeframe relevant to this lawsuit, served food and drink products to customers at restaurants (or “stores”) operating under the name “Steak N Shake by Biglari.” SNS is a wholly owned subsidiary of Biglari Holdings, Inc. (**Doc. #6**, Amended Complaint, ¶ 4; **Doc. #42**, Amended Answer, ¶ 4).

2. Defendant Sardar Biglari (“Biglari”) is the President and Chief Executive Officer of Defendant SNS. Biglari is also the Chairman and Chief Executive Officer of Biglari Holdings, Inc. Biglari is the majority shareholder of Biglari Holdings, Inc., and in turn, the majority shareholder of SNS. (Amended Complaint, ¶ 5; Amended Answer, ¶ 5).

3. During the timeframe relevant to this lawsuit, Defendants owned and operated over 200 Steak N Shake stores across 14 states, including approximately fifty (50) stores in Indiana, forty-seven (47) stores in Illinois, and forty (40) stores in Ohio. (Amended Complaint, ¶ 6; Amended Answer, ¶ 6; **Exhibit A**-Nevin Declaration, ¶ 2).

4. During the timeframe relevant to this lawsuit, Defendants’ Steak N Shake retail restaurants were modeled to be staffed with the following positions that were treated as exempt from overtime pay (listed in their respective hierarchal structure): “General Manager,” “Restaurant Manager”, and one or more “Managers.” (Amended Complaint, ¶ 23; Amended Answer, ¶ 23; **Exhibits B through I**-Manager Declarations, ¶ 2; **Exhibit J**-Miller Trial Testimony, at page/lines 5:7-15).

5. During the timeframe relevant to this lawsuit, Defendants also employed overtime eligible, or nonexempt, persons at each Steak N Shake retail restaurant such as Operations Supervisors, Production Trainers, Service Trainers, Production Workers, and Servers. These

nonexempt hourly-paid employees were employed by Defendants to perform production and service manual labor duties. (Amended Complaint, ¶ 24; Amended Answer, ¶ 24; Exhibit A-Nevin Dec., ¶ 4; Exhibits B to I-Manager Decs., ¶ 3; Exhibit J-Miller Test., at 11:8-18; **Exhibit K-Sanchez Trial Testimony**, at page/lines 45:7-13).

B. Allegations Applicable to All Managers.

6. During the timeframe relevant to this lawsuit, regardless of location, Defendants classified all Managers as exempt from overtime pay. Defendants also had a uniform job description for all Managers setting forth their alleged job duties and responsibilities and designating this position as exempt from overtime pay. (Amended Complaint, ¶¶ 25, 28; Amended Answer, ¶ 28; Exhibits B to I-Manager Decs., ¶ 5; Exhibit J-Miller Test., at 22:18 to 23:10; **Exhibit Q-Manager Job Description**).

7. During the timeframe relevant to this lawsuit, regardless of location, Managers had substantially similar primary job duties. These duties were controlled by Defendants' centralized corporate policies and procedures. These duties involved Managers spending most of their time performing the job tasks of the nonexempt workers. Managers exercised little managerial responsibilities, were not free from supervision, and were effectively paid an hourly rate equivalent to the nonexempt workers. If Managers failed to perform these job duties, their restaurants would fail. (Amended Complaint, ¶¶ 26-27; Exhibits B to I-Manager Decs., ¶¶ 6, 10-13; Exhibit J-Miller Test., at 14:3 to 15:9; 20:10 to 21:20; Exhibit K-Sanchez Test., at 48:8 to 49:14; **Exhibit L-Odom Trial Testimony**, at pages/lines 100:21 to 101:17).

8. During the timeframe relevant to this lawsuit, regardless of location, Managers were routinely scheduled for 50-hour workweeks. Managers routinely worked more than 50 hours a workweek. Managers did not receive overtime pay for any hours worked over 40 in a

workweek. (Amended Complaint, ¶¶ 29-30; Exhibits B to I-Manager Decs., ¶¶ 5, 8; Exhibit J-Miller Test., at 22:18 to 23:10; Exhibit K-Sanchez Test., at 60:7-13; Exhibit L-Odom Test., at 116:19-24).

C. Manager and Other SNS Management Testimony.

9. Plaintiff Alicia Wilmoth (“Wilmoth”) worked for Defendants as a Manager from approximately September 2018 through January 2019 at Defendants’ Steak N Shake restaurant located in New Castle, Indiana. (**Exhibit B**, ¶ 1). As a Manager, Wilmoth was paid a set amount for her work regardless of the hours she worked on a weekly basis. (*Id.* at ¶ 5). As a Manager, Wilmoth was typically scheduled to work 50 hours each workweek and worked on average 50-52 hours per week. (*Id.* at ¶ 8). As a Manager, Wilmoth spent the vast majority of her time each workweek performing the same production and service duties as the nonexempt employees. Wilmoth considered these nonexempt duties to be the most important part of her job because the restaurant would have failed had she not performed those duties. (*Id.* at ¶ 6). In Wilmoth’s experience, there were rarely enough nonexempt employees working on her shifts. (*Id.* at ¶ 7). As a Manager, Wilmoth did not have the authority to hire or fire employees and did not decide employee pay rates. (*Id.* at ¶ 12). As a Manager, Wilmoth did not conduct employee performance reviews, did not decide employee pay raises or promotions, and had little to no authority to discipline employees. (*Id.* at ¶ 13).

10. Plaintiff Brandon Scott (“Scott”) worked for Defendants as a Manager for approximately five years, until June 2019. Scott worked at Defendants’ Steak N Shake restaurant located in Peru, Illinois. (**Exhibit C**, ¶ 1). As a Manager, Scott was paid a set amount for his work regardless of the hours he worked on a weekly basis. (*Id.* at ¶ 5). As a Manager, Scott was typically scheduled to work 50 hours each workweek and worked on average 50-60

hours per week. (*Id.* at ¶ 8). As a Manager, Scott spent the vast majority of his time each workweek performing the same production and service duties as the nonexempt employees. Scott considered these nonexempt duties to be the most important part of his job because the restaurant would have failed had he not performed those duties. (*Id.* at ¶ 6). In Scott's experience, there were rarely enough nonexempt employees working on his shifts. (*Id.* at ¶ 7). As a Manager, Scott did not have the authority to hire or fire employees and did not decide employee pay rates. (*Id.* at ¶ 12). As a Manager, Scott did not conduct employee performance reviews, did not decide employee pay raises or promotions, and had little to no authority to discipline employees. (*Id.* at ¶ 13).

11. Plaintiff Albert Diana ("Diana") worked for Defendants as a Manager from approximately 2015 to January 2020. Diana worked at Defendants' Steak N Shake restaurant located in Niles, Ohio. (**Exhibit D**, ¶ 1). As a Manager, Diana was paid a set amount for his work regardless of the hours he worked on a weekly basis. (*Id.* at ¶ 5). As a Manager, Diana was typically scheduled to work 50 hours each workweek and worked on average 53-56 hours per week. (*Id.* at ¶ 8). As a Manager, Diana spent the majority of his time each workweek performing the same production and service duties as the nonexempt employees. Diana considered these nonexempt duties to be the most important part of his job because the restaurant would have failed had he not performed those duties. (*Id.* at ¶ 6). In Diana's experience, there were rarely enough nonexempt employees working on his shifts. (*Id.* at ¶ 7). As a Manager, Diana did not have the authority on his own to hire or fire employees and did not decide employee pay rates. (*Id.* at ¶ 12). As a Manager, Diana did not conduct employee performance reviews, did not decide employee pay raises or promotions, and had little to no authority to discipline employees. (*Id.* at ¶ 13).

12. Opt-in Plaintiff Trent Lewandowski (“Lewandowski”) worked for Defendants as a Manager from approximately 2017 to October 2019. Lewandowski worked at Defendants’ Steak N Shake restaurant located in Westfield, Indiana. (**Exhibit E**, ¶ 1). As a Manager, Lewandowski was paid a set amount for his work regardless of the hours he worked on a weekly basis. (*Id.* at ¶ 5). As a Manager, Lewandowski was typically scheduled to work 50 hours each workweek and worked on average 60 hours per week. (*Id.* at ¶ 8). As a Manager, Lewandowski spent the vast majority of his time each workweek performing the same production and service duties as the nonexempt employees. Lewandowski considered these nonexempt duties to be the most important part of his job because the restaurant would have failed had he not performed those duties. (*Id.* at ¶ 6). In Lewandowski’s experience, there were rarely enough nonexempt employees working on his shifts. (*Id.* at ¶ 7). As a Manager, Lewandowski did not have the authority to hire or fire employees and did not decide employee pay rates. (*Id.* at ¶ 12). As a Manager, Lewandowski did not conduct employee performance reviews, did not decide employee pay raises or promotions, and had little to no authority to discipline employees. (*Id.* at ¶ 13).

13. Opt-in Plaintiff Kimberly Thompson (“Thompson”) worked for Defendants as a Manager from approximately 2014 to March 2019. Thompson worked at several of Defendants’ Steak N Shake restaurants located in Louisville, Kentucky. (**Exhibit F**, ¶ 1). As a Manager, Thompson was paid a set amount for her work regardless of the hours she worked on a weekly basis. (*Id.* at ¶ 5). As a Manager, Thompson was typically scheduled to work 50 hours each workweek and worked on average 70-80 hours per week. (*Id.* at ¶ 8). As a Manager, Thompson spent the vast majority of her time each workweek performing the same production and service duties as the nonexempt employees. Thompson considered these nonexempt duties to be the

most important part of her job because the restaurant would have failed had she not performed those duties. (*Id.* at ¶ 6). In Thompson’s experience, there were rarely enough nonexempt employees working on her shifts. (*Id.* at ¶ 7). As a Manager, Thompson had limited involvement in hiring or firing employees (and this was only because her restaurants had periods of time without an assigned GM) and did not decide employee pay rates. (*Id.* at ¶ 12). As a Manager, Thompson had limited involvement in conducting employee performance reviews and disciplining employees (again, because of a lack of GM), and ultimately did not decide whether employees were given a pay raise or promotion. (*Id.* at ¶ 13).

14. Opt-in Plaintiff Sherry Seigart (“Seigart”) worked for Defendants as a Manager and RM from approximately 2016 to April 2019. Seigart worked at Defendants’ Steak N Shake restaurant located in Indianapolis, Indiana. (**Exhibit G**, ¶ 1). As a Manager, Seigart was paid a set amount for her work regardless of the hours she worked on a weekly basis. (*Id.* at ¶ 5). As a Manager, Seigart was typically scheduled to work 50 hours each workweek and worked on average at least 60 hours per week. (*Id.* at ¶ 8). As a Manager, Seigart spent the vast majority of her time each workweek performing the same production and service duties as the nonexempt employees. Seigart considered these nonexempt duties to be the most important part of her job because the restaurant would have failed had she not performed those duties. (*Id.* at ¶ 6). In Seigart’s experience, there were rarely enough nonexempt employees working on her shifts. (*Id.* at ¶ 7). As a Manager, Seigart did not have the authority to hire or fire employees and did not decide employee pay rates. (*Id.* at ¶ 12). As a Manager, Seigart did not conduct employee performance reviews, did not decide employee pay raises or promotions, and had little to no authority to discipline employees. (*Id.* at ¶ 13).

15. Opt-in Plaintiff Brian Hurley (“Hurley”) worked for Defendants as a Manager from approximately April 2018 to October 2019. Hurley worked at Defendants’ Steak N Shake restaurant located in Richmond, Kentucky. (**Exhibit H**, ¶ 1). As a Manager, Hurley was paid a set amount for his work regardless of the hours he worked on a weekly basis. (*Id.* at ¶ 5). As a Manager, Hurley was typically scheduled to work 50 hours each workweek and worked on average 65 hours per week. (*Id.* at ¶ 8). As a Manager, Hurley spent the vast majority of his time each workweek performing the same production and service duties as the nonexempt employees. Hurley considered these nonexempt duties to be the most important part of his job because the restaurant would have failed had he not performed those duties. (*Id.* at ¶ 6). In Hurley’s experience, there were rarely enough nonexempt employees working on his shifts. (*Id.* at ¶ 7). As a Manager, Hurley did not have the authority to hire or fire employees and did not decide employee pay rates. (*Id.* at ¶ 12). As a Manager, Hurley did not conduct employee performance reviews, did not decide employee pay raises or promotions, and had little to no authority to discipline employees. (*Id.* at ¶ 13).

16. Opt-in Plaintiff Margaret Bolick (“Bolick”) worked for Defendants as a Manager from approximately June 2018 to May 2019. Bolick worked at Defendants’ Steak N Shake restaurants located in Kokomo, Indiana. (**Exhibit I**, ¶ 1). As a Manager, Bolick was paid a set amount for her work regardless of the hours she worked on a weekly basis. (*Id.* at ¶ 5). As a Manager, Bolick was typically scheduled to work 45 hours each workweek and worked on average 70 hours per week. (*Id.* at ¶ 8). As a Manager, Bolick spent the vast majority of her time each workweek performing the same production and service duties as the nonexempt employees. Bolick considered these nonexempt duties to be the most important part of her job because the restaurant would have failed had she not performed those duties. (*Id.* at ¶ 6). In

Bolick's experience, there were rarely enough nonexempt employees working on her shifts. (*Id.* at ¶ 7). As a Manager, Bolick did not have the authority to hire or fire employees and did not decide employee pay rates. (*Id.* at ¶ 12). As a Manager, Bolick did not conduct employee performance reviews, did not decide employee pay raises or promotions, and had little to no authority to discipline employees. (*Id.* at ¶ 13).

17. Shannon Miller ("Miller") worked for Defendants as a Manager from July 2017 to February 2019.³ (**Exhibit J**, at page/lines 5:16 to 6:7; 8:25 to 9:8). Miller worked at Defendants' Steak N Shake restaurant located in Ellisville, Missouri. (*Id.* at 6:8-14; 9:11-13). As a Manager, Miller was paid a set amount for her work regardless of the hours she worked on a weekly basis. (*Id.* at 22:18 to 23:22). As a Manager, Miller was typically scheduled to work 50 hours each workweek and worked on average 50 to 60 hours per week. (*Id.*). As a Manager, Miller spent the majority of her time each workweek performing the same production and service duties as the nonexempt employees. Miller considered these nonexempt duties to be the most important part of her job because the restaurant would have failed had she not performed those duties. (*Id.* at 11:8 to 12:7; 12:19 to 13:3; 14:3 to 15:9). In Miller's experience, there were rarely enough nonexempt employees working on her shifts. (*Id.* at 11:19 to 12:4). As a Manager, Miller did not have the authority to hire or fire employees and did not decide employee pay rates. (*Id.* at 24:4-7; 27:11-14). As a Manager, Miller did not conduct employee performance reviews, did not decide employee pay raises or promotions, and had little to no authority to discipline employees. (*Id.* at 24:8-14; 27:11-24; 28:18-24; 30:4 to 31:1).

³ Miller testified at trial on behalf of Defendant SNS in *Drake v. Steak N Shake Operations, Inc.*, 4:14-cv-01535-JAR. Although she was a Manager and putative class member in that case, she "opted out" and therefore was not a plaintiff. (**Exhibit J**, at 4:9-17). However, because she has worked as a Manager for Defendants within the timeframe applicable to this current lawsuit, her testimony is relevant.

18. Chrissy Sanchez (“Sanchez”) has worked for Defendants as a General Manager since 2014 at Defendants’ Steak N Shake restaurant located in Washington, Missouri. (**Exhibit K**, at page/lines 38:7-14).⁴ In Sanchez’s experience, there has been an ongoing and constant issue at Defendants’ restaurants with understaffing of hourly production and service workers. Because of this understaffing of hourly workers, Managers must perform those production and service duties. (*Id.* at 43:11 to 45:13). If the production and service duties do not get performed, the restaurants will not succeed. (*Id.* at 45:17-20). Managers must always perform the production and service duties first when necessary. (*Id.* at 46:23 to 47:1). Managers do not decide employee pay rates or pay raises. (*Id.* at 53:24 to 54:2). Managers do not have the authority to fire employees. (*Id.* at 54:19-22). Per Defendants’ policy, Managers do not have the authority to hire employees. (*Id.* at 55:1-5; 56:1-4). As the General Manager, Sanchez is ultimately responsible for disciplining employees at her restaurant, and Managers spend very little overall time involved in formal discipline. (*Id.* at 59:23 to 60:6). Managers are typically scheduled to work 50 hours per week and sometimes work more than that. (*Id.* at 60:7-13).

19. Stacey Odom (“Odom”) has worked for Defendants as a Restaurant Manager since 2016 at Defendants’ Steak N Shake restaurant located in Washington, Missouri. (**Exhibit L**, at page/lines 94:1-7).⁵ In Odom’s experience, understaffing of hourly production and service workers has been “an issue” at Defendants’ restaurants. Because of this understaffing of hourly workers, Managers must perform those production and service duties. (*Id.* at 98:1-19). In fact, Managers spend most of their actual time performing nonexempt production and service duties.

⁴ Sanchez testified at trial on behalf of Defendant SNS in the *Drake* case. At the time of trial, she was still employed by Defendants as a General Manager. Because she has worked for Defendants within the timeframe applicable to this current lawsuit, her testimony is relevant.

⁵ Odom testified at trial on behalf of Defendant SNS in the *Drake* case. At the time of trial, she was still employed by Defendants as a Restaurant Manager. Because she has worked for Defendants within the timeframe applicable to this current lawsuit, her testimony is relevant.

(*Id.* at 98:24 to 99:2). If the production and service duties do not get performed, the restaurant will not succeed. (*Id.* at 99:10-13). Managers do not decide employee pay rates or pay raises. (*Id.* at 109:16-18). Odom admits she is “not clear” on what Defendants’ policy is regarding Managers’ ability to hire and fire employees, so would defer to someone else on that issue. (*Id.* at 110:13-23). Managers have very minimal involvement in the formal disciplining of employees. (*Id.* at 116:14-18). Managers are typically scheduled to work 50 hours per week and sometimes work more than that. (*Id.* at 116:19-24).

D. Other Relevant Allegations.

20. In December 2017, the United States District Court for the Eastern District of Missouri determined that the same class of Defendants’ Managers (for a time period earlier and partially inclusive of this lawsuit) was “similarly situated” for purposes of Rule 23 certification and denial of SNS’s motion to decertify the FLSA conditionally certified class. (*Drake v. Steak N Shake Operations, Inc.*, 4:14-cv-01535-JAR, 286 F.Supp.3d 1040 (E.D. Mo. 2017)).

21. In February 2019, a jury in the United States District Court for the Eastern District of Missouri determined that Defendant SNS had failed to prove that the same class of Managers were subject to the executive, administrative and combination exemptions under the FLSA. The jury further determined that the Managers were owed substantial overtime pay from Defendant SNS. (**Exhibit M**- Special Verdict Form). The District Court subsequently entered Judgment against Defendant SNS and in favor of the class of Managers. (**Exhibit N**-Second Amended Judgment).

22. Despite the previous jury verdict and court judgment—finding that SNS’s classification of Managers as exempt was illegal—Defendants have continued to classify

Managers as exempt. (Amended Complaint, ¶¶ 25, 28; Amended Answer, ¶ 28; Exhibits B to I-Manager Decs., ¶ 5).

23. Plaintiffs are seeking court approved notice to be sent to the following proposed collective class under § 216(b) of the FLSA:

All persons who worked, or will work during the liability period, as “Managers” for Defendants at all corporate owned “Steak N Shake” restaurants located in the United States at any time within three years prior to the filing of the Complaint – but excluding the covered period of time for persons who consented to join and participated in the settlement agreement reached in *Drake v. Steak N Shake, Inc.*, 4:14-cv-1535-JAR (E.D.Mo.) and *Clendenen v. Steak N Shake, Inc.*, 4:17-cv-1506 (E.D.Mo.) (hereafter the “FLSA Collective”).

(Amended Complaint, ¶ 42).

III. The FLSA’s Purpose

“The FLSA must be construed liberally to apply to the furthest reaches consistent with congressional direction.” *Koch v. Jerry W. Bailey Trucking, Inc.*, 482 F. Supp. 3d 784, 793 (N.D. Ind. 2020). “The FLSA is humanitarian and remedial in nature and must be constructed to effect Congress’ purpose, which was to protect the country’s workers.” *Id.* “Section 216(b) [of the FLSA] does not explicitly provide for court-ordered notice.” *Powers v. Centennial Commun. Corp.*, 679 F. Supp. 2d 918, 920 (N.D. Ind. 2009), *amended on reconsideration*, 108-CV-208-PPS, 2010 WL 746776 (N.D. Ind. Feb. 26, 2010). “Nonetheless, the Supreme Court has held that, in appropriate cases, district courts have the discretion to implement § 216(b) by facilitating notice to potential plaintiffs. *Id.* (citing *Hoffmann–La Roche, Inc. v. Sperling*, 493 U.S. 165, 169, 110 S.Ct. 482, 107 L.Ed.2d 480 (1989)). “Such court-authorized notice serves the broad, remedial purpose of the FLSA and comports with the court’s interest in managing its docket.” *Id.* (citing, *Hoffmann–La Roche* 493 U.S. at 172–74).

IV. Argument

A. Standard for Conditional Certification under § 216(b):

In a number of prior opinions, this Court has set forth the same standards governing conditional certification under § 216(b) of the FLSA to facilitate class notice. “Under the FLSA, an employee is permitted to maintain a collective action for ‘unpaid overtime compensation ... for and on behalf of himself ... and other employees similarly situated.’” *Parra*, 2020 WL 2748191, at *2 (quoting 29 U.S.C. § 216(b)). “The ‘District Court has the discretion to authorize notice to similarly situated employees so that they may opt-in to a class.’” *Id.* (quoting *Carter v. Indianapolis Power & Light Co.*, 2003 U.S. Dist. LEXIS 23398, at *7, 2003 WL 23142183 (S.D. Ind. Dec. 23, 2003)). “Such a collective action differs significantly from a Rule 23 class action. Potential class members in a collective action must affirmatively opt-in to be bound, while in a Rule 23 action they must opt out [to] not be bound.” *Id.* (quoting *Cheesman v. Nexstar Broad. Grp., Inc.*, 2008 U.S. Dist. LEXIS 42265, at *3, 2008 WL 2225617 (S.D. Ind. May 27, 2008)). “The standards governing class certification under Rule 23 are not applicable to FLSA collective actions.” *Id.*

“Courts in the Seventh Circuit engage in a two-step inquiry to determine whether an FLSA action may proceed as a collective action.” *Parra*, 2020 WL 2748191, at *2. “The first step is called the ‘notice stage’ and ‘involves an analysis of the pleadings and affidavits which have been submitted to determine whether notice should be given to potential class members.’” *Id.* (citation omitted). “The second step, which usually occurs after discovery has largely been completed, allows a court the opportunity to determine whether the class should be decertified or restricted because various putative class members are not in fact similarly situated as required by the statute.” *Id.* (citation omitted).

“During the initial ‘notice stage,’ a plaintiff does not have to prove his entire case. Rather, the plaintiff must make only a threshold showing that he is similarly situated to the employees on whose behalf he seeks to pursue claims.” *Parra*, 2020 WL 2748191, at *2 (quoting *Coan v. Nightingale Home Healthcare, Inc.*, 2005 U.S. Dist. LEXIS 15475, at *3, 2005 WL 1799454 (S.D. Ind. June 29, 2005)). “This threshold showing is relatively modest.” *Id.* “[T]o meet their burden, Plaintiffs must provide evidence via an affidavit, declaration, or other support beyond allegations in order to make a minimal showing of other similarly situated employees subjected to a common policy.” *Id.* (quoting *Allen, supra*). “Courts have held, however, that being similarly situated does not require identical positions of the putative class members; instead, it requires that common questions predominate among the members of the class.” *Kolish v. Metal Techs., Inc.*, 216CV00145JMSMJ, 2017 WL 525965, at *15 (S.D. Ind. Feb. 8, 2017).

Finally, courts in this district “have noted several times previously . . . that a conditional certification does not require the district court to adjudicate the merits of plaintiffs’ claims.” *Scott v. NOW Courier, Inc.*, 1:10-CV-971-SEB-TAB, 2012 WL 1072751, at *7 (S.D. Ind. Mar. 29, 2012). “The effect of a conditional certification of a collective action simply opens the way for notice to the proposed class of the pending action so other similarly situated putative plaintiffs have an opportunity to opt-in as parties to the litigation.” *Id.*

B. Steak N Shake Managers are “Similarly Situated” under § 216(b):

The three named Plaintiffs, six other Managers, a General Manager and a Restaurant Manager have all provided allegations via sworn testimony as to the similarity among the Manager position. Defendants’ corporate policies also verify this similarity. The substantial allegations—set forth in detail above—are summarized as follows:

- Defendants’ policy that all Managers all perform the same job duties via their uniform job description applying to all locations.
- Defendants’ position that all Managers allegedly have the same level of authority permitting them to apply the same alleged FLSA exemptions to overtime pay regardless of location. In turn, all Managers routinely work more than 50 hours per workweek without receiving overtime pay.
- All Managers are subject to companywide policies that strictly govern nearly every aspect of the day-to-day operations at all of Defendants’ restaurants.
- All Managers testified that they spend the vast majority of their time performing the same job duties as the hourly nonexempt restaurant employees. In turn, all Managers testified that their primary job duties did not involve managerial or administrative duties.
- Managers were rarely involved, if at all, in employment decisions like hiring, disciplining, terminating hourly employees, determining employee pay, or scheduling. Instead, all of these responsibilities fall on the “General Managers.”

Manager misclassification cases in the restaurant industry are routinely certified given the uniformity of a companywide overtime classification policy. The Court in *McColley v. Casey's Gen. Stores, Inc.*, 2:18-CV-72 DRL-JEM, 2021 WL 1207564 (N.D. Ind. Mar. 31, 2021), was faced with a similar motion for conditional certification regarding misclassification of store managers. There, the court granted conditional certification based upon plaintiff presenting evidence that:

[T]he potential class members: (1) worked for Casey's as salaried store managers; (2) regularly worked in excess of 40 hours per week; (3) were not paid extra overtime compensation for any hours worked in excess of 40 per week; and (4) primarily performed non-managerial tasks.

Id. at *5. The court found that “[t]he record thus establishes that Ms. McColley and the potential class members . . . were subject to a common policy or plan—namely the alleged misclassification of managers as exempt employees despite allegedly performing primarily non-exempt tasks—with the common injury of lost overtime pay.” *Id.* Here, the Named Plaintiffs provided even more evidence than what was presented in *McColley*.

In *Meyer v. Panera Bread Co.*, the plaintiffs alleged that defendant misclassified assistant managers at its restaurants as exempt from the FLSA's overtime provisions while requiring those employees to perform primarily non-managerial work. 344 F. Supp. 3d 193, 201 (D.D.C. 2018). The plaintiffs sought conditional certification under § 216(b). *Id.* In support, plaintiffs provided declarations from other assistant managers who worked at numerous locations. *Id.* at 201-202. All declarations provided similar information: assistant managers categorized as exempt employees; that they regularly worked more than 40 hours per week without overtime pay; the majority of time was spent on non-managerial tasks; the general managers performed the managerial tasks; and directives on running the restaurant came from centralized corporate control. *Id.* at 202. Here, named Plaintiffs have provided the same level of allegations. The *Meyer* Court granted conditional certification based on:

Plaintiffs have presented evidence through declarations that Panera's corporate headquarters exerted significant control over the operations of its restaurants. They have indicated that the ordinary management hierarchy—regional director, general manager, assistant manager—tended to require that assistant managers perform non-managerial duties, as the bulk of the managerial duties were reserved, at the restaurant level, to the general manager. Moreover, they have linked the performance of these non-managerial duties to a corporate policy of strictly controlling labor costs.

Id. at 202. Again, this is everything the named Plaintiffs present here.

In *Holland v. Fulenwider Enterprises, Inc.*, the court granted conditional certification for assistant managers working at Kentucky Fried Chicken and Taco Bell franchises. 1:17-CV-48, 2018 WL 700801, at *4 (W.D.N.C. Feb. 2, 2018). To support this finding at the lenient notice stage, the court stated:

Plaintiff and opt-in plaintiffs have provided enough facts to allege that they were the victims of misclassification in order to avoid receiving overtime pay. Furthermore, based on the additional discovery, plaintiff has done enough to allege that she and opt-in plaintiffs are sufficiently similarly situated to meet the lenient standard, such as in amount of hours worked and amount of time spent on

non-managerial tasks.

Id. at *4. In *McGhee v. TOMS King, LLC*, the plaintiffs sought conditional class certification for restaurant managers and general managers in training at franchised Burger King locations. 2:19-CV-01470-RJC, 2021 WL 1176097, at *1 (W.D. Pa. Mar. 29, 2021). The plaintiffs alleged that they spent “the vast majority of their time performing the same duties as non-exempt employees, including serving customers, ringing customers up on the cash register, preparing food, working the drive-[through], stocking, counting inventory, and cleaning the restaurant.” *Id.* at *2. The court granted conditional certification.

Plaintiffs have submitted evidence which supports a finding that Defendants had a policy of classifying all RMs and RGMITs as exempt employees during the timeframe relevant herein. Plaintiffs have further submitted evidence which amounts, at least, to a modest factual showing that Plaintiffs performed non-exempt tasks at least 90% of the time during their employment as an RM and an RGMIT, respectively, that they worked well in excess of forty (40) hours per workweek, that they were paid a salary, and that they were not paid overtime for hours worked in excess of forty (40) hours per workweek based upon Defendants’ classification of RMs and RGMITs as exempt employees. Defendants’ policy allegedly affected Plaintiffs by denying them the overtime compensation to which they were allegedly entitled.

Id. at *6. Once again, like *Holland* and *McGhee*, named Plaintiffs have presented similar factual allegations.

C. Steak N Shake Managers Received the Same Nationwide Certification in the Past:

On September 28, 2018, the U.S. District Court for the Eastern District of Missouri certified a nationwide collective class for the same “Managers” under § 216(b) of the FLSA. *Clendenen v. Steak N Shake Operations, Inc.*, 4:17-CV-01506-JAR, 2018 WL 4679728, at *1 (E.D. Mo. Sept. 28, 2018) (Ross, J.).⁶ The *Clendenen* court applied the same standards and

⁶ This nationwide certification excluded Managers in Defendants’ St. Louis Group Market because that class of employees was covered by an existing case before the same judge: *Drake v. Steak N Shake*, No. 4:14-cv-1535-JAR (E.D. Mo.). All Managers in the remaining seven markets covering the rest of Defendants’ restaurants were part of the *Clendenen* certified class. *Id.* at *1.

principals as this Court (*see* section IV.A, *supra*) in reaching this decision. *Id.* As is the case here, the *Clendenen* plaintiff made the following factual allegations:

[A]ll SnS Managers were subject to a uniform job description; SnS Managers were not paid overtime; SnS Managers had the same or substantially similar primary job duties regardless of market or store; SnS Managers' primary job duties were not administrative or managerial but were largely the same as non-exempt hourly employees'; SnS Managers' work was strictly controlled by SnS policy and oversight; SnS Managers were routinely scheduled to work, and did work, far in excess of forty hours per week; and SnS did not document or record hours worked by Managers.

Id. at *2.

To support her allegations, the *Clendenen* plaintiff provided supporting declarations, Defendants' uniform Manager job description, and the Defendants' handbook provided to all Managers. *Id.* In granting conditional certification, the court found: "Based on the factual record before it, the Court concludes that Plaintiff has provided 'modest factual support' for her original allegations that a class of similarly situated employees likely exists based on a single, potentially FLSA-violating policy that, if proven, would give rise to class-wide liability." *Id.* at

*3. The *Clendenen* court elaborated:

For instance, the Managers state that their most important job duties on any given shift—and the work they spent the bulk of their time doing—included working the grill, working back dress, working fountain, making shakes, dropping fries, cooking the food, serving the food working cash counter, assisting the drive-through customers, and cleaning. At the same time, the Managers state that they were rarely involved, if at all, in employment decisions like hiring, disciplining, or terminating hourly employees, determining employee pay, or scheduling, and that their opinions on personnel matters were typically given little, if any, weight. Plaintiff's evidence also supports her claim that Managers routinely worked more than forty hours a week without being paid overtime.

Id.

Even under Rule 23's more stringent requirements, this same class of "Managers" proceeded to trial for the same overtime claim. *Drake v. Steak N Shake Operations, Inc.*, 286 F.

Supp. 3d 1040 (E.D. Mo. 2017). As referenced in the Amended Complaint (Doc. #6, ¶ 31), *Drake* dealt with an FLSA collective class of Managers from Defendants' St. Louis Group Market and a Rule 23 Manager class under Missouri wage laws. *Id.* at 1043. After trial in *Drake*, the jury found that Defendants' Managers were misclassified, and owed overtime pay. *See Drake v. Steak N Shake Operations, Inc.*, 4:14-CV-01535-JAR, 2019 WL 2075895 (E.D. Mo. May 10, 2019). The Defendants ultimately settled the *Drake* and *Clendenen* claims. *Drake v. Steak N Shake, Inc.*, 4:14-CV-1535-JAR, 2019 WL 12104295, at *2 (E.D. Mo. July 26, 2019).

In summation, the Defendants continue to deny Managers overtime pay. Another court addressing this issue in the past granted not only nationwide conditional certification under § 216(b) of the FLSA (and later denied decertification), but also certification under Rule 23's more stringent standards. In turn, a jury found that these Managers were wrongfully denied overtime pay. Granted, Defendants' loss at trial and agreeing to settle these prior lawsuits are not an admission of wrongdoing. However, these prior cases demonstrate the sound basis for the relief asked for herein.

D. Plaintiffs' Proposed Notice Should be Accepted by the Court:

The Plaintiffs' proposed notice provides the putative class members with all the relevant information pertaining to the claims and damages being asserted, and Defendants' position on these claims (*see Exhibit O*). It informs them of the role they would play if deciding to opt into this matter and how to opt-in. For these reasons, the proposed notice and consent form (**Exhibit P**) should be approved by this Court.

E. Class Data and Means of Providing Notice:

If this Court grants conditional class certification, the Plaintiffs request that Defendants provide the class members' names, dates of employment, last known mailing address, phone

number, and personal email addresses.⁷ Persons who work in the Manager position are relatively low paid workers and are highly transitory individuals who typically rent their place of residence. Even for those who provide change of address notice to the U.S. Postal service, said notices eventually expire and mail is not forwarded. Counsel for Plaintiffs can speak with authority on this issue after resolving and paying hundreds of claims in the *Drake* and *Clendenen* matters discussed herein. Providing a complete and fair opportunity to learn of the claims herein, and participate in this process, should be of the utmost importance to the Court. Sending notice via U.S. Mail only has been expanded by courts throughout this country to include notice by email and websites.

“More recently, courts recognize that ‘nowadays, communication through email is the norm.’” *Knox v. Jones Group*, 208 F. Supp. 3d 954, 963 (S.D. Ind. 2016), *on reconsideration in part*, 115CV01738SEBTAB, 2016 WL 6083526 (S.D. Ind. Oct. 18, 2016) (citation omitted). This is especially the case when such notices are often confused for junk mail by the recipients. *See Carrel v. Medpro Group, Inc.*, 1:16-CV-130-TLS, 2016 WL 4884157, at *4 (N.D. Ind. Sept. 15, 2016) (“The Plaintiff argues that an extra level of notice is necessary to ensure that potential plaintiffs are given a full and fair opportunity to join the case given the volume of junk mail people receive every day.”).

Plaintiffs also request the ability to set up a website providing the same class notice as well as the ability for persons to consent to join via the website. “As with email, communication through websites is common.” *Knox*, 208 F. Supp. 3d at 964. “Opening a public website

⁷ See e.g., *Owens v. GLH Capital Enter., Inc.*, 3:16-CV-1109-NJR-SCW, 2017 WL 2985600, at *5 (S.D. Ill. July 13, 2017)(“Employers shall . . . provide counsel for Employees with the name, dates of employment, job title, last known address, any cell phone numbers, and email addresses of all proposed class members . . .”).

improves access to consent forms, and the Court is unaware of any actual (or anecdotal) evidence that a case website with misleading comments circulates, resulting in artificially increased case participation.” *Id.*; see e.g., *Espenscheid v. DirecStat USA, LLC*, 09-CV-625-BBC, 2010 WL 2330309, at *1 (W.D. Wis. June 7, 2010) (“Also, plaintiffs may create a website containing the notice and issue a court-approved press release directing potential class members to the website.”).

Consents received electronic signatures from websites are acceptable. Courts routinely permit putative class members to opt-in by way of electronic signatures. The rationale for this is threefold: (i) the FLSA, unlike Rule 11, does not contain a signature requirement. Rather, it requires that the consent be “in writing;” (ii) Congress has already addressed this issue with the Electronic Signatures in Global and National Commerce Act (“E-Sign Act”) of 2000, which states that “with respect to any transaction in or affecting interstate or foreign commerce” a “signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form,” 15 U.S.C. § 7001(a)(1); and (iii) we live in a time when all manner of commercial transactions are routinely cemented by electronic submission. Indeed, individuals today routinely enter into any number of agreements electronically using various websites, software packages, and mobile phone applications. See e.g., *Turner v. Concentrix Servs., Inc.*, 2020 WL 544705, at *8 (W.D. Ark. Feb. 3, 2020) (“[T]his Court and others within Arkansas have, of late, allowed electronic signatures from the RightSignature service in FLSA cases. This case is no different, and the Court will allow Plaintiff to utilize the RightSignature service as a means for opt-in plaintiffs to sign the consent documents.”) (internal citations omitted); *Kraft v. Freight Handlers, Inc.*, 2019 WL 3854989, at *6 (M.D. Fla. May 21, 2019) (“When courts allow notice to be distributed via

email, they regularly allow opt-in plaintiffs to execute consent forms electronically”); *Valencia v. Armada Skilled Home Care of New Mexico, LLC*, 2020 WL 4606552, at *8 (D.N.M. July 23, 2020) (“As to the issue of hyperlinks in the electronic form of the Notice, recognizing that we live in a time when all manner of commercial transactions are routinely cemented by electronic submission, courts have approved the use of online electronic signature opt-in forms.”); *Dyson v. Stuart Petroleum Testers, Inc.*, 308 F.R.D. 510, 517–18 (W.D. Tex. 2015) (“Accordingly, the Court concludes Plaintiff may employ its proposed electronic signature method for execution of consent forms.”); *Wingo v. Martin Transp., Inc.*, 2018 WL 6334312, at *13–14 (E.D. Tex. Dec. 5, 2018) (“[T]he prospective class members may electronically sign their consent forms. Such electronic signature should be through a service such as DocuSign, and may not merely be “/s/ FirstName LastName.”).

Plaintiffs would also like to send class notice via text message. This text message would direct recipients to the website discussed in the prior paragraphs. From extensive experience representing almost 1,000 SNS Managers in prior overtime litigation, Plaintiffs’ counsel can attest to the fact that these individuals move on a frequent basis and few have email accounts. This is not uncommon for persons working in low wage positions in the fast food industry. One thing that is constant for all persons is the cell phone number. These numbers remain the same regardless of changing mailing addresses, email addresses, or even phone plans. More courts are recognizing the need to send notices via text messages.

The request that notice be distributed via direct mail, email and text messaging appears eminently reasonable to the Court. This has become a much more mobile society with one's email address and cell phone number serving as the most consistent and reliable method of communication The Court is unpersuaded by Defendants' argument that notice beyond first class mail is “redundant, wasteful ... and could compromise the integrity of the notice process.” Therefore, the Court approves notice via regular mail, email and text messaging.

Irvine v. Destination Wild Dunes Management, Inc., 132 F.Supp.3d 707, 711 (D.S.C. Sept. 14, 2015) (internal citations omitted).

Plaintiff requests to send notice by First Class U.S. Mail, text message, and email Plaintiff argues that ‘[d]ue to the transience of the modern workforce, notice by U.S. Mail alone creates a significant risk that notice will not be received.’ The Court finds, as it has in previous cases, that sending notice by all three methods is likely to ‘increase the probability of apprising collective action members of their rights.’

Bagoue v. Developmental Pathways, Inc., 2019 WL 1358842, at *4 (D.Colo. Mar. 25, 2019) (internal citations omitted).

Indeed, given the amount of junk mail that people receive, email and text message likely are more effective methods for communicating with potential class members than traditional, first-class mail. The Court agrees with this reasoning.

Landry v. Swire Oilfield Services, L.L.C., 252 F.Supp.3d 1079, 1130 (D.N.M. May 2, 2017).

In several recent FLSA cases district courts have permitted plaintiffs' counsel to send notice to putative collective action members via text message. Text-message notification is particularly appropriate when the employer has previously communicated with the employees via text message or where there is high employee turnover Considering these factors and the state of modern communication, the Court finds that notification via text message is appropriate here.

Kidwell v. Ruby IV, LLC, 2019 WL 219850, at *6 (E.D.La. Jan. 16, 2019) (internal citations omitted).

[T]he court agrees with Plaintiffs that, in light of the transient nature of potential plaintiffs, serving notice by text message is appropriate The two proposed text messages only modestly infringe on privacy interests. Such limited intrusion is justified to give potential plaintiffs notice of possible wage claims.

Harris v. Medical Transportation Management, Inc., 317 F.Supp.3d 421, 426 (D.D.C. July 17, 2018) (internal citations omitted); *see also, Camp v. Bimbo Bakeries USA, Inc.*, 2019 WL 440567, at *5 (D.N.H. Feb. 4, 2019) (authorizing “Plaintiffs to mail, email, and text the Notice and Opt-in Form attached to Plaintiffs' Motion to all members of the collective identified by

Defendants.”); *Bhumithanarn v. 22 Noodle Mkt. Corp.*, 2015 WL 4240985, at *5 (S.D.N.Y. July 13, 2015) (“given the high turnover characteristic of the restaurant industry, the Court finds that notice via text message is likely to be a viable and efficient means of communicating with many prospective members of this collective action”); *Defrese-Reese v. Healthy Minds, Inc.*, 2018 WL 6928920, at *4 (W.D.La. Dec. 19, 2018) (“The undersigned finds that text messages are a reasonable and effective means of providing notice and should be approved with Plaintiff’s proposed text and procedure.”).

Plaintiffs also seek permission to send a reminder postcard twenty-one days after the initial notice is sent. The Court in *Knox* realized that this is left to its discretion and there are varying positions in this Circuit. 208 F. Supp. 3d at 964.⁸ Ultimately, *Knox* held: “The Court is unconvinced that any harm will result from potential class members being informed of their rights twice.” *Id.*; see e.g., *Swarthout v. Ryla Teleservices, Inc.*, 4:11-CV-21 RM, 2011 WL 6152347, at *5 (N.D. Ind. Dec. 12, 2011) (“following the mailing of the initial Notice of Lawsuit, one reminder letter (Mot., Exh. B, p. 5) may be sent at a time to be determined by plaintiff’s counsel.”).

For any notices returned via U.S. mail as undeliverable, the Plaintiffs request that Defendants be required to provide the last four digits of their social security number. While courts typically do not require production of SSNs for FLSA class members, they have noted that “[i]f plaintiffs encounter difficulties providing notice to potential class members because they do not have sufficient information to find them, they may request the more personal information at

⁸ “In *Swarthout v. Ryla Teleservices, Inc.*, No. 4–11–CV–21–RM, 2011 WL 6152347, *5, 2011 U.S. Dist. LEXIS 142408, *15 (N.D. Ind. 2011), the court approved sending potential class members one reminder notice, finding it was not inappropriate or excessive. In *Smallwood v. Illinois Bell Tel. Co.*, 710 F.Supp.2d 746, 753 (N.D.Ill.2010), the court denied the request to send a reminder notice, finding it was unnecessary and potential encouragement to join the lawsuit.” *Id.*

that time.” *Carter v. Indiana State Fair Commn.*, 1:11-CV-852-TWP-TAB, 2012 WL 4481350, at *6 (S.D. Ind. July 17, 2012), *report and recommendation adopted*, 1:11-CV-00852-TWP, 2012 WL 4481348 (S.D. Ind. Sept. 28, 2012) (quoting *Kelly v. Bluegreen Corp.*, 256 F.R.D. 626, 632 (W.D. Wis. 2009)); *see also Andrade v. Aeroteck, Inc.*, No. CCB08–2668, 2009 WL 2757099, at *1 n. 1 (D.Md. Aug.29, 2009) (discussing cases precluding the disclosure of telephone numbers and birth dates and suggesting that such information is unnecessary unless mailed notice is returned as undeliverable). Here, the last four digits of the SSNs will allow the notice administrator to conduct current address research via skip tracing for ones not deliverable.

WHEREFORE, the Plaintiffs respectfully request that this Court issue an order for the following:

- a. Granting conditional class certification regarding the Plaintiffs’ claims under §216(b) of the FLSA on behalf of all “Manager” employees who worked for Defendants within three years from the date of the Court’s order;
- b. Directing the Defendants to provide a list of names of these persons within fourteen (14) days of the Court’s order along with their last known home addresses, phone numbers, and personal email addresses, in Microsoft Excel format for mailing purposes;
- c. Provide the last four digits of social security numbers for all class members whose mailed notices are returned undeliverable so Plaintiff can locate a viable mailing address;
- d. Approval and authorization for the Plaintiff to send the notice of claims and consent to become party plaintiff forms attached to the supporting Memorandum as Exhibits O and P;

e. Approval for the Plaintiffs to create a website providing the same information and forms contained in Exhibits O and P referenced above and text messages referring class members to this website;

f. Approval for the Plaintiffs to send a reminder post card twenty-one days after the initial mailing of the notice; and

g. Granting such other relief the Court deems just and proper.

Respectfully Submitted,



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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on **September 14, 2021**, a copy of the foregoing was filed electronically. Service of this filing will be made on all ECF-registered counsel by operation of the court's electronic filing system. Parties may access this filing through the court's system.

/s/ Brendan J. Donelon
Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

Case no.: 1:21-cv-1507-TWP-MG

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS’ MOTION FOR CONDITIONAL CERTIFICATION**

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- Exhibit C — Brandon Scott Declaration
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- Exhibit G — Sherry Seigart Declaration
- Exhibit H — Brian Hurley Declaration
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- Exhibit J — Shannon Miller Trial Testimony
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- Exhibit P — Proposed Consent Form
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**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

Case no.: 1:21-cv-1507-TWP-MG

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION**

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

**TAMEKA BERRY, AND KIMBERLY
WALL,**

Plaintiffs,

v.

Case No. 1:20-cv-02932-JMS-MPB

STEAK N SHAKE INC.,

Defendant.

DECLARATION OF REBEKAH SCHUCK NEVIN

I, Rebekah Schuck Nevin, am over the age of 18 and make this declaration based on personal knowledge:

1. I have worked for Steak n Shake, Inc.'s ("Steak n Shake") operations since 2008. From 2008 to 2017, I worked, progressively, in the roles of Server, Manager, Restaurant Manager, General Manager, and ultimately Training General Manager. From 2017 to the present, I have worked in the role of Employee Relations Manager. Based on my work and job duties, I am knowledgeable about Steak n Shake restaurants, Servers, and policies.

2. Throughout the United States, there are currently approximately 200 Steak n Shake restaurants owned and operated by Steak n Shake Inc. across 14 states.

3. Before the COVID-19 pandemic, Steak n Shake offered a wide variety of food and beverage items for sale, which patrons could purchase for consumption in the restaurant dining room, as a to-go order, or via drive-thrus. Patrons choosing to consume their food and beverage items in the restaurant dining room could choose between table or counter service. Patrons choosing table service were served by a Server, who took their order, provided their food and drink, and otherwise attended to their dining needs.

4. During the three-year period of April 20, 2018 to April 20, 2021, approximately 26,763 individuals worked as a Steak n Shake Server, 2,697 of which worked as a Server at more than one Steak n Shake restaurant.

5. These Servers acknowledged Steak n Shake policies, including, but not limited to, its: (1) Clock In-Clock Out Policy; (2) Server Pay and Tip Policy; and (3) Wage and Age Agreement.


6. Shortly after the COVID-19 pandemic began, due to public health and safety directives and a reduction in foot traffic and patronage, Steak n Shake revised its restaurant operations. Initially, Steak n Shake closed its restaurant dining rooms to patrons. Later, Steak n Shake restaurants eliminated table service, such that patrons had the option of placing orders via drive-thrus, for delivery, or for curbside service.

7. As a result of the above operational changes to its restaurants, Steak n Shake currently does not employ Servers.

8. I have reviewed Steak n Shake's records on named plaintiff Tameka Berry, and they indicate she was employed as a Server at four restaurants.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this fourth day of May, 2021.



Rebekah Schuck Nevin

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

Case no.: 1:21-cv-1507-TWP-MG

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION**

Exhibit B

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

Case no.: 1:21-cv-1507-TWP-MG

DECLARATION – Alicia Wilmoth

My name is Alicia Wilmoth, and under penalty of perjury, I hereby provide the following information to the best of my personal knowledge and belief:

1. My name is Alicia Wilmoth and I currently reside in Anderson, Indiana. I was employed by Defendants as a “Manager” from approximately September 2018 through January 2019. I worked at Defendants’ Steak N Shake restaurant located at 23 Executive Drive, New Castle, Indiana. This was a corporate owned restaurant.

2. To my knowledge, when I worked for Defendants, all their restaurants were modeled to be staffed with the following positions that Defendants designated as exempt from overtime pay (listed in their respective chain of supervision): “General Manager,” “Restaurant Manager” [at some, but not all locations], and one or more “Manager” positions [the position that I held].

3. In addition to these overtime exempt positions, Defendants also employed numerous employees that were overtime eligible (or nonexempt) at each retail restaurant such as Operation Supervisors, Production Trainers, Service Trainers, Production Workers, and Servers.

4. The General Manager was ultimately responsible for running the restaurant. All the positions listed above reported directly to the General Manager.

5. As a Manager, I was paid a set amount for my work regardless of the hours that I worked. I was not paid any overtime for hours worked in excess of forty per workweek.

6. In my typical workday as a Manager, I spent the vast majority of my time performing the exact same production and service job duties as the nonexempt employees. I considered these duties to be the most important part of my job because, if I did not do these tasks on a daily basis, food would not be made and customers would not be served. The restaurant would have failed had I not spent the majority of my time performing these duties. These duties were pretty much the same whether the General Manager was present or not.

7. It was my experience throughout my employment with Defendants that we rarely had enough nonexempt production and service employees to work on the shifts. This was a reason I ended up spending the majority of my time performing these duties.

8. As a Manager, I was typically scheduled to work 50 hours each week. However, on average, I ended up working approximately 50-52 hours per week.

9. As a Manager, for a period of time I did have the ability to clock in and clock out on the shifts I worked. While I tried to remember to do so, I often forgot or did not clock in accurately. However, this was never held against me because the time I clocked in did not have any impact on the pay I received.

10. As a Manager, I did not play any significant role in preparing the work schedule for employees. Defendants' companywide Labor Scheduling System controlled the number of hours that could be scheduled for nonexempt employees on a weekly basis. When employees showed up on each shift, they typically knew where to start working at. I also did not have the authority to permit hourly employees to work overtime.

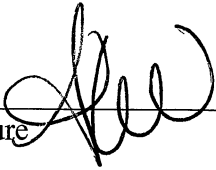
11. As part of my training, and while working for Defendants, it was clear that nearly every aspect of how the restaurant was to operate was covered by Defendants' mandatory written policies and procedures. As a Manager, I had to follow these policies and procedures and did not have any real discretion to disregard them.

12. As a Manager, I did not have the authority on my own to hire or fire employees. Defendants had a two-interview procedure that had to be followed. I would sometimes conduct the first interview following set company questions and protocols that were provided to me. However, the second and final interview was performed by the General Manager. The decision whether or not to hire that person was ultimately made by the General Manager. I played no role in deciding employee pay rates.

13. As a Manager, I did not conduct any performance reviews for employees. Any employee performance reviews were done by the General Manager. I had little to no authority or involvement in disciplining employees. I did not decide whether any employees were given a pay raise or promotion.

14. When it came to training new employees, all the exempt and nonexempt employees in the restaurant assisted with this process. However, restaurants typically had hourly paid Production Trainers and Service Trainers, who were directly responsible for the training of new employees.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing statements are true and correct and that I have personal knowledge of the information provided above.

Signature  _____

Date 7/18/21

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

Case no.: 1:21-cv-1507-TWP-MG

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION**

Exhibit C

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

Case no.: 1:21-cv-1507-TWP-MG

DECLARATION – Brandon Scott

My name is Brandon Scott, and under penalty of perjury, I hereby provide the following information to the best of my personal knowledge and belief:

1. My name is Brandon Scott and I currently reside in Mustang, Oklahoma. I was employed by Defendants as a “Manager” for four to five years through the end of my employment in June 2019. Prior to that time, I worked as a nonexempt hourly production worker and trainer for about five years. I worked at Defendants’ Steak N Shake restaurant located at 4040 Venture Dr., Peru, Illinois. This was a corporate owned restaurant.

2. To my knowledge, when I worked for Defendants, all their restaurants were modeled to be staffed with the following positions that Defendants designated as exempt from overtime pay (listed in their respective chain of supervision): “General Manager,” “Restaurant Manager” [at some, but not all locations], and one or more “Manager” positions [the position that I held].

3. In addition to these overtime exempt positions, Defendants also employed numerous employees that were overtime eligible (or nonexempt) at each retail restaurant such as Operation Supervisors, Production Trainers, Service Trainers, Production Workers, and Servers.

4. The General Manager was ultimately responsible for running the restaurant. All the positions listed above reported directly to the General Manager.

5. As a Manager, I was paid a set amount for my work regardless of the hours that I worked. I was not paid any overtime for hours worked in excess of forty per workweek.

6. In my typical workday as a Manager, I spent the vast majority of my time performing the exact same production and service job duties as the nonexempt employees. I considered these duties to be the most important part of my job because, if I did not do these tasks on a daily basis, food would not be made and customers would not be served. The restaurant would have failed had I not spent the majority of my time performing these duties. These duties were pretty much the same whether the General Manager was present or not.

7. It was my experience throughout my employment with Defendants that we rarely had enough nonexempt production and service employees to work on the shifts. This was a reason I ended up spending the majority of my time performing these duties.

8. As a Manager, I was typically scheduled to work 50 hours each week. However, on average, I ended up working approximately 50-60 hours per week.

9. As a Manager, for a period of time I did have the ability to clock in and clock out on the shifts I worked. While sometimes I forgot to do so, I did this on regular basis.

10. As a Manager, I did not play any significant role in preparing the work schedule for employees. Defendants' companywide Labor Scheduling System controlled the number of hours that could be scheduled for nonexempt employees on a weekly basis. When employees

showed up on each shift, they typically knew where to start working at. I also did not have the authority to permit hourly employees to work overtime.


11. As part of my training, and while working for Defendants, it was clear that nearly every aspect of how the restaurant was to operate was covered by Defendants' mandatory written policies and procedures. As a Manager, I had to follow these policies and procedures and did not have any real discretion to disregard them.

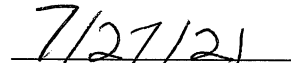
12. As a Manager, I did not have the authority on my own to hire or fire employees. Defendants had a two-interview procedure that had to be followed. I would sometimes conduct the first interview following set company questions and protocols that were provided to me. However, the second and final interview was performed by the General Manager. The decision whether or not to hire that person was ultimately made by the General Manager. I played no role in deciding employee pay rates.

13. As a Manager, I did not conduct any performance reviews for employees. Any employee performance reviews were done by the General Manager. I had little to no authority or involvement in disciplining employees. I did not decide whether any employees were given a pay raise or promotion.

14. When it came to training new employees, all the exempt and nonexempt employees in the restaurant assisted with this process. However, restaurants typically had hourly paid Production Trainers and Service Trainers, who were directly responsible for the training of new employees.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing statements are true and correct and that I have personal knowledge of the information provided above.


Signature


Date

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

Case no.: 1:21-cv-1507-TWP-MG

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION**

Exhibit D

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

Case no.: 1:21-cv-1507-TWP-MG

DECLARATION – Albert Diana

My name is Albert Diana, and under penalty of perjury, I hereby provide the following information to the best of my personal knowledge and belief:

1. My name is Albert Diana and I currently reside in Campbell, Ohio. I was employed by Defendants as a “Manager” from approximately 2015 to January 2020. I primarily worked at Defendants’ Steak N Shake restaurant located at 5555 Youngstown Warren Road, Niles, Ohio. I also worked on a temporary basis on occasion at Defendants’ restaurants located in Youngstown and Cleveland, Ohio. These were all corporate owned restaurants.

2. To my knowledge, when I worked for Defendants, all their restaurants were modeled to be staffed with the following positions that Defendants designated as exempt from overtime pay (listed in their respective chain of supervision): “General Manager,” “Restaurant Manager” [at some, but not all locations], and one or more “Manager” positions [the position that I held].

3. In addition to these overtime exempt positions, Defendants also employed numerous employees that were overtime eligible (or nonexempt) at each restaurant such as Operation Supervisors, Production Trainers, Service Trainers, Production Workers, and Servers.

4. The General Manager was ultimately responsible for running the restaurant. All the positions listed above reported directly to the General Manager.

5. As a Manager, I was paid a set amount for my work regardless of the hours that I worked. I was not paid any overtime for hours worked in excess of forty per workweek.

6. In my typical workday as a Manager, I spent the majority of my actual time performing the exact same production and service job duties as the nonexempt employees. I considered these duties to be a very important part of my job because, if I did not do these tasks on a daily basis, food would not be made and customers would not be served. The restaurant would have failed had I not spent the majority of my overall time performing these duties. These duties were pretty much the same whether the General Manager was present or not.

7. It was my experience throughout my employment with Defendants that we rarely had enough nonexempt (hourly) production and service employees to work on the shifts. This was a reason I ended up spending the majority of my overall time performing these duties.

8. As a Manager, I was typically scheduled to work 50 hours each week. However, on average, I ended up working approximately 53-56 hours per week.

9. As a Manager, for a period of time I did have the ability to clock in and clock out on the shifts I worked. I usually recorded my time accurately, but not always, as there would be times I did not bother clocking in and out. This is because the time I clocked in did not have any impact on the pay I received.

10. As a Manager, I did not play any significant role in preparing the work schedule for employees. This was the General Manager's responsibility. Defendants' companywide Labor Scheduling System controlled the number of hours that could be scheduled for nonexempt employees on a weekly basis. When employees showed up, they typically knew where to start working at. I did not have the authority to permit hourly employees to work overtime.

11. As part of my training, and while working for Defendants, it was clear that nearly every aspect of how the restaurant was to operate was covered by Defendants' mandatory written policies and procedures. As a Manager, I had to follow these policies and procedures and did not have any real discretion to disregard them.

12. As a Manager, I did not have the authority on my own to hire or fire employees. Defendants had a two-interview procedure that had to be followed. I would sometimes conduct the first interview following set company questions that were provided to me. However, the second and final interview was performed by the General Manager. The decision whether or not to hire that person was ultimately made by the General Manager. I played no role in deciding employee pay rates.

13. As a Manager, I did not conduct any performance reviews for employees. Any employee performance reviews were done by the General Manager. I had little to no authority or involvement in disciplining employees. I did not decide whether any employees were given a pay raise or promotion.

14. When it came to training new employees, all the exempt and nonexempt employees in the restaurant assisted with this process. However, restaurants typically had hourly paid Production Trainers and Service Trainers, who were most directly responsible for the training of new employees.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing statements are true and correct and that I have personal knowledge of the information provided above.

Albert Diana
Albert Diana

8-3-2021
Date

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

Case no.: 1:21-cv-1507-TWP-MG

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION**

Exhibit E

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

Case no.: 1:21-cv-1507-TWP-MG

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

DECLARATION – Trent Lewandowski

My name is Trent Lewandowski, and under penalty of perjury, I hereby provide the following information to the best of my personal knowledge and belief:

1. My name is Trent Lewandowski and I currently reside in Indianapolis, Indiana. I was employed by Defendants as a “Manager” from approximately 2017 to October 2019. I worked at Defendants’ Steak N Shake restaurant located in Westfield, Indiana. This was a corporate owned restaurant.

2. To my knowledge, when I worked for Defendants, all their restaurants were modeled to be staffed with the following positions that Defendants designated as exempt from overtime pay (listed in their respective chain of supervision): “General Manager,” “Restaurant Manager” (at some, but not all locations), and one or more “Manager” positions (the position that I held).

3. In addition to these overtime exempt positions, Defendants also employed numerous employees that were overtime eligible (or nonexempt) at each retail restaurant such as Operation Supervisors, Production Trainers, Service Trainers, Production Workers, and Servers.

4. The General Manager was ultimately responsible for running the restaurant. All the positions listed above reported directly to the General Manager.

5. As a Manager, I was paid a set amount for my work regardless of the hours that I worked. I was not paid any overtime for hours worked in excess of forty per workweek.

6. In my typical workday as a Manager, I spent the vast majority of my time performing the same production and service job duties as the hourly employees. I considered these duties to be the most important part of my job because, if I did not do these tasks on a daily basis, food would not be made and customers would not be served. The restaurant would have failed had I not spent the vast majority of my time performing these duties. These duties were pretty much the same whether the General Manager was present or not.

7. It was my experience throughout my employment with Defendants that we rarely had

enough nonexempt production and service employees to work on the shifts. This was a reason I ended up spending the vast majority of my time performing these duties.

8. As a Manager, I was typically scheduled to work 50 hours each week. However, on average, I ended up working approximately 60 hours per week.

9. As a Manager, I did have the ability to clock in and clock out on the shifts I worked. I usually remembered to accurately record my time. However, it did not matter because the time I clocked in did not have any impact on the pay I received.

10. As a Manager, I did not have any significant role in preparing the work schedule for employees. Defendants' companywide Labor Scheduling System controlled the number of hours that could be scheduled for nonexempt employees on a weekly basis. When employees showed up on each shift, they typically knew where to start working at. I also did not have the authority to permit hourly employees to work overtime.

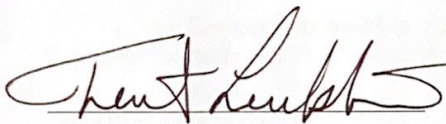
11. As part of my training, and while working for Defendants, it was clear that nearly every aspect of how the restaurant was to operate was covered by Defendants' mandatory written policies and procedures. As a Manager, I had to follow these policies and procedures and did not have any real discretion to disregard them.

12. As a Manager, I did not have the authority to hire or fire employees. Defendants had a two-interview procedure that had to be followed. I would infrequently conduct the first interview following set company questions that were provided to me. However, the second and final interview was performed by the General Manager. The decision whether to hire that person was ultimately made by the General Manager. I played no role in deciding employee pay rates.

13. As a Manager, I did not conduct any performance reviews for employees. Any employee performance reviews were done by the General Manager. I had little to no authority or involvement in disciplining employees. I did not decide whether any employees were given a pay raise or promotion.

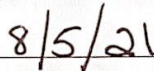
14. When it came to training new employees, all the exempt and nonexempt employees in the restaurant assisted with this process. However, restaurants typically had hourly paid Production Trainers and Service Trainers, who were directly responsible for the training of new employees.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing statements are true and correct and that I have personal knowledge of the information provided above.



Signature

2



Date

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

Case no.: 1:21-cv-1507-TWP-MG

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION**

Exhibit F

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

Case no.: 1:21-cv-1507-TWP-MG

DECLARATION – Kimberly Thompson

My name is Kimberly Thompson, and under penalty of perjury, I hereby provide the following information to the best of my personal knowledge and belief:

1. My name is Kimberly Thompson and I currently reside in Louisville, Kentucky. I was employed by Defendants as a “Manager” from approximately September 2014 to March 2019. I worked at several of Defendants’ Steak N Shake restaurants located Louisville, Kentucky. These were all corporate owned restaurants.

2. To my knowledge, when I worked for Defendants, all their restaurants were modeled to be staffed with the following positions that Defendants designated as exempt from overtime pay (listed in their respective chain of supervision): “General Manager,” “Restaurant Manager” (at some, but not all locations), and one or more “Manager” positions (the position that I held).

3. In addition to these overtime exempt positions, Defendants also employed numerous employees that were overtime eligible (or nonexempt) at each retail restaurant such as Operation Supervisors, Production Trainers, Service Trainers, Production Workers, and Servers.

4. The General Manager was ultimately responsible for running the restaurant. All the positions listed above reported directly to the General Manager.

5. As a Manager, I was paid a set amount for my work regardless of the hours that I worked. I was not paid any overtime for hours worked in excess of forty per workweek.

6. In my typical workday as a Manager, I spent the vast majority of my time performing the same production and service job duties as the hourly employees. I considered these duties to be the most important part of my job because, if I did not do these tasks on a daily basis, food would not be made and customers would not be served. The restaurant would have failed had I not spent the vast majority of my time performing these duties.

7. It was my experience throughout my employment with Defendants that we rarely had enough nonexempt production and service employees to work on the shifts. This was a reason I ended up spending the vast majority of my time performing these duties.

8. As a Manager, I was typically scheduled to work 50 hours each week. However, on average, I ended up working approximately 70-80 hours per week.

9. Other than for a brief period of time in approximately late 2016 to early 2017, I was not required to clock in and clock out on the shifts I worked.

10. As a Manager, I did not have any meaningful discretion or role in preparing the work schedule for employees. Defendants' companywide Labor Scheduling System controlled the number of hours that could be scheduled for nonexempt employees on a weekly basis. I did not have the authority to permit hourly employees to work overtime.

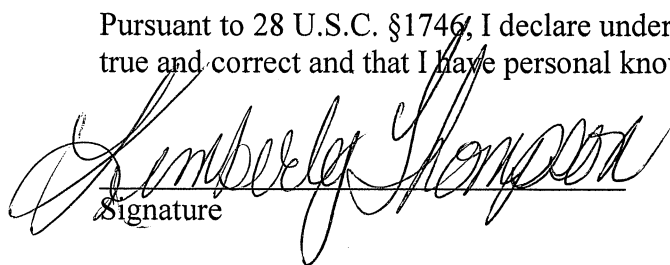
11. As part of my training, and while working for Defendants, it was clear that nearly every aspect of how the restaurant was to operate was covered by Defendants' mandatory written policies and procedures. As a Manager, I had to follow these policies and procedures and did not have any real discretion to disregard them.

12. As a Manager, I had some limited involvement in the hiring or firing employees, but this was because we often did not have a General Manager assigned to restaurant. I did not decide employee pay rates.

13. As a Manager, I had some limited involvement in performance reviews for employees, but again, because of a lack of General Manager. I also had some involvement in disciplining employees, but that was simply following set procedures and policies as dictated by Defendants. I did not ultimately decide whether any employees were given a pay raise or promotion.

14. When it came to training new employees, all the exempt and nonexempt employees in the restaurant assisted with this process. However, restaurants typically had hourly paid Production Trainers and Service Trainers, who were directly responsible for the training of new employees.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing statements are true and correct and that I have personal knowledge of the information provided above.


Signature


Date

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

Case no.: 1:21-cv-1507-TWP-MG

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION**

Exhibit G

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

Case no.: 1:21-cv-1507-TWP-MG

DECLARATION – Sherry Seigart

My name is Sherry Seigart, and under penalty of perjury, I hereby provide the following information to the best of my personal knowledge and belief:

1. My name is Sherry Seigart and I currently reside in Indianapolis, Indiana. I was employed by Defendants as a “Manager” and “Restaurant Manager” (“RM”) from approximately 2016 to April 2019. I worked at Defendants’ Steak N Shake restaurant located in Indianapolis, Indiana. I also worked on a temporary basis at other restaurants located in Indianapolis and Mooresville, Indiana. These were all corporate owned Steak N Shake restaurants.

2. To my knowledge, when I worked for Defendants, all their restaurants were modeled to be staffed with the following positions that Defendants designated as exempt from overtime pay (listed in their respective chain of supervision): “General Manager,” “Restaurant Manager” (at some, but not all locations), and one or more “Manager” positions (the position that I held).

3. In addition to these overtime exempt positions, Defendants also employed numerous employees that were overtime eligible (or nonexempt) at each retail restaurant such as Operation Supervisors, Production Trainers, Service Trainers, Production Workers, and Servers.

4. The General Manager was ultimately responsible for running the restaurant. All the positions listed above reported directly to the General Manager.

5. As a Manager and RM, I was paid a set amount for my work regardless of the hours that I worked. I was not paid any overtime for hours worked in excess of forty per workweek.

6. In my typical workday as a Manager and RM, I spent the vast majority of my time performing the same production and service job duties as the hourly employees. I considered these duties to be the most important part of my job because, if I did not do these tasks on a daily basis, food would not be made and customers would not be served. The restaurant would have failed had I not spent the vast majority of my time performing these duties. These duties were pretty much the same whether a General Manager was present or not.

7. It was my experience throughout my employment with Defendants that we rarely had enough nonexempt production and service employees to work on the shifts. This was a reason I ended up spending the vast majority of my time as a Manager and RM performing these duties.

8. As a Manager and RM, I was typically scheduled to work 50 hours each week. However, on average, I ended up working approximately 60 hours per week at least.

9. As a Manager and/or RM, for a period of time I was required to clock in and clock out on the shifts I worked. However, the time I clocked in did not have any impact on the pay I received.

10. As a Manager, I did not have a significant role in preparing the work schedule for employees. Defendants' companywide Labor Scheduling System controlled the number of hours that could be scheduled for employees on a weekly basis. I also did not have the authority to permit hourly employees to work overtime.

11. As part of my training, and while working for Defendants, it was clear that nearly every aspect of how the restaurant was to operate was covered by Defendants' mandatory written policies and procedures. As a Manager and RM, I had to follow these policies and procedures and did not have any real discretion to disregard them.

12. As a Manager, I did not have the authority to hire or fire employees. Defendants had a two-interview procedure that had to be followed. I would sometimes conduct the first interview following set company questions that were provided to me. The decision whether to hire that person was not made by me. I played no role in deciding employee pay rates.

13. As a Manager or RM, I did not conduct any performance reviews for employees. I had little to no authority or involvement in disciplining employees. I did not decide whether any employees were given a pay raise or promotion.

14. When it came to training new employees, all the exempt and nonexempt employees in the restaurant assisted with this process. However, restaurants were supposed to have hourly paid Production Trainers and Service Trainers, who were directly responsible for the training of new employees. Any training I performed as a Manager was minimal compared to the time I spent actually performing the nonexempt production and service duties.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing statements are true and correct and that I have personal knowledge of the information provided above.

8-10-2021

Signature

Sherry Seigart

Date

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

Case no.: 1:21-cv-1507-TWP-MG

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION**

Exhibit H

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

Case no.: 1:21-cv-1507-TWP-MG

DECLARATION – Brian Hurley

My name is Brian Hurley, and under penalty of perjury, I hereby provide the following information to the best of my personal knowledge and belief:

1. My name is Brian Hurley and I currently reside in London, Kentucky. I was employed by Defendants as a “Manager” from approximately April 2018 to October 2019. I worked at Defendants’ Steak N Shake restaurant located in Richmond, Kentucky. This was a corporate owned restaurant.

2. To my knowledge, when I worked for Defendants, all their restaurants were modeled to be staffed with the following positions that Defendants designated as exempt from overtime pay (listed in their respective chain of supervision): “General Manager,” “Restaurant Manager” (at some, but not all locations), and one or more “Manager” positions (the position that I held).

3. In addition to these overtime exempt positions, Defendants also employed numerous employees that were overtime eligible (or nonexempt) at each retail restaurant such as Operation Supervisors, Production Trainers, Service Trainers, Production Workers, and Servers.

4. The General Manager was ultimately responsible for running the restaurant. All the positions listed above reported directly to the General Manager.

5. As a Manager, I was paid a set amount for my work regardless of the hours that I worked. I was not paid any overtime for hours worked in excess of forty per workweek.

6. In my typical workday as a Manager, I spent the vast majority of my time performing the same production and service job duties as the nonexempt employees. I considered these duties to be the most important part of my job because, if I did not do these tasks on a daily basis, food would not be made and customers would not be served. The restaurant would have failed had I not spent the vast majority of my time performing these duties. These duties were essentially the same whether the General Manager was present or not.

7. It was my experience throughout my employment with Defendants that we rarely had enough nonexempt production and service employees to work on the shifts. This was a reason I ended up spending the vast majority of my time performing these duties.

8. As a Manager, I was typically scheduled to work 50 hours each week. However, on average, I ended up working approximately 65 hours per week.

9. As a Manager, for a period of time I may have had the ability to clock in and out on the shifts I worked. However, this did not matter because the time I clocked in did not have any impact on the pay I received.

10. As a Manager, I did not have a significant role in preparing the work schedule for employees. Defendants' companywide Labor Scheduling System controlled the number of hours

that could be scheduled for nonexempt employees on a weekly basis. When employees showed up on each shift, they typically knew where to start working at. I also did not have the authority to permit hourly employees to work overtime.

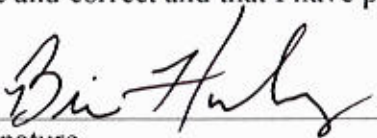
11. As part of my training, and while working for Defendants, it was clear that nearly every aspect of how the restaurant was to operate was covered by Defendants' mandatory written policies and procedures. As a Manager, I had to follow these policies and procedures and did not have any real discretion to disregard them.

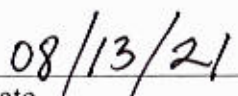
12. As a Manager, I did not have the authority to hire or fire employees. Defendants had a two-interview procedure that had to be followed. I would sometimes conduct the first interview following set company questions that were provided to me. However, the second was performed by the General Manager. The decision whether to hire that person was ultimately made by the General Manager. I played no role in deciding employee pay rates.

13. As a Manager, I did not conduct any performance reviews for employees. I had little to no authority or involvement in disciplining employees. I did not decide whether any employees were given a pay raise or promotion.

14. When it came to training new employees, all the exempt and nonexempt employees in the restaurant assisted with this process. However, restaurants typically had hourly paid Production Trainers and Service Trainers, who were directly responsible for the training of new employees.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing statements are true and correct and that I have personal knowledge of the information provided above.


Signature


Date

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

Case no.: 1:21-cv-1507-TWP-MG

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION**

Exhibit I

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

Case no.: 1:21-cv-1507-TWP-MG

DECLARATION – Margaret Bolick

My name is Margaret Bolick, and under penalty of perjury, I hereby provide the following information to the best of my personal knowledge and belief:

1. My name is Margaret Bolick and I currently reside in Kokomo, Indiana. I was employed by Defendants as a “Manager” from approximately June 2018 to May 2019. I worked at two of Defendants’ Steak N Shake restaurants located in Kokomo, Indiana. These were both corporate owned restaurants.

2. To my knowledge, when I worked for Defendants, all their restaurants were modeled to be staffed with the following positions that Defendants designated as exempt from overtime pay (listed in their respective chain of supervision): “General Manager,” “Restaurant Manager” (at some, but not all locations), and one or more “Manager” positions (the position that I held).

3. In addition to these overtime exempt positions, Defendants also employed numerous employees that were overtime eligible (or nonexempt) at each retail restaurant such as Operation Supervisors, Production Trainers, Service Trainers, Production Workers, and Servers.

4. The General Manager was ultimately responsible for running the restaurant. All the positions listed above reported directly to the General Manager.

5. As a Manager, I was paid a set amount for my work regardless of the hours that I worked. I was not paid any overtime for hours worked in excess of forty per workweek.

6. In my typical workday as a Manager, I spent the vast majority of my time performing the same production and service job duties as the hourly employees. I considered these duties to be the most important part of my job because, if I did not do these tasks on a daily basis, food would not be made and customers would not be served. The restaurant would have failed had I not spent the vast majority of my time performing these duties. These duties were pretty much the same whether the General Manager was present or not.

7. It was my experience throughout my employment with Defendants that we rarely had enough nonexempt production and service employees to work on the shifts. This was primarily why I ended up spending the vast majority of my time performing these duties.

8. As a Manager, I was typically scheduled to work 45 hours each week. However, on average, I ended up working approximately 70 hours per week.

9. As a Manager, I was never required to record my actual work hours.

10. As a Manager, I did not have a meaningful role in preparing the work schedule for employees. Defendants' companywide Labor Scheduling System controlled the number of hours that could be scheduled for hourly employees. I also did not have the authority to permit hourly employees to work overtime.

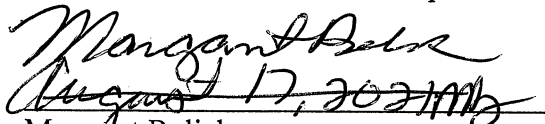
11. As part of my training, and while working for Defendants, it was clear that nearly every aspect of how the restaurant was to operate was covered by Defendants' mandatory written policies and procedures. As a Manager, I had to follow these policies and procedures and did not have any real discretion to disregard them.


12. As a Manager, I did not have the authority on my own to hire or fire employees. Regarding interviews of potential employees, I would sometimes sit in with the GM who conducted the interview. However, I did not conduct the interview, and the decision whether or not to hire that person was made by the General Manager. I also played no role in deciding employee pay rates.

13. As a Manager, I did not conduct any performance reviews for employees. I had little to no authority or involvement in disciplining employees. I did not decide whether any employees were given a pay raise or promotion.

14. When it came to training new employees, all the exempt and nonexempt employees in the restaurant assisted with this process. However, restaurants typically had hourly paid Production Trainers and Service Trainers, who were directly responsible for the training of new employees.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing statements are true and correct and that I have personal knowledge of the information provided above.


Margaret Bolick


Date

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

Case no.: 1:21-cv-1507-TWP-MG

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION**

Exhibit J

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MISSOURI

3 SANDRA DRAKE, et al.,)
4 Plaintiffs,)
5 vs.) Cause No. 4:14CV-1535JAR
6 STEAK'N SHAKE OPERATIONS INC.,)
7 Defendant.)

8 PARTIAL TRIAL TRANSCRIPT
9 (Testimony of Shannon Miller)

10 BEFORE THE HONORABLE JOHN A. ROSS
11 UNITED STATES DISTRICT JUDGE

12 FEBRUARY 20, 2019

13 APPEARANCES

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30 Reported by:

31 Lisa M. Paczkowski, CCR, RPR
32 Official Court Reporter
33 United States District Court
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FEBRUARY 21, 2019

(The following is a trial excerpt of the witness Shannon Miller.)

THE COURT: If you will speak into that microphone, it will help amplify your voice. Counsel, you may proceed.

SHANNON MILLER,

being produced and sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CRAIG:

Q. Thank you, Judge. Good afternoon.

A. Good afternoon.

Q. Can you please state your name for the jury?

A. Shannon Miller.

Q. And Ms. Miller, I want to start and go over your background information for the jury so they understand why you are here testifying today.

A. Okay.

Q. Actually, we met about seven months ago when I took your deposition in this case; is that correct?

A. Correct.

Q. At that time, we discussed your then current employment situation as a manager with Steak'n Shake, right?

A. Okay.

Q. And so for starters, I just want to make sure that your employment situation now is the same as it was seven months

1 ago.

2 A. Actually, it is not. I have ended and terminated it and
3 moved to Texas.

4 Q. That's what I wanted to clear up with you. Once I get
5 that straight, I can ask more questions.

6 THE COURT: If you will speak into the microphone,
7 it will help amplify your voice. I just want to make sure
8 everybody can hear you. Thank you, that's great. Go ahead.

9 Q. (By Mr. Craig) To clarify, you are not a Plaintiff in
10 this case; is that correct?

11 A. Correct.

12 Q. And you are not a claimant in this case either?

13 A. Right.

14 Q. And I took your deposition seven months ago, because you
15 had agreed to testify at this trial on behalf of Steak'n
16 Shake; is that correct?

17 A. Yes.

18 Q. At that time, you assured me that you would testify
19 honestly and truthfully.

20 A. Yes.

21 Q. And you did testify honestly and truthfully.

22 A. Yes.

23 Q. All right. And obviously you understand that today
24 again you have been sworn in under oath to tell the truth?

25 A. Correct.

1 Q. And will you again testify honestly?

2 A. Yes.

3 Q. All right, thank you. So seven months ago when I took
4 your deposition, you were employed at that time as a manager
5 for Steak'n Shake?

6 A. Yes.

7 Q. And there has been testimony already about three
8 different job titles at the restaurant with the word
9 "manager" in it; does that sound familiar to you?

10 A. Yes.

11 Q. I think that's general manager, restaurant manager, and
12 then manager?

13 A. Correct.

14 Q. Is that correct, from your understanding?

15 A. Yes.

16 Q. Okay, thanks. So seven months ago when we visited, you
17 were employed by Steak'n Shake as a manager?

18 A. Yes.

19 Q. All right. And I think you just testified that you are
20 no longer employed with Steak'n Shake?

21 A. Correct.

22 Q. And can you tell us when your employment ended with
23 Steak'n Shake?

24 A. Last Wednesday.

25 Q. Okay. I can't do the math, so about a week, eight days

1 ago?

2 A. Eight days ago.

3 Q. Today is the 21st, roughly the 13th of February?

4 A. Yes.

5 Q. Okay. Did you still have the job title as manager at
6 that time?

7 A. Yes.

8 Q. All right. And seven months ago at least you were
9 assigned to work at the Steak'n Shake location out in
10 Ellisville on Manchester Road?

11 A. Yes.

12 Q. Did you continue to work at that location until the end
13 of your employment?

14 A. Yes.

15 Q. And one thing that you mentioned in your deposition
16 seven months ago that stood out was that there was no general
17 manager assigned to your restaurant at that time; do you
18 recall that?

19 A. Correct.

20 Q. And as I recall it, you said that a couple months
21 earlier the general manager had quit?

22 A. Yes.

23 Q. And as of the time of your deposition, Steak'n Shake had
24 not yet assigned a new general manager to the location?

25 A. That's correct.

1 Q. Okay. And because there was no new general manager yet
2 assigned, you and some of the other employees were normally
3 covering the duties of the general manager?

4 A. Yes and the other manager.

5 Q. And also the district manager, correct?

6 A. Correct.

7 Q. And because of that unusual situation, you were
8 performing some job duties that were additional to the job
9 duties you normally performed in just your role as manager,
10 correct?

11 A. Yes.

12 Q. In fact, we discussed various job duties that you were
13 performing at that time that you normally did not perform as
14 just the manager?

15 A. Correct.

16 Q. For example, because there was no general manager at the
17 restaurant, you were performing the scheduling duties that
18 you did not do as just a manager?

19 A. Yes.

20 Q. I think also because there was no general manager, you
21 had done a few written or disciplinary write ups that you
22 normally didn't do as a manager?

23 A. Correct.

24 Q. Okay, thank you. So in other words, because there was
25 temporarily no general manager assigned to the restaurant,

1 your job as a manager was different than it had been under
2 normal circumstances?

3 A. Yes.

4 Q. So in your deposition, I made sure to ask you to
5 describe your job duties in your normal role as just a
6 manager; do you recall that?

7 A. Yes.

8 Q. Okay. And that's what I would like to do with you again
9 today.

10 A. Okay.

11 Q. Hopefully for the last time. Okay, does that make
12 sense?

13 A. Yes.

14 MR. CRAIG: May I approach, your Honor?

15 THE COURT: You may.

16 Q. (By Mr. Craig) I'll hand you a copy of your deposition
17 in case we need to reference it; is that fair?

18 A. That's fair.

19 Q. Okay, thank you. Did you have an opportunity to review
20 your deposition prior to today?

21 A. Yes.

22 Q. Okay, good. So let's talk about your experiences as
23 just the manager, okay?

24 A. Okay.

25 Q. All right. As I recall your testimony, you became the

1 manager for Steak'n Shake in July of 2017?

2 A. It was like May I went through the training. July I
3 actually started as a manager.

4 Q. When did you start officially?

5 A. Out of training that would be in July.

6 Q. Okay. So July of 2017 is when you started officially as
7 a manager?

8 A. Yes.

9 Q. Okay. Also if you need to -- do you need any water?

10 A. I think I'm good.

11 Q. Okay, let us know if you do. As a manager, you were
12 assigned to the Ellisville location; is that correct?

13 A. Correct.

14 Q. All right. And back in 2017 when you became a manager,
15 did you first go to a training store for some training?

16 A. Yes.

17 Q. And would that have actually been at another Steak'n
18 Shake restaurant?

19 A. Yes.

20 Q. And in fact, at that training restaurant, you spent the
21 majority of your time actually learning and performing the
22 production service duties; is that correct?

23 A. Correct.

24 Q. Or what Steak'n Shake calls the station work?

25 A. Yes.

1 Q. Okay. There has already been a lot of testimony here
2 already about all the various production services duties that
3 go on at Steak'n Shake?

4 A. Okay.

5 Q. But just to summarize, production services duties that
6 are performed every day at a Steak'n Shake are things like
7 greeting and seating customers when they first come in?

8 A. Yes.

9 Q. And taking and serving the customer's orders?

10 A. Yes.

11 Q. Bussing and cleaning the tables after the customers
12 leave?

13 A. Yes.

14 Q. And obviously, working the grill to cook burgers and
15 things like that?

16 A. Yes.

17 Q. Also there is a dressing station where you put on
18 ketchup, mustard, pickles on the burger?

19 A. Yes.

20 Q. Putting in french fries and putting them into a fryer?

21 A. Yes.

22 Q. Obviously making chili and making shakes?

23 A. Yes.

24 Q. Cleaning dishes?

25 A. Yes.

1 Q. Cleaning the restaurant?

2 A. Yes.

3 Q. Then obviously they had a drive thru that you work
4 taking and serving those orders?

5 A. Correct.

6 Q. And of course cashing the customers out, right?

7 A. Yes.

8 Q. So the production and service duties what we are talking
9 about here is manual labor essentially; is that correct?

10 A. Correct.

11 Q. Okay. And based on your experience, are those pretty
12 much the production and service manual labor duties that go
13 on throughout the day at Steak'n Shake?

14 A. Yes.

15 Q. And these production and service manual labor duties are
16 what the hourly paid employees are paid to do; is that
17 correct?

18 A. Correct.

19 Q. But unfortunately, a lot of the time there was just not
20 enough hourly employees at your restaurant to perform all of
21 those manual labor duties; is that true?

22 A. True.

23 Q. And that caused you to have to perform a lot of those
24 manual labor duties; is that true?

25 A. True.

1 Q. In fact, during the timeframe when you were the manager,
2 understaffing of the hourly workers was an ongoing problem at
3 your restaurant; is that correct?

4 A. Yes.

5 Q. And not having enough hourly workers meant you had to do
6 more of those manual labor duties; is that true?

7 A. True.

8 Q. And to be clear, you may have wanted to delegate more of
9 the work to the hourly employees; but frequently, you didn't
10 have enough of those hourly employees to delegate that work
11 to, true?

12 A. True.

13 Q. And that just was just the reality of the situation; is
14 that correct?

15 A. Correct.

16 Q. In other words, during your deposition, we discussed how
17 sometimes theories and realities can be two different things?

18 A. Yes.

19 Q. And do you recall we discussed what an average typical
20 day looked like for you as just a manager?

21 A. Yes.

22 Q. All right. And during that time period that you were
23 just a manager, every day you were performing those
24 production and service manual duties; is that true?

25 A. True.

1 Q. In fact each and every shift that you worked as just a
2 manager, you performed manual labor; is that true?

3 A. True.

4 Q. And so during the timeframe you were just a manager, if
5 we paid you a visit at your restaurant on an average typical
6 day, we would see you working the grill, cooking burgers?

7 A. Yes.

8 Q. We would see you making the chili and making shakes?

9 A. Yes.

10 Q. We would see you dropping the fries and chicken in the
11 deep fryer?

12 A. Yes.

13 Q. We would see you delivering the food to the customers?

14 A. Yes.

15 Q. We would see you cleaning up after the customers left?

16 A. Yes.

17 Q. We would see you taking and delivering the drive-thru
18 orders?

19 A. Yes.

20 Q. We would see you cashing the customers out?

21 A. Yes.

22 Q. We would even see you washing the dishes, true?

23 A. True.

24 Q. And every day just as a manager, you would finish your
25 shift with food, and grease, and chili stains all over the

1 work shirt of yours, correct?

2 A. Correct.

3 Q. And those food, grease, and chili stains working on your
4 feet, working the manual labor duties throughout your shift;
5 is that true?

6 A. True.

7 Q. In fact, as just the manager, you spent the vast
8 majority of your daily shift working on your feet; is that
9 correct?

10 A. That's correct.

11 Q. And we will discuss any other duties that you had as a
12 manager, okay?

13 A. Okay.

14 Q. But whatever other duties you may have had as just a
15 manager, you spent the majority of your time actually
16 performing the production and service duties; is that true?

17 A. True.

18 Q. And whatever other duties you may have had as just a
19 manager, it is the production service duties that were
20 overall most important to the success of the restaurant at
21 that time, correct?

22 A. Yes.

23 Q. In fact, had you not performed the manual labor duties,
24 the restaurant would have certainly suffered; is that
25 correct?

1 A. Correct.

2 Q. And had you not performed all of the manual labor
3 duties, the restaurant certainly would not have succeeded; is
4 that true?

5 A. True.

6 Q. During the timeframe in just that manager role, the
7 truth is that your job was very similar to the jobs performed
8 by the hourly workers; is that correct?

9 A. Correct.

10 Q. Now as we discussed, you were officially assigned to the
11 Ellisville location; is that correct?

12 A. Yes.

13 Q. But as I recall your testimony, on occasion you said you
14 also helped out at other Steak'n Shake restaurants in St.
15 Louis?

16 A. Yes.

17 Q. And when you were helping out at those other Steak'n
18 Shake restaurants, you were also mostly performing the
19 production and service duties; is that correct?

20 A. Correct.

21 Q. And again, we have just been talking about the normal or
22 typical situation when you were just a manager, and you had a
23 general manager assigned to your restaurant, right?

24 A. Right.

25 Q. Okay. So let me ask you a little bit about the role of

1 the general manager at the Steak'n Shake restaurant?

2 A. Okay.

3 Q. Based on your experience, would you agree that the
4 general manager is the person ultimately responsible for
5 everything within the four walls of the restaurant?

6 A. Yes.

7 Q. And to be clear, the general manager must still answer
8 to the district manager; is that correct?

9 A. Correct.

10 Q. And the general manager must still adhere to all of
11 Steak'n Shake's mandatory policies and procedures; is that
12 correct?

13 A. Correct.

14 Q. Okay. But the GM is the person at the restaurant with
15 the most control, correct?

16 A. Yes.

17 Q. And the GM had duties and authorities that you did not
18 have as just the manager position; is that correct?

19 A. Correct.

20 Q. And obviously as just a manager, the general manager was
21 your supervisor?

22 A. Yes.

23 Q. In other words, as a manager, you answered to the
24 general manager?

25 A. Correct.

1 Q. And even when the general manager was not physically
2 present at the restaurant, the GM was still your supervisor;
3 is that correct?

4 A. Correct.

5 Q. And you would agree that as just a manager even when the
6 general manager was not physically present at the restaurant,
7 your duties and your authority remain the same; is that
8 correct?

9 A. Correct.

10 Q. So as a manager, even when the general manager was not
11 present at the restaurant, you did not become the general
12 manager; is that correct?

13 A. Correct.

14 Q. And when the general manager was not present at the
15 restaurant, you did not assume the general manager duties or
16 authority?

17 A. Correct.

18 Q. Okay. Now you may recall that we discussed in your
19 deposition that based on your experience, once the hourly
20 employees get trained, they pretty much understand what their
21 job duties are; is that correct?

22 A. Correct.

23 Q. And they don't need a supervisor constantly standing
24 over them telling them what to do; is that true?

25 A. True.

1 Q. And ultimately, it is all about cooking and serving
2 burgers, fries, and shakes, right?

3 A. Right.

4 Q. And certainly that can be challenging work
5 physically-speaking; is that correct?

6 A. Correct.

7 Q. But in all honesty, it is not overly complex work,
8 intellectually-speaking, right?

9 A. Right.

10 Q. Again, we are talking about physical manual labor, true?

11 A. True.

12 Q. So from your experience, once the hourly employees
13 understand their job duties, they don't really need a lot of
14 constant continuous instruction; is that true?

15 A. True.

16 Q. And I think also you would agree that pretty much every
17 task at a Steak'n Shake restaurant has a mandatory Steak'n
18 Shake policy that dictates how that task is to be done; is
19 that correct?

20 A. Correct.

21 Q. And there has been testimony here already about some of
22 those policies and procedures, but just for example mandatory
23 steak'n Shake policies and procedures would include exactly
24 how long a customer should be standing in the restaurant
25 before they are even greeted?

1 A. Yes.

2 Q. And policies and procedures that dictate even how to
3 greet the employee; is that correct?

4 A. Correct.

5 Q. And how to setup the tables and prepare each item of
6 food?

7 A. Correct.

8 Q. And mandatory policies about how long all of that should
9 take?

10 A. Yes.

11 Q. And even mandatory policies of about how much specific
12 ingredients to use for each item?

13 A. Yes.

14 Q. And mandatory policies about how food is to be prepped
15 and stored?

16 A. Yes.

17 Q. There is mandatory policies about what exactly to do if
18 a piece of equipment breaks down?

19 A. Yes.

20 Q. Which is you fill out a form and Steak'n Shake's
21 maintenance takes over, correct?

22 A. Exactly.

23 Q. There is mandatory policies about how to handle an
24 incident or an accident that happens at the restaurant; is
25 that correct?

1 A. Correct.

2 Q. Which again is you fill out a form or contact corporate
3 so that they can handle that situation appropriately,
4 correct?

5 A. Correct.

6 Q. And then there is mandatory policies and procedures
7 about exactly how the appearance of the store and the
8 employee should be?

9 A. Yes.

10 Q. So for all of these things that we have discussed, there
11 are mandatory Steak'n Shake policies and procedures that
12 specifically dictate how those tasks are to be done; is that
13 correct?

14 A. Correct.

15 Q. And as just the manager, you could not deviate from or
16 change any of those mandatory policies; is that true?

17 A. That's true.

18 Q. And so therefore, as a manager, you did not decide how
19 the tasks were to be done, or how the issues were to be
20 resolved at the restaurant; is that correct?

21 A. Correct.

22 Q. How all of these issues or tasks were to be handled were
23 controlled by mandatory Steak'n Shake policies and
24 procedures?

25 A. Yes.

1 Q. That as a manager, you were required to follow?

2 A. Right.

3 Q. In fact, based on your experience, all of the employees
4 were required to follow, right?

5 A. Right.

6 Q. And so the truth is that your role as a manager was to
7 just do the job as directed by the Steak'n Shake policies and
8 procedures, correct?

9 A. Correct.

10 Q. And your job as a manager was not to be deciding how
11 that job got done; is that correct?

12 A. True.

13 Q. And because of all of these mandatory policies and
14 procedures, in all honesty, your job as a manager did not
15 involve a great deal of decision making on your part; is that
16 true?

17 A. True.

18 Q. And your job as a manager did not involve a great deal
19 of judgment calls on your part either; is that correct?

20 A. Correct.

21 Q. So, for example, Steak'n Shake has a corporate labor
22 scheduling system that sets the number of employees and the
23 number of hours that can be scheduled at a restaurant on a
24 given shift; is that correct?

25 A. True.

1 Q. And in your role as just the manager, you had no
2 involvement in the scheduling process, or the scheduling of
3 the employee's work hours; is that correct?

4 A. True.

5 Q. In fact, I recall we went over some paperwork in your
6 deposition that showed you were involved in scheduling, but
7 that was just during that period where there was no general
8 manager assigned; is that correct?

9 A. Correct.

10 Q. But as a -- as just a manager, you were not involved in
11 the scheduling; is that correct?

12 A. Correct.

13 Q. Am I boring you? I'm boring myself, okay. As a
14 manager, you could not authorize overtime being worked by
15 employees without first being approved by the GM or the DM,
16 correct?

17 A. Correct.

18 Q. And when you were just a manager, who prepared the
19 employee work schedules?

20 A. The general manager.

21 Q. Would that include your weekly work schedule?

22 A. Yes.

23 Q. And how many hours would the general manager schedule
24 you for on a weekly basis?

25 A. 50 hours.

1 Q. And you typically did work a 50-hour work week as I
2 recall?

3 A. More or less.

4 Q. Right. I think at the time of your deposition, you said
5 you were actually working approximately 60 hours a week; is
6 that correct?

7 A. Probably, yeah.

8 Q. And obviously, you were not paid overtime for the hours
9 you worked over 40?

10 A. True.

11 Q. And I think at the time of your deposition seven months
12 ago, you told me you were earning a salary of \$36,000 a year?

13 A. Correct.

14 Q. Was that your ending salary as well?

15 A. It was up to 38 when I left.

16 Q. Okay. So within the last seven months even after I took
17 your deposition, you had got a raise?

18 A. Correct.

19 Q. To 38?

20 A. Yes.

21 Q. All right. Was that your ending salary?

22 A. Yes.

23 Q. Now I'm sure you also recall from your deposition that I
24 asked you a bunch of questions about whether you performed
25 certain various tasks as just a manager; do you recall that?

1 A. Yes.

2 Q. Okay. I will need to do that again today.

3 A. Okay.

4 Q. Hopefully we will get through this real quick. As a
5 manager, you do not have the authority to hire or fire
6 employees; is that correct?

7 A. Correct.

8 Q. As a manager, you didn't have the authority to promote
9 or demote employees?

10 A. Correct.

11 Q. And based on your experience, decisions about hiring,
12 firing, promotions, demotions, those occurred above your
13 level; is that correct?

14 A. Yes.

15 Q. Now as I recall as a manager, you did have some
16 involvement in interviews of potential employees; is that
17 correct?

18 A. Correct.

19 Q. And there has been testimony here already about a two
20 interview process that goes on at Steak'n Shake restaurants?

21 A. Yes.

22 Q. Does that sound familiar?

23 A. Yes.

24 Q. Okay. As I understand it as just a manager, you were
25 involved only in those first or initial interviews?

1 A. Yes.

2 Q. And when you handled those first interviews, there was a
3 mandatory Steak'n Shake interview form that you used; is that
4 correct?

5 A. Correct.

6 Q. And that form had the questions to ask and the
7 information to obtain from the applicant?

8 A. Yes.

9 Q. And that form had certain criteria that needed to exist
10 in order for you to move the applicant on to the second
11 interview?

12 A. Correct.

13 Q. which would be with the general manager?

14 A. Yes.

15 Q. Okay. And there was I think some sort of grading that
16 you would give based on the applicant's answers; is that
17 right?

18 A. Correct.

19 Q. But to be clear, you were not personally deciding
20 whether or not that person got a second interview; is that
21 correct?

22 A. True.

23 Q. Okay. It all depends on the applicant meeting that
24 criteria that Steak'n Shake set?

25 A. Yes.

1 Q. Okay. And if the applicant answers and met the criteria
2 set by Steak'n Shake, then you would forward it on to the GM
3 for the second interview?

4 A. Yes.

5 Q. All right, thank you. And again, the GM would be the
6 person making any decisions about hiring the person?

7 A. Yes.

8 Q. And as just a manager, you actually spent very little
9 overall time handling these initial interviews; is that
10 correct?

11 A. Correct.

12 Q. Okay. And I think I recall from your testimony, you
13 said that any production or service duties that had to get
14 done would take priority over something like an initial
15 interview; is that correct?

16 A. Correct.

17 Q. So if you needed to make a burger or a shake for a
18 customer, that would have to come before something like an
19 interview, true?

20 A. True.

21 Q. And in other words, customer service always came first?

22 A. Yes.

23 Q. Okay. And sometimes customers aren't necessarily happy,
24 right?

25 A. Right.

1 Q. Okay. And as just a manager, you would agree that you
2 were very limited in what you could do for unhappy customers
3 beyond apologizing and offering a gift card?

4 A. Right.

5 Q. And those are things that steak'n Shake directed you to
6 use to placate unhappy customers, correct?

7 A. Correct.

8 Q. And as just a manager, you did not spend a great deal of
9 overall time resolving customer complaints, true?

10 A. True.

11 Q. So getting back to your job duties as a manager, did you
12 -- as a manager, you did not have any involvement setting pay
13 rates or pay raises for employees; is that correct?

14 A. Correct.

15 Q. And you did not have any involvement in determining the
16 type of benefits employees got?

17 A. Correct.

18 Q. And in fact, as I recall you said as just a manager, you
19 were never asked to make any specific recommendations about
20 employee pay rates or raises, or anything like that, true?

21 A. True.

22 Q. Again things like determining an employee's pay rate,
23 pay raises, benefits, those things occurred above your level?

24 A. Yes.

25 Q. And speaking of pay, if an employee had a problem with

1 their pay, it was not your responsibility as a manager to
2 resolve that issue, correct?

3 A. Correct.

4 Q. Based on your understanding, any complaints that
5 employees might have about their pay needed to be taken up
6 with a GM or maybe HR?

7 A. Yes.

8 Q. And in fact, as just a manager, you were not responsible
9 for handling any employee related type of complaints,
10 correct?

11 A. Correct.

12 Q. And again, based on your experience, any sort of
13 employee complaints, harassment, pay issues, anything like
14 that, needed to be taken up with the GM, or the DM, or HR?

15 A. Yes.

16 Q. In other words, above your level as a manager?

17 A. Yes.

18 Q. As a manager, you did not have any responsibility for
19 handling the performance evaluations of hourly employees; is
20 that correct?

21 A. That's correct.

22 Q. And again based on your experience, employee performance
23 evaluations are done by the general manager?

24 A. Yes.

25 Q. So I want to ask you a little bit about the formal

1 training that the hourly employees received at the
2 restaurant?

3 A. Okay.

4 Q. Okay. And by that I mean as just a manager, if you were
5 performing the manual labor work alongside the hourly
6 employees, you might show them how to dress a burger if they
7 had a question about that; is that correct?

8 A. Yes.

9 Q. Okay. Helping out formally like that is something all
10 of the employees helped each other with, correct?

11 A. Correct.

12 Q. Most of them?

13 A. Most of them, yes.

14 Q. Including the hourly employees, right?

15 A. Yes.

16 Q. But as far as the formal training of the hourly
17 employees go, Steak'n Shake has production trainers and
18 service trainers who are responsible for that training; is
19 that correct?

20 A. Correct.

21 Q. And as just a manager, it was not your responsibility to
22 handle any of that formal training, correct?

23 A. Correct.

24 Q. And incidentally, the production trainers and the
25 service trainers were paid hourly; is that correct?

1 A. That's correct.

2 Q. And were eligible for overtime pay?

3 A. Yes.

4 Q. I want to ask you a little bit about the disciplining of
5 hourly employees at the restaurant?

6 A. Okay.

7 Q. Okay. You would agree that the general manager, the
8 person at the restaurant, who had the ultimate authority to
9 discipline employees?

10 A. Yes.

11 Q. And in your role as just a manager, you did not have any
12 responsibility for formal discipline of employees?

13 A. That's correct.

14 Q. And as just a manager, you did not have any authority to
15 decide the level of discipline to give an employee?

16 A. Correct.

17 Q. And as a manager, you did not have the authority to
18 decide whether or not an employee should be disciplined?

19 A. Correct.

20 Q. Based on your experience, all of that type of
21 disciplining occurred above your level as a manager?

22 A. Yes.

23 Q. The general manager, district manager, HR?

24 A. Yes.

25 Q. But not you as a manager?

1 A. Correct.

2 Q. So again, in your deposition, I think we saw a couple of
3 write ups you had done, but that was strictly during the
4 period where there was no GM at the restaurant; is that
5 correct?

6 A. Correct.

7 Q. Now as a manager, did you have your own office?

8 A. No.

9 Q. Did you have your own desk?

10 A. No.

11 Q. Did you have your own computer?

12 A. No.

13 Q. You may recall we discussed in your deposition that
14 employee personnel changes like hiring, firing, pay changes,
15 things like that, they would get inputted into the
16 restaurant's computer system?

17 A. Yes.

18 Q. Do you recall we discussed that?

19 A. Yes.

20 Q. Okay. And as I recall as just a manager, you never even
21 inputted that information into the computer; is that correct?

22 A. That's correct.

23 Q. Now when you first became a manager, do you recall being
24 given a bunch of documents that you had to sign by HR?

25 A. Through a website, yes.

1 Q. Yeah, I think you told me it was all electronic at the
2 time you became a manager; is that correct?

3 A. Correct.

4 Q. And one of the forms that you were sent electronically
5 was something called a certification of job duties; do you
6 recall that?

7 A. Yes.

8 Q. Okay. I want to show you a document that has already
9 been admitted into evidence as Plaintiff's 72. I'll show you
10 both pages. That's the first page, and then the second page,
11 you may see your name there?

12 A. Yes.

13 Q. I'm sorry, there is two screens there.

14 A. Yes.

15 Q. And it says "Digitally signed by Shannon Miller"?

16 A. Yes.

17 Q. Okay. And is this a form that you I guess signed
18 electronically?

19 A. Yes.

20 Q. All right. And do you recall we discussed this document
21 a little bit in your deposition, right?

22 A. Yes.

23 Q. And specifically on the first page of the form, this
24 paragraph here, the first paragraph, "Although you will be
25 expected to assist your associates with guest service

1 whenever necessary, you should devote the majority of your
2 work day to your primary management tasks"; do you see that?

3 A. Yes.

4 Q. That first part of the sentence that I just highlighted,
5 "Although you will be expected to assist your associates with
6 guest service whenever necessary", that statement means as a
7 manager, you must perform any necessary production or service
8 duties first and foremost; is that correct?

9 A. Correct.

10 Q. And as just a manager, the reality for you was that
11 performing production and service duties was necessary most
12 of your shifts; is that correct?

13 A. Yes.

14 Q. In other words, whatever you were supposed to be
15 spending the majority of your time on in theory did not
16 happen in reality when you were just a manager; is that
17 correct?

18 A. Correct.

19 Q. So I'm just going to run down a list of various
20 executive and office administration tasks, and ask you if you
21 had any involvement as a manager in any of them. Okay, we
22 will try to get through this quickly. were you able as
23 manager to determine the type of equipment that could be used
24 at the restaurant?

25 A. No.

1 Q. Fryers, grills, things like that?

2 A. No.

3 Q. Have any involvement of setting labor or expense
4 budgets?

5 A. No.

6 Q. Were you responsible for maintaining production or sales
7 records that would be used to evaluate hourly employees?

8 A. No.

9 Q. Now with respect to safety and security of the
10 restaurant, all of the employees at the restaurant have an
11 obligation and a responsibility for safety and security; is
12 that correct?

13 A. Correct.

14 Q. And when you were in your role as just a manager, you
15 did not have any duties or responsibilities that were
16 different than the rest of the employees; is that correct?

17 A. Correct.

18 Q. As a manager, could you commit the company to any sort
19 of contracts or business deals?

20 A. No.

21 Q. Did you ever negotiate any contracts for Steak'n Shake?

22 A. No.

23 Q. And as just a manager, you were not responsible for
24 monitoring or implementing any legal compliance measures at
25 your restaurant; is that correct?

1 A. Correct.

2 Q. Did you ever represent Steak'n Shake in any labor
3 complaints or grievances?

4 A. No.

5 Q. I know some of these are ridiculous, and I apologize.
6 Did you have the authority to determine the price of food or
7 the type of food that could be carried at the restaurant?

8 A. No.

9 Q. Were you ever asked to provide advice to Steak'n Shake
10 upper management as to how to run the business?

11 A. No.

12 Q. Okay. Did you have the authority to formulate new or
13 different management or operating policies?

14 A. No.

15 Q. It is going to get a little more ridiculous here with
16 the office administration. Did you do any tax work for
17 Steak'n Shake?

18 A. No.

19 Q. Any finance work?

20 A. No.

21 Q. Accounting?

22 A. No.

23 Q. Budgeting?

24 A. No.

25 Q. Insurance work?

1 A. No.

2 Q. Did you do any advertising work?

3 A. No.

4 Q. Okay. As a manager, you did not handle any auditing
5 work for Steak'n Shake, true?

6 A. True.

7 Q. You did not handle any quality control measures or
8 procedures for Steak'n Shake; is that correct?

9 A. Correct.

10 Q. Were you involved in any marketing for Steak'n Shake?

11 A. No.

12 Q. Were you asked by Steak'n Shake to conduct any sort of
13 research on their behalf?

14 A. No.

15 Q. Did you ever work in the human resource department for
16 Steak'n Shake?

17 A. No.

18 Q. Did you do any public, government, or public or
19 government relations work for Steak'n Shake?

20 A. No.

21 Q. Okay. Lastly, did you ever do any computer, network,
22 internet type of work for Steak'n Shake?

23 A. No.

24 Q. I'm just about done, Ms. Miller. I appreciate your
25 patience, thank you. Let me ask you this, I know I asked you

1 this at your deposition, has anyone from Steak'n Shake ever
2 asked you to describe to them the job duties that you
3 actually performed as a manager?

4 A. No.

5 Q. Has anyone from Steak'n Shake ever asked you to describe
6 to them specifically how much time you spent performing
7 manual labor at work as a manager?

8 A. No.

9 Q. Have you answered my questions today truthfully?

10 A. Yes.

11 MR. CRAIG: Okay, I have nothing further, ma'am,
12 thank you.

13 THE COURT: Mr. Harrison or Ms. Duckworth?

14 CROSS-EXAMINATION

15 BY MS. DUCKWORTH:

16 Q. Ms. Miller, are you doing okay. Do you need some water
17 now?

18 A. No, I'm still good.

19 Q. Okay. I'm going to back up just a second, because I
20 want to get a little bit more of your history for the jury.
21 Now I understand you -- did you have some time in the past
22 that you worked for Steak'n Shake?

23 A. Yes, I did.

24 Q. And roughly when was that?

25 A. That was around 2005 or 2006.

1 Q. And what position were you in?

2 A. I was a manager.

3 Q. At what store?

4 A. Arnold.

5 Q. So did you leave and come back after a period of time?

6 A. Yes.

7 Q. Okay. And that's when you returned to the Ellisville
8 store?

9 A. Yes.

10 Q. And what position did you start there in?

11 A. Server.

12 Q. And when was that?

13 A. That was in 2016.

14 Q. About how long were you in the server position before
15 you moved to manager?

16 A. Just about a year.

17 Q. Did you have any other roles in between those two?

18 A. No.

19 Q. Okay. Now you also mentioned that your employment with
20 steak'n Shake ended last week; is that correct?

21 A. That's correct.

22 Q. And was that involuntary or voluntary?

23 A. That was a voluntary separation.

24 Q. Now when you did move from server to manager, was there
25 some changes in how you were paid by Steak'n Shake?

1 A. Yes.

2 Q. And how is that?

3 A. A lot more money, salary versus hourly. It was a
4 full-time salary instead of full-time hourly.

5 Q. And did you understand you would get that salary whether
6 you worked 40 hours a week or 60 hours a week?

7 A. Yes.

8 Q. And did you also become eligible to receive bonuses?

9 A. Yes.

10 Q. Did you also become eligible to receive benefits through
11 the company?

12 A. Yes.

13 Q. Were those opportunities that you also had when you were
14 only in the server position?

15 A. No.

16 Q. Now Mr. Craig touched on this, but I wanted to get into
17 a little bit more into the training that you had when you
18 moved from the server to the manager position, okay.

19 A. Okay.

20 Q. Now, you mentioned you did it at a training store?

21 A. Yes.

22 Q. About how long did the training last?

23 A. About six weeks.

24 Q. And you discussed how a portion of that was learning the
25 different production and service positions within the

1 restaurant; is that correct?

2 A. Correct.

3 Q. Now was your understanding as to why it was valuable for
4 you to learn all of those different production and service
5 positions?

6 A. Yes.

7 Q. So just a little bit more, why do you believe it was
8 valuable for you to learn all of those positions?

9 A. Because I had to make sure that every position was
10 covered to help the customers to the best of the stores'
11 ability, and if I needed to step in, I needed to know what I
12 was doing.

13 Q. Okay. And was the whole training focused on production
14 and service, or did it cover other topics?

15 A. It also covered the management responsibilities like
16 deposits, paperwork, inventory, things like that.

17 Q. Any other kind of management skills or interactions with
18 employees, things like that?

19 A. There was a how -- how you respond to employees, or how
20 you talk to employees, you just want to make sure you don't
21 want to offend them.

22 Q. Okay. And when you were doing this training at the
23 training store, was this an in-person training, was there
24 online classes, or how was that presented to you?

25 A. It was both. I would work in the store. At the end of

1 day before I went home, I would take little online surveys,
2 questionnaires, things like that.

3 Q. It would test what you were learning that particular
4 day?

5 A. Yes. So we had like a midterm exam, which highlights
6 what you should know up to that point, and then a final at
7 the end to make sure that you actually took in what you
8 learned.

9 Q. And were there individuals who came from corporate to
10 kind of check in with you on how your training was going?

11 A. Yes.

12 Q. And roughly how often did that occur?

13 A. Once every week.

14 Q. Okay. And overall, what did you feel like the goal of
15 this manager training was for you?

16 A. To prepare me to be a manager in my own store.

17 Q. Did you feel like at the end of the training that you
18 were equipped both on kind of hard skills and working the
19 stations at the store to be able to direct employees to do
20 that as well as softer management skills in directing
21 employees?

22 A. Yes.

23 Q. Now at the Ellisville store, was that a 24 hour store or
24 a shorter hour store?

25 A. A shorter hour.

1 Q. And roughly when was the opening and closing?

2 A. We opened at seven o'clock in the morning, and we closed
3 at midnight.

4 Q. So would that be a two-shift store as opposed to three
5 shifts?

6 A. Yes.

7 Q. Now I think you mentioned with Mr. Craig that during the
8 time that you were at the Ellisville store, you didn't always
9 have a general manager; is that correct?

10 A. Correct.

11 Q. Did you always or ever have a restaurant manager?

12 A. No.

13 Q. And while you were a manager at that store, did you have
14 an OS, PT, or ST.

15 A. We did have a PT and an ST but no OS.

16 Q. And was the time period that you had the production
17 training, or the PT or the ST, was that consistent, or was it
18 more spotty?

19 A. It was more spotty.

20 Q. And the time period that you off and on had the general
21 manager in the store, could you estimate how much time that
22 you had without a general manager while you were in the
23 manager position?

24 A. Often, probably a year without.

25 Q. Okay. Now when you were scheduled to work as a manager,

1 and for now as Mr. Craig did, we will focus for now on the
2 time period when there was a GM at your store, okay.

3 A. Okay.

4 Q. would you typically be scheduled as a manager over a
5 shift, or would you be scheduled to work alongside another
6 manager?

7 A. It was depending on when I worked, because when I had a
8 general manager in the store, I would have one shift where I
9 was working a first shift, and two shifts that I was working
10 the second shift, and I had two shifts where I worked the
11 split shift, which is from 10 to 8. For the times that I'm
12 running the shift from 6 to 4, basically I was working by
13 myself from 6 until 10. The other manager would work the
14 split shift, and the entire time that I was there with the
15 split shift, I was always working with another manager.

16 Q. And when the time period was that you were only the
17 manager on the schedule, were you the highest-ranking person
18 in the store at that time?

19 A. Yes.

20 Q. So would you have referred yourself to be the person in
21 charge?

22 A. Yes.

23 Q. would the hourly -- would they report to you during that
24 time period?

25 A. Yes.

1 Q. And I think Mr. Craig asked you if some sort of formal
2 employee complaint arose, such as a pay issue or a
3 harassment, the DM would need to get involved in that
4 situation?

5 A. Correct.

6 Q. Okay. But if something more informal came up in the
7 course of a shift, would you expect the hourly associates to
8 come to you, or to call the GM at home?

9 A. They would come to me.

10 Q. I want to turn a little bit to some of the specific
11 duties that you were responsible for as a manager. While you
12 weren't -- first off, let's talk about the schedule. While
13 you weren't the person making the schedule, what role did you
14 have relative to employee scheduling on your particular
15 shift?

16 A. We have a lineup which is basically a list of employees
17 that you have for a shift for a day, and I would look at that
18 when the schedule came out and again the night before my
19 shift to make sure that everything was covered. If there was
20 something that needed to be covered, I would either ask the
21 employees that were there if they could stay in or come in,
22 if it was their day off, on the next shift. And if they
23 couldn't, I would talk to the lead manager on the next shift
24 to make sure they could make phone calls in the morning.

25 Q. Okay. So if I understand, it is kind of a multi-step

1 process, but maybe earlier in the week, you are looking at
2 what the schedule is for the whole week?

3 A. Yes.

4 Q. Okay. And then again the night before you have a
5 particular shift, you are looking at the lineup as well?

6 A. Correct.

7 Q. You are not waiting until you walk in for a shift to
8 look at the schedule?

9 A. No.

10 Q. So if you are looking at that lineup or the schedule
11 earlier in the week, what are you able to do to address the
12 potential issue on the shift as it comes closer to you during
13 the week?

14 A. I would have continuous conversations with the employees
15 as they come there to see if anybody is available to work the
16 shift, or if I know it is going to be really slow that day, I
17 will explain that I might have to send you home early if we
18 are as slow. I think we will be. So it is constant
19 communication with the employees to see if they would be
20 willing to pick it up or willing to go home early.

21 Q. And when you do come in for a particular shift, you have
22 your lineup, are the positions already assigned to the
23 employees, or do you assign them to the positions?

24 A. I assigned them to positions. I do try to do that
25 before I go home from my previous shift, because I like to

1 know what we have and where they should be.

2 Q. Now, when you have this schedule set for the week, are
3 the employees breaks also set on that schedule?

4 A. No.

5 Q. So are you, as manager on duty during a particular shift
6 responsible for deciding when the particular employees will
7 take their breaks?

8 A. Yes.

9 Q. And how do you decide who needs to go on a break?

10 A. First in, first out. So if they have been there the
11 longest, I will ask if they want a break, and I'll relieve
12 them, but it depends on the business. If it is busy, they
13 will have to wait a little later so.

14 Q. In terms of getting to the end of a shift, are there
15 times when you would have to send an employee home early?

16 A. Yes.

17 Q. And what were the circumstances of that happening?

18 A. That would be in the days that we were not doing much
19 business at all, and I have to check labor that if we had too
20 many labor hours spent during the day, I'd have to cut from
21 somewhere, and I have to talk to the employees, and say, "I
22 need you to go home. We can't afford to have you here".

23 Q. And would you have to get the permission of the general
24 manager or the district manager before you made that
25 decision?

1 A. No.

2 Q. So you wouldn't have to wait for them to call you and
3 say, "Hey, you need to let people go home". You could just
4 do that on your own?

5 A. Yes.

6 Q. I want to talk now about what we have heard referred to
7 as this 14 point walk or the 14 point program. Can you give
8 the jury some more understanding of what that means?

9 A. That means you are walking through the restaurant and
10 the parking lot, making sure everything is clean, everything
11 is up to the safety standards. So you want to make sure that
12 there is no food product that's out -- no food products in
13 the danger zone, which that's the temperature. We also have
14 to make sure that all of the employees are in uniform, and
15 they are all ready to serve the customers. We want to make
16 sure that every part of the store is covered and ready for
17 the rush.

18 Q. Now is there a certain number of times a day or a shift
19 that that 14 point walk is completed?

20 A. The first part where you check the parking lot should be
21 before you start the shift, and before you are leaving your
22 shift. The rest should be down throughout the day to make
23 sure everything stays up to par.

24 Q. So if I understand it, it is not something that's not
25 necessarily done at once, but over a course of a shift?

1 A. Correct.

2 Q. I'll show you what has been marked as Defendant's
3 Exhibit T, which has been admitted into evidence. If you
4 can, tell me if you recognize this?

5 A. Yes.

6 Q. Okay. And does this appear to be a shift management
7 training tool that you received during your management
8 training program?

9 A. Correct.

10 Q. And I flipped it in a couple of pages. That's the third
11 page to what is titled "14 point program"; do you see that?

12 A. Yes.

13 Q. And do you recognize this as something else from your
14 training?

15 A. Yes.

16 Q. Okay. Is this the 14 point walk or the 14 point program
17 that you were referencing?

18 A. Yes, it is.

19 Q. Okay. So it looks like this breaks it down into 14
20 different tasks that you are to focus on during the course of
21 a shift, would that be an accurate description?

22 A. Yes.

23 Q. All right. Now, can all of these things be completed,
24 or any of them be completed before you are to arrive for a
25 shift?

1 A. Yeah, the exterior, the greeting of the associates and
2 guests with a smile. You also want to make sure that the
3 cash is accurate before you start your shift or the first
4 three definitely.

5 Q. So those are things that you would do when you are
6 coming onto a particular shift?

7 A. Yes.

8 Q. So obviously I think the first one can be explained the
9 checking the exterior of the store, is that to make sure it
10 meets the cleanliness standards or what exactly?

11 A. It is making sure that it is clean and looks good for
12 the employees to pull into the lot. You also want to make
13 sure if there is broken bottles that could be a safety
14 hazard, it has to be cleaned up. That's one of things that
15 I'd do when I pull into the store for my shift, and I do like
16 two circles around the store and check the parking lot before
17 I park. That's the first thing that gets done.

18 Q. And how about the second item, "Greet all associates and
19 guests with a smile"; what does that mean?

20 A. That's just when you come in the door, you say "Hi" to
21 all of the associates, and if there is customers in the
22 dining room, you say "Hi" to them, and you ask how they are
23 doing. You always have a smile on your face when you say it.
24 And I always say it is show time as soon as you walk in the
25 door, and you have to have the smile.

1 Q. And number three, "verify cash and deliveries"; what
2 does that mean?

3 A. That is just for verifying cash and checking the cash
4 register, and do the drawer audits to make sure that the
5 money that we say is in the drawer is actually in the drawer.
6 That's the same with the safe. We have to make sure it is
7 accurate to what it is supposed to have in the safe.

8 Q. Okay. And then which of the -- so starting with number
9 four, how far down would you say covers kind of the rest of
10 your shift as opposed to the end of the shift duties?

11 A. Probably through 11, until after the rush, that's where
12 we have the downtime. So we can catch up cleaning we do for
13 the other shift.

14 Q. So let's look then at the numbers in that section that
15 you pointed out. So number four, "checking on the food
16 prep", is that something that you are doing on your shift.
17 Could you explain what that means?

18 A. Just going to check to make sure that we have enough
19 product ready to go for any rush or that we may already be
20 having. So we want to make sure we have enough tomatoes
21 sliced. We have onions sliced. We have the coleslaw made.
22 we have the baked beans made. We are checking out the
23 products, making sure we have enough to sell.

24 Q. Okay. And how about number five, the fountain line and
25 service line?

1 A. That's the line of the temperatures we have to make sure
2 everything is under 40 degrees for the line and the service,
3 and the fountain station we want to make sure it is under 10.
4 so you want to make sure that everything is clean. so first
5 thing that we check, and then we want to make sure we take
6 temperatures, and make sure everything is in a good zone for
7 the temperature.

8 Q. And is that for the food safety purposes?

9 A. Mostly, yes.

10 Q. And are you the person who is responsible for doing the
11 temperatures of the food, or are your employees doing that?

12 A. I am responsible for making sure it gets done.
13 Sometimes I hand the thermometer to the employees. Usually I
14 do it myself.

15 Q. Let's move to number six. I think you touched on this
16 already, the monitoring the overall cleanliness of store. Is
17 that something that's ongoing for you over the course of the
18 shift?

19 A. Yes.

20 Q. And how about number seven, "Review list and correct
21 opportunities." what does that entail?

22 A. You always want to double-check with the list to make
23 sure everything is the way it should be, and if not, get it
24 done.

25 THE COURT: Counsel, there is no good time for me

1 to interrupt. I'm going to go ahead and interrupt you, and
2 we are going to take a very short recess, let you stretch
3 your legs and get a drink of water.

4 (At 3:30 p.m., a recess was taken. At 3:48 p.m.,
5 the proceedings returned to open court.)

6 THE COURT: Ms. Miller, you have retaken the
7 witness stand. You will recall you are still under oath.
8 Counsel, you may proceed.

9 Q. (By Ms. Duckworth) Before the break, we had been going
10 through the 14 point program. Let's go back to number eight
11 where we left off, "Review yesterday's results and plan your
12 shift." Can you explain to us what that means?

13 A. This is just looking over the business from the day
14 before, so if it was busy, the same, or slow, that's probably
15 going to have a pretty good effect on what your shift will be
16 like that night. So you want to make sure that we have
17 enough people to handle the business that they had last
18 night. So it should be about the same, unless it is a week
19 night like Thursday, and then coming in on Friday, it would
20 definitely be different.

21 Q. How about number nine, "Pep talk with crew"?

22 A. That's when you talk to your crew, and you explain like,
23 "Yesterday, we did a really good job on this. So let's keep
24 that up, and let's work on something else today. Try to
25 improve each shift when you come in."

1 Q. I think we heard that referred to as a huddle, does that
2 sound familiar to you?

3 A. Yes.

4 Q. And what is the manager walk, what does that entail?

5 A. You are walking through the store and making sure that
6 every area of the store is up to the Steak'n Shake standards.
7 That means it is clean. It is ready for any rush that may
8 come about, and everything is up to standards. So you are
9 going to start in back the kitchen area to make sure that the
10 dishes are clean. You want to make sure that the dishwasher
11 has been cleaned, the water. You are going to go on, and you
12 are going to check the fountain areas to make sure that it is
13 stocked around the fountain areas. That we have enough cups
14 and glasses, and we have enough drink carriers and napkins,
15 and that all of the condiments are stocked up.

16 Then we're going to do the same thing in the dining
17 room. Then we will check the actual service line to make
18 sure that everything is cleaned and stocked and ready for the
19 next rush.

20 Q. Okay. And that moves us to number 11, "After the rush";
21 what does that entail?

22 A. Basically, you are going to do that walk again to make
23 sure that everything is back where it should be, and if you
24 already have customers in the dining room, you are going to
25 stop and talk with them, and see how things are with their

1 visit, and if there is anything that we can do to fix it, and
2 if there was anything wrong, hopefully there is not, and
3 basically you want to make your presence known to the
4 customers as well as the associates.

5 Q. And how about number 12 where it reads "Slack time";
6 what does that entail?

7 A. That's time to restock, time to get everything ready for
8 the rush ready, and you want to make sure everything is ready
9 for any surprise business that you might have. You are ready
10 to be right on top of it.

11 Q. And then number 13 it says, "Administrative duties";
12 what does that entail?

13 A. That would be doing the deposits, and that's also when
14 we would want to check the application website to see if
15 there is any good potential applicants out there that we can
16 contact.

17 Q. And then number 14, "The shift recap"; what is that?

18 A. Well, the next manager is coming in, or since we only
19 have the two shifts, if you are on the second shift, you
20 would want to leave a note. You are going to want to relay
21 what happened on the shift to the next manager coming in.

22 Q. Now over the course of your shift as the manager on
23 duty, are you the one responsible for completing the items on
24 that 14 point list?

25 A. Yes.

1 Q. Now, I'm sure, as we can appreciate with just the
2 realities of a restaurant, sometimes you are really busy, and
3 sometimes on every shift you are not able to get through all
4 of those 14 items; would you agree with that?

5 A. There is times when you can't get through all of them,
6 but you are able to get through a great majority of them.

7 Q. Are you able to prioritize which you need to focus on at
8 different points in your shift?

9 A. I always try to start with the food safety to make sure
10 everything is up to temperature or down to temperature. You
11 want to make sure everything is clean, and you want to talk
12 to the employees. But I always put the food safety first.

13 Q. How did you, in addition to training, during your
14 management training program, how did you become familiar or
15 well-versed in this 14 point process?

16 A. It was mostly the training, and when I first became a
17 manager in 2017, I would start with a piece of paper that had
18 everything I was looking for on it, and I would always look
19 at it and check it off, look at it, and check it off. Then
20 it becomes a habit, and you just know what's on the list, so
21 you know what to check for.

22 Q. I want to go back to something you mentioned about
23 number 14, "The shift recap", and being at a store that had
24 two shifts. What kind of additional or other administrative
25 duties do you have at the end of the shift to set up the

1 store for the next day?

2 A. You want to make sure everything is stocked and cleaned.

3 That's probably the same for the 24 hour stores. But you do

4 want to make sure that the person that's coming in in the

5 morning understands that if something is broken or not

6 working, that they have to call maintenance. Just let them

7 know so that they can get it done before their shift, and let

8 them know about any issues they may have had with the

9 employees, or if there was problem with a customer's order

10 that be expecting a call from them, something like that. It

11 is basically letting them know, giving them a heads up.

12 Q. And would that be the same process you would go through

13 whether it was another manager who would be on duty the next

14 shift or a general manager on the next shift?

15 A. It would be the same.

16 Q. In terms of setting up that next shift, were there

17 things that you had to do in terms of food preparation?

18 A. If we had time and enough customers, we would try to get

19 them the prep started for the next day. And if we weren't

20 able to do it, that's one of the things that would be

21 included in the note. "We have enough to get through

22 probably until 11, but you are going to run out, so make sure

23 that your prep person does this."

24 Q. Were there things that you could have done on your shift

25 to set up for the next shift in terms of employees who had

1 called off while you were on shift?

2 A. As long as it was not too late, I could call employees
3 that aren't there. Other than that, I can talk to the
4 employees that are working on the night shift, and see if
5 they were willing to come in on the next shift at any given
6 amount of time.

7 Q. Now, in terms of kind of the financial responsibilities
8 or cash handling, can you help us understand what your duties
9 were over the course of a shift to basically handle cash or
10 count cash?

11 A. So we would do the drawer audits, and that's where we
12 are verifying the amount, the paper tells us how much money
13 we should have in the drawer. Well you just want to compare
14 that to what we actually have in the drawer, and we do that
15 frequently throughout the shift. It can be anywhere from
16 twice per shift to eight times a shift. There is no given
17 amount to make sure what we have and what we are responsible
18 for is there.

19 Q. And when would the deposits be done?

20 A. They would be done after first shift and -- well, at the
21 end of first shift and at the end of second shift.

22 Q. What does that entail with that?

23 A. That's basically resetting the drawers back to the
24 starting amount. In our store, it is hundred dollars, others
25 it is different, and then everything other that amount goes

1 into the deposit at night. Actually, during the day, at
2 night you are going to pull it out, and it also has on the
3 paper how much should be in the drawer, and that's what you
4 have to make sure you pull out from the deposit, and then you
5 write everything down and you combine all of the drawers for
6 one deposit and get it ready to go to the bank the next day.
7 If you work first shift, you do the same thing, but you take
8 it to the bank from that night.

9 Q. And as the manager on duty, you would actually be
10 physically taking it from the store to the bank?

11 A. As long as it was during first shift. Second shift it
12 is too dark.

13 Q. Thank you. Mr. Craig also asked you a little bit about
14 customer complaints earlier, and if you can just help us
15 understand a little bit more what your duties were relative
16 to handling customer complaints that would arise on your
17 shift?

18 A. Yes for something that happened in the store I do have
19 to -- excuse me -- I did have the power to remake their food,
20 to give them something a little bit extra, cookie or
21 something to make up for it, and I always double check to
22 make that it was handled satisfactory -- or it was handled
23 right.

24 Q. Thank you. Now, I know there were some mention of
25 policies or procedures that would dictate what you do as a

1 manager, do you remember talking about that?

2 A. Yes.

3 Q. Is it outlined, you know, if a customer has this kind of
4 complaint about their food, then you need to resolve it in
5 this way, or if they have this kind of complaint about their
6 server, you have to resolve it "X" way?

7 A. No, it is not a policy that I have been given.

8 Basically everybody is different and some people just want to
9 be heard, and you have to make a -- or I had to make the
10 decision regarding the situation as it occurred. would you
11 like this, or what would you like. Sometimes it is just I
12 wanted you to know.

13 Q. Maybe you were had some limitations on the kind of
14 things you could offer to a guest, but when it comes down to
15 resolving a particular issue, it was up to you to decide the
16 best way to resolve it for that guest?

17 A. Correct.

18 Q. Mr. Craig also asked you about issuing formal discipline
19 or issuing formal performance evaluation; do you remember
20 that?

21 A. Yes.

22 Q. Now even if you didn't have the responsibility to issue
23 those formal written disciplines or formal annual
24 evaluations, was coaching and counseling employees something
25 that you did on each of your shifts?

1 A. Yes.

2 Q. How would that arise organically over the course of a
3 shift.

4 A. Regardless of where I am, I am always looking over the
5 restaurant and trying to figure out so and so knows how to do
6 something, if somebody is doing something the wrong way, I'll
7 correct them, and I'll explain to them, we have to do it this
8 way, and then I give the reason. Because people are better
9 when they understand why.

10 Q. And you talked about hiring. You didn't have the
11 authority to give someone official offer of employment; is
12 that right?

13 A. That's right.

14 Q. But in addition to maybe having some participation in an
15 interview process, I think you mentioned something called
16 talent reach. Can you explain for us what that means?

17 A. That's an online application that comes to the store and
18 we can actually review the application, and if we are
19 interested in the applicant, we can call them for an
20 interview there.

21 Q. And in just thinking to the time that you were a
22 manager, how would you have used talent reach to help your
23 general manager in staffing?

24 A. Well at least once per shift, I would like to have the
25 opportunity to review the talent reach, and sometimes people

1 put applications in throughout the day, and if there is
2 something that looks good to me, I'll leave a note, or I'll
3 talk to the general manager, and tell them you should call
4 this person and set up an interview.

5 Q. Now you also talked a little bit about training, and
6 during a time period whenever there was not a production
7 trainer or a service trainer in your store, as the manager on
8 duty, would you be responsible for training a new employee on
9 the requirements of their position?

10 A. Yes.

11 Q. Now ideally we would want to have a fully trained and
12 see that an employee in each position to do their job, right?

13 A. Correct.

14 Q. And that is the goal with each employee to train to that
15 level, would you agree with that?

16 A. Yes.

17 Q. But up to that point, even if you are, you know, in the
18 back working on a production station, or filling in, are you
19 still assisting with training of the employees around you?

20 A. Yes.

21 Q. How do you do that?

22 A. Basically just giving them advise on how to do their
23 jobs, again explaining that looks like if it is the grill,
24 explain to them we have to put in the way the way the
25 procedure said. The reason we do that is to make sure

1 everything is up to temperature and cooked thoroughly, and we
2 know exactly which one goes on next.

3 Q. And in addition to training employees, or giving them
4 some advise on how to work a particular station, are you ever
5 moving employees between the different stations?

6 A. Yes.

7 Q. And what would the circumstance be of needing to do
8 that?

9 A. If we get a rush, and I notice that somebody in a
10 position is slower or having trouble figuring it out, they
11 might be a new employee, they might be having personal
12 problems, but if they are moving slowly, and there is
13 somebody else that can do that position really great, I'll
14 switch them around until after the rush, and then I'll put
15 them back on the position so they can work it out.

16 Q. Now, in your experience, was that something that the
17 associates would do on their own, you rotate them among
18 positions or was that something that you guided as the
19 manager?

20 A. I guided it as a manager.

21 Q. I'm now going to show you what has been marked as
22 Defendant's Exhibit L-5, which has been admitted into
23 evidence. And I think you will recognize this Mr. Craig
24 showed you a little bit ago, your manager certification of
25 job duties?

1 A. Yes.

2 Q. I'm going to flip to the second page. Is that your
3 signature there or electronic signature?

4 A. Yes.

5 Q. Okay. Do you recognize this as a document that you
6 signed while you are employed by Steak'n Shake?

7 A. Yes.

8 Q. Did you read this document before you electronically
9 signed it?

10 A. Yes.

11 Q. So I want to look at this section (indicating), you see
12 where it is under "Manager"?

13 A. Yes.

14 Q. Okay. Now let's look at these kind of box by box. The
15 first box says identify and solve operations issues. I think
16 you mentioned already today that if some informal issue came
17 up with an employee, that they would bring that to you during
18 the course of your shift; is that correct?

19 A. Yes.

20 Q. And I guess depending on the severity of the issue,
21 would you have to evaluate whether you could resolve it, or
22 if some higher manager needed to be involved?

23 A. Yes.

24 Q. So at the end of the day, did you believe as a manager
25 on duty, you are responsible for completing this task?

1 A. Yes.

2 Q. Let's move to the second box, communicate shift
3 expectations and goals to associates. A little bit ago do
4 you remember telling us about a huddle or otherwise giving
5 employees a run down on the expectations of a particular
6 shift?

7 A. Yes.

8 Q. And would you view this box, this task, as something
9 that you performed as a manager?

10 A. Yes.

11 Q. All right, let's go to the next box, manage and direct
12 associates work, and evaluate their performance, and again
13 while you didn't do formal performance evaluations, did you
14 do as your duty to manage the employees over the course of a
15 shift and coach them on their performance?

16 A. Yes.

17 Q. Did you believe that this was a responsibility that you
18 performed as a manager?

19 A. Yes.

20 Q. Okay. All right, so the next box reads, review clock in
21 and clock out times of hourly associates to ensure that
22 proper hours are recorded, child labor requirements are met,
23 and proper breaks are given. I think the first one we
24 haven't touched on yet in terms of clock in and clock out
25 times of employees. would you have any participation in

1 advising the general manager of times that needed to be
2 changed?

3 A. Yes.

4 Q. Anything else related to that that you can think of at
5 this point?

6 A. Not at this point.

7 Q. Now relative to child labor requirements, how would that
8 come into play during your duties as a manager?

9 A. we didn't really deal with that, because the child labor
10 laws start with 15 and under and ours were all over 16.

11 Q. Did you ever have an occasion where somebody tried to
12 apply for a position that was under that age limit and you
13 had to turn them away?

14 A. Yes.

15 Q. And I think we have already discussed that over a course
16 of a shift, you would direct employees to take their breaks;
17 is that correct?

18 A. Correct.

19 Q. So based on all of that, would you agree that this box,
20 this requirement is something that you performed as a
21 manager?

22 A. Yes.

23 Q. All right, let's move to the next box, "Maintain cash
24 controls, make deposits and audit food safety and cleanliness
25 standards." we have just discussed the task that you had

1 over the course of a shift regarding cash controls and making
2 deposits, again depending on which shift you held; do you
3 remember that?

4 A. Yes.

5 Q. In terms of the auditing food safety or cleanliness
6 standards, do you believe that in going through the 14 point
7 walk during a particular shift you were ensuring that those
8 were met?

9 A. Yes.

10 Q. So as a manager, do you believe you fulfilled those
11 responsibilities?

12 A. Yes.

13 Q. The next one, "Forecasting sales and labor." Can you
14 give us an idea of what responsibilities you had in that
15 regard?

16 A. It is one of the things where I have to be aware of any
17 occasion that is happening near us, and if it is happening, I
18 have to double check the lineup to make sure we have enough
19 employees that can handle that. And if we don't, I would try
20 to get people to come in, either from a previous shift, stay
21 late and come in early, depending on what employees were
22 available. And if not, I would work with the other managers
23 to try to come up with the -- sorry, to try to come up with a
24 way to rectify the situation.

25 Q. You talked about earlier, you are looking at a schedule

1 early in the week to forecast what the issues will be and
2 doing what you can to set yourself up for success on a shift?

3 A. Correct.

4 Q. In terms of ordering food, did you have any
5 responsibilities in that regard?

6 A. I didn't do it on a regular basis, but I was capable of
7 doing it. I have done that on a few occasions.

8 Q. Was that if you were asked to do so by your general
9 manager?

10 A. Yes. It is if the general manager was on vacation, I
11 would takeover that responsibility. Other than that, it was
12 up to them.

13 Q. And training is something we just discussed. So looking
14 at that entire box, would you agree that those are
15 responsibilities that you performed as a manager?

16 A. Yes.

17 Q. Okay. Let's look at the final box, you will see it
18 reads, "Participate in hiring, promotion, discipline, and
19 termination decisions." Now I know that Mr. Craig also asked
20 you some questions about these various categories, and even
21 if you were not the ultimate decisionmaker with each of these
22 items, did you believe as a manager you still had input into
23 those kinds of decisions?

24 A. Yes.

25 Q. And can you give an example of how you would have input

1 on a more informal level into those kinds of decisions?

2 A. For the promotions, I might come to the general manager
3 and say, John boy is doing a great job and really following
4 all of he procedures. I think we might want to get him
5 trained on other positions and get him into a trainer
6 position. For a termination I'd say, I think Julie should be
7 fired. Yesterday I noticed that Julie had a really bad
8 attitude. She was talking to the customers like that. I
9 would give situations that I think would be a reason for
10 termination, and then it would be up to the general manager
11 to take that.

12 Q. Now, you talked with Mr. Craig about sort of I mean
13 again the realities of a restaurant you are going to be busy
14 and sometimes a lot of the time you are going to have to also
15 step in and help with production and service duties. Do you
16 remember talking about that?

17 A. Yes.

18 Q. Now so did you -- could you say that you spent a hundred
19 percent of your time on production service versus a hundred
20 percent of your time on managing the employees?

21 A. No.

22 Q. So even if there are times that you have to step in on a
23 station and help you know flip burgers or make shakes, have
24 you ever taken off that manager hat?

25 A. No.

1 Q. Even if you are the manager on a shift, you are helping
2 with the production and service duties at the same time are
3 you also monitoring the store?

4 A. Yes.

5 Q. At the same time, are you also monitoring your
6 employees?

7 A. Yes.

8 Q. At the same time, are you also moving people around, or
9 coaching the employees on how to make things run smoother?

10 A. Yes.

11 Q. Now we also talked a little bit -- or you talked with
12 Mr. Craig, excuse me, a little bit about understaffing and
13 how that was an issue that you faced at Steak'n Shake
14 restaurants?

15 A. Correct.

16 Q. As a fallout to that, you know, if being faced with
17 understaffing, what could you do as a manager, or what did
18 you try to do to combat that issue?

19 A. I would try to make sure every employee was cross
20 trained and they knew how to do at least two things. So
21 preferably, everything. That way if we were shorthanded, and
22 somebody is on front dress, they can go and help out on
23 fountain, which is the shakes, and they don't know how to do
24 the dishes, so we that would slow down. We have people
25 always going back to work on dishes, and then we also have

1 them help bus the tables in the dining room services is one
2 of the places that we were really shorthanded and the server
3 didn't have time to bus the tables. I always tried to make
4 sure people went out there to bus for them.

5 Q. And then I think you mentioned earlier that sometimes
6 just in setting up your shift or another shift, you might ask
7 an existing employee to come in more or to stay late or
8 something like that?

9 A. Correct.

10 Q. Now I know you indicated with Mr. Craig too you agreed
11 that at the restaurant, as with any restaurant, your number
12 one priority is your guest service; is that right?

13 A. Right.

14 Q. Now in reaching that priority and making your guest
15 satisfied, what was your role as a manager in making sure
16 that happened?

17 A. Making sure that every position was covered, and that
18 they got their food in a timely manner, and tried to make
19 sure that everybody was greeted with a smile, and if I wasn't
20 able to go out and double check on a table, I would make sure
21 the server did and check if there was a problem, make sure
22 the fries were hot mor sandwich was made the right way. If
23 we had to remake it, usually I would try to go out there and
24 do that.

25 Q. we have just been talking about all of the duties that

1 you had whenever you were just a manager, and there was or
2 there was a general manager in your store as well, think now
3 just for a moment about the time period when there was not a
4 general manager at the store. Can you give the jury a little
5 idea about what additional duties you took on during those
6 time periods?

7 A. With those time periods, I would do the schedule, and
8 mostly do the schedule. You have the manager there. She did
9 the food orders and the weekly inventories. I just did the
10 schedule along with everything else that I did.

11 Q. So those extra general manager duties were filled by you
12 and another manager in the store?

13 A. Correct.

14 Q. As well as the district manager, as you mentioned
15 before?

16 A. Correct.

17 Q. Okay. So one last question about again the time period
18 that you are a manager, and you have a general manager in the
19 store, you are a manager on duty for a particular shift. Can
20 you separate the amount of time that you were focusing on
21 management task versus to nonmanagement task?

22 A. No. I couldn't.

23 Q. Why couldn't you separate that?

24 A. Because I was never doing one in the absence of the
25 other. If I was working a position, I was also managing the

1 restaurant.

2 Q. sounds like you would have to juggle a lot of the tasks
3 at once?

4 A. Correct.

5 Q. one of those tasks might be thing flipping burgers or
6 making the shakes, and you have the management tasks on your
7 mind as well?

8 A. Exactly.

9 MS. DUCKWORTH: I don't have any other questions?

10 THE COURT: Mr. Craig, any other questions.

11 MR. CRAIG: Yes, your Honor. I'll get you out less
12 than five-minutes, faster than Steak'n Shake.

13 **REDIRECT EXAMINATION**

14 BY MR. CRAIG:

15 Q. Okay. I think at the very beginning of your examination
16 with Steak'n Shake's attorney, you made a comment that when
17 you went from a server -- or when you became a manager, you
18 made a lot more money?

19 A. Correct.

20 Q. Right. And that makes sense, because you were a
21 part-time server at that time, correct?

22 A. Correct.

23 Q. And how much were you making an hour as a part-time
24 server?

25 A. Like 390 plus tips.

1 Q. 390 plus steps as a part-time server?

2 A. Correct.

3 Q. And then you went to become a manager and working over
4 50 or 60 hours a week?

5 A. Correct.

6 Q. And in fact, I think you will recall from your
7 deposition you said that even though you were a part-time
8 server making 390 an hour, there were times you had to go
9 back and do production work as well; is that correct?

10 A. Correct, making shakes, so yes that is production.

11 Q. That's production, isn't it?

12 A. Yes.

13 Q. That's what you had to do because of the understaffing
14 in the production workers, right?

15 A. Correct.

16 Q. When you were being paid \$3.90 an hour?

17 A. Correct.

18 Q. And as far as resolving the complaints go, I think you
19 said you could choose between offering to make a burger for a
20 customer or even just apologize; is that right?

21 A. Correct.

22 Q. But it was Steak'n Shake who decided those options for
23 you; is that correct?

24 A. Correct.

25 Q. And I don't want to ask you anything I didn't ask

1 already, okay.

2 A. Okay.

3 Q. The Judge wouldn't let me do that either. I want to
4 make it clear that if I asked you which of your job duties
5 were most important as a manager, correct?

6 A. Correct.

7 Q. And I asked you what job duties you spent the majority
8 of your time doing as a manager, correct?

9 A. Correct.

10 Q. And I asked you about what job duties you may have been
11 supposed to do in theory, but that you actually did in
12 reality, true?

13 A. True.

14 Q. You answered those questions honestly?

15 A. Yes.

16 MR. CRAIG: Thank you, ma'am. No further
17 questions, thank you.

18 THE COURT: Ms. Duckworth, any other questions of
19 the witness?

20 MS. DUCKWORTH: No further questions, thank you.

21 THE COURT: You may step down. Counsel, call your
22 next witness.

23 (End of requested proceedings.)

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REPORTER'S CERTIFICATE

I, Lisa M. Paczkowski, Registered Professional Reporter, do hereby certify that I am a duly appointed official Court Reporter for the United States District Court, Eastern District of Missouri, and that the foregoing is a true and accurate reproduction of requested proceedings had in the matter of:

Sandra Drake vs. Steak'n Shake

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Dated this 2nd day of September, 2021.

 /s/ Lisa M. Paczkowski
Lisa M. Paczkowski
Official Court Reporter
United States District Court
Eastern District of Missouri

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

Case no.: 1:21-cv-1507-TWP-MG

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION**

Exhibit K

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MISSOURI

3 SANDRA DRAKE, et al.,)
4 Plaintiffs,)
5 vs.) Cause No. 4:14CV-1535JAR
6 STEAK'N SHAKE OPERATIONS INC.,)
7 Defendant.)

8 PARTIAL TRIAL TRANSCRIPT
9 (Testimony of **Christina Sanchez** & Stacey Odom)

10 BEFORE THE HONORABLE JOHN A. ROSS
11 UNITED STATES DISTRICT JUDGE

12 FEBRUARY 25, 2019

13 APPEARANCES

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1 at Steak'n Shake, can you walk us through what positions you
2 started with at the company, and what kind of work you do at
3 the present?

4 A. Okay. I was rehired in '95. So I worked a year before
5 that, '93 to '94, as a server at the First Capitol Steak'n
6 Shake. Then I went to a different restaurant for a year and
7 came back in '95. I was a server for five years, and then
8 went to the Brentwood Steak'n Shake, and that's where I
9 became a manager. I was a manager for six months before I
10 became a general manager. At the job at Steak'n Shake, I was
11 transferred there to become a general manager, and I was
12 there for approximately two years before I transferred to the
13 Gladstone Steak'n Shake in Kansas City.

14 I was a general manager there for approximately two
15 years, and then moved back to St. Louis. So I went to the
16 Bellefontaine Steak'n Shake for approximately a year. I
17 lived in St. Charles, so I asked if I could be closer to
18 where I lived. I transferred to the Cave Springs Steak'n
19 Shake as a general manager. Then to the O'Fallon Steak'n
20 Shake, O'Fallon, Missouri, and then when I moved to where I
21 live now in Gerald, Missouri, I asked to be transferred to
22 the Washington Steak'n Shake.

23 Q. Where you have stayed until today?

24 A. Yes.

25 Q. So how long have you been at Washington then?

1 A. Approximately four years.

2 Q. And is the Washington, Missouri, Steak'n Shake a
3 training store?

4 A. It is.

5 Q. Would that make you a training general manager?

6 A. Correct.

7 Q. And how long has that store operated as a training
8 store?

9 A. Approximately three years.

10 Q. And can you give the jury just a brief explanation of
11 what it takes to be certified as a training store?

12 A. As a training store, you have to meet certain criteria.
13 So you have to have a certain amount of service trainers and
14 production trainers that can train managers. So that's what
15 a training manager does, you train managers for Steak'n
16 Shake, and your turnover it has to be a certain percentage
17 and your complaints have to be under a certain amount. You
18 have to have a certain amount of sales so that the
19 higher-volume stores versus lower-volume stores.

20 So once you meet all of that criteria, corporate
21 would come and make sure that the store looks good, and
22 certify you as a training restaurant.

23 Q. You have referenced complaints in there, are you
24 referencing guest complaints?

25 A. Correct.

1 Q. Can you give us a general idea of how that manager
2 training is structured. Is it a set period of time, or how
3 does that work?

4 A. Yes. So managers would train for seven weeks. The
5 restaurant manager or the general manager trains for eight
6 weeks. They come in, and the first three weeks they train
7 with my trainer. So my production trainers and my service
8 trainers training them on stations. So they learn every
9 station. After three weeks, they start their management
10 training, weeks four, five, six, and seven, and eight if they
11 are a general manager or a restaurant manager is considered
12 is dedicated to the management training.

13 Q. What's the focus of that management training portion?

14 A. There is a lot of things that we focus on. We first
15 start on the food safety line check, and go through that,
16 huddles, food ordering, how to run a shift, hiring,
17 inventory, cash management, labor management, just about
18 everything a manager needs to know.

19 Q. And how is that broken down. Is it kind of different
20 topic by day, or how do you do that?

21 A. They have a book, a binder, and so we follow that
22 binder, and every day it is kind of broken down what they
23 need to do. We have task outlines is what they are called.
24 So they read through the task outlines which is kind of it
25 breaks down everything very specifically on how to do things.

1 So they read through those, and we guide them through those,
2 and teach them how to do those things.

3 Q. Now we heard some testimony last week from managers
4 regarding training stores and having a different labor budget
5 than non-training stores; is that accurate?

6 A. No.

7 Q. Okay, now we have also heard testimony about the
8 different managers. I think you mentioned you have managers,
9 restaurant managers, and then general managers; is that
10 correct?

11 A. Yes.

12 Q. So for my questions now, I just want to focus
13 specifically on the manager level, okay.

14 A. Okay.

15 Q. And in your own words, how would you describe what the
16 key role of a manager is on any given shift?

17 A. To run a good shift so they would have to make sure that
18 things are set up for the day. Do they have enough
19 associates. Do they have enough food ready to go. Is the
20 restaurant clean. Is the food safe, things like that.

21 Q. Okay. Can you pull up Exhibit V-5 please. This has
22 been admitted. Can you tell me if you recognize that
23 document?

24 A. I do.

25 Q. What is it?

1 A. It is the job certification duties.

2 Q. Is this the one that you signed?

3 A. I did.

4 Q. Now it looks like you signed this under the restaurant
5 manager box. We are going to focus our attention on the
6 manager column, okay?

7 A. Okay.

8 Q. And are you familiar with the requirements that are
9 outlined here for the managers?

10 A. Yes.

11 Q. And do you believe this accurately describes what
12 managers do in your store?

13 A. Yes.

14 Q. Okay. Let's turn to those specific duties under the
15 manager column. The first one you will see reads "Identify
16 and solve operation issues"; do you see that?

17 A. Yes.

18 Q. And is this a responsibility of the managers at your
19 store?

20 A. Yes.

21 Q. Can you give us an idea of how managers in your store
22 carry out this particular responsibility.

23 A. If there is issues with the customers, they have to
24 address those. And if there is issues with an associate
25 ringing in a ticket incorrectly, they have to fix those.

1 Maintenance issues, if the ice machine goes down on a Friday,
2 they have to put that in so the maintenance guy can come out
3 and fix that.

4 Q. In terms of guest complaints, what responsibility do
5 managers have in the handling and resolving those?

6 A. They have to -- they need to talk to the guests, and see
7 what's wrong. See how they can solve that issue, and if they
8 need to what we call comp, take off an item, or remake an
9 item. They have to make that decision.

10 Q. Now do hourly associates have the authority to resolve
11 customer complaints without the manager getting involved?

12 A. No. They need to talk to the manager. They can suggest
13 things, but it is up to the manager to take them off the
14 ticket. All food items need to be rang up, but if they feel
15 the guest should get a free shake, then they would have to
16 ring that up, and the manager comps it.

17 Q. We also heard about the 14 point walk. Can you explain
18 briefly what that is?

19 A. That's making sure that you are set up for your shift.
20 So coming in is step number one, evaluating the parking lot,
21 so is it clean. Does somebody need to go out and clean.
22 Step number two is greeting all associates with a smile. So
23 in that, you set the tone for the day. Then the rest is just
24 kind of management things, verifying cash, is the cash
25 correct. You're checking stock on the food. Do you have

1 enough food for the day. Do you need to perhaps prep more
2 tomatoes. Is there enough shake base in the conditioning box
3 so in the middle of lunch, you are not running into a frozen
4 shake base, things like that.

5 Q. Are managers responsible for completing that 14 point
6 walk on each of their shifts?

7 A. Yes.

8 Q. And is that supposed to help them identify issues in the
9 store that needs to be resolved over their shift?

10 A. Yes.

11 Q. What kind of duties would a manager on one particular
12 shift have for setting up the shift that's going to follow
13 them?

14 A. They would need to make sure that the associates are
15 doing their side work. So are they stocking their stations
16 for dinner. I mainly work first shift, so I would be
17 checking to make sure that they are stocking for dinner and
18 have enough product on hand, are things clean, are there --
19 are the fryers filtered, things like that, checking
20 temperatures on the food.

21 Q. And this is kind of first category of identifying issues
22 that may come up on the shift and resolving them. Is that
23 something that you cover in the manager's training program?

24 A. Of course.

25 Q. And how do you address that there?

1 A. A lot of times managers when they go to -- when they get
2 out of training and go to another store, they are on the
3 second shift a lot. So they work from 3 to 1, 4 to 2. So I
4 let them know when you come in for your shifts, the first
5 thing you need to do is check your line and make sure you are
6 set up for the shifts, make notes, tell your crew okay you
7 need to bring up some more tomatoes. You need to pan up more
8 meat, bring up more fries, things like that.

9 Q. Turning back to that certification of job duties, do you
10 see the second box there, "Communicate shift expectations and
11 goals with the associates." Did I read that correctly?

12 A. Yes.

13 Q. And is it also a responsibility of managers at your
14 store?

15 A. Yes.

16 Q. And can you give us an example of how managers at your
17 store would carry out this responsibility?

18 A. well, the weekly cleaning, so on top of the side work
19 for your station, you would have to -- the manager would need
20 to assign a weekly cleaning to make sure there is some extra
21 cleaning going on. Also talking about goals, you know, how
22 are we going on our complaints, and our drive thru times, and
23 what can we do to make those better.

24 Q. we heard this phrase called "Huddles"?

25 A. Uh-huh.

1 Q. Is that a way that they would communicate those goals to
2 the associates?

3 A. Yes.

4 Q. And just so that I understand, you are saying this
5 weekly cleaning such as associate's assignments, these are
6 things the manager would give them to do above whatever
7 normal work stations they are working on?

8 A. Correct.

9 Q. And is this communicated with associates, is that
10 something that you also cover on manager's training?

11 A. Yes.

12 Q. Let's turn to the third box on the certification. It
13 reads, "Manage and direct associate's work"; do you see that?

14 A. Yes.

15 Q. And is this also the responsibility of managers in your
16 store?

17 A. Yes.

18 Q. And actually if you can zoom out from that to just the
19 certification page as a whole. It looks like on the
20 certification, it is the responsibility of the general
21 manager, restaurant manager, and the manager to manage and
22 direct associate's work; is that correct?

23 A. Correct.

24 Q. So how is this a responsibility of all levels of
25 management?

1 A. You have to make sure things are running smoothly. You
2 have to direct the associates to make sure they are following
3 procedures. Make sure that they are given breaks when you
4 feel it is necessary. When you do give breaks, you have to
5 move people around, so it slows down your dressing table
6 operator. You don't need two of them, you can move one to
7 the drive thru and start giving breaks, all of the time
8 making sure that you are directing them, "okay, and let's
9 make sure we are cleaning, stocking, and getting things ready
10 for our dinner".

11 Q. So whether you are the general manager on the shift, the
12 restaurant manager, or the manager, whoever is that manager
13 on duty, they are going to be the ones who manage and direct
14 the employees as to what to do?

15 A. Correct.

16 Q. So you mentioned in there kind of moving people around
17 as needed or giving breaks. We heard some testimony last
18 week that managers would basically come in for a shift,
19 select a station, work on that station for 10 hours without
20 ever directing another employee. Does that sound feasible to
21 you?

22 A. No.

23 Q. Why not?

24 A. There is always things that come up during the day that
25 as a manager you have to address. So whether you are having

1 to step in to do a station because someone calls out, you
2 still have to pull cash. You still have to make sure that
3 you take temperatures, and the food is safe. You still have
4 to direct people to direct to work, to pay cash, which means
5 paying customers out, bussing everything, you just kind of
6 have to keep an eye on everything while you are in that
7 position.

8 Q. Now as a general manager, do you prepare the schedules
9 for your store?

10 A. I do.

11 Q. Now are managers stuck to following that particular
12 schedule, or are they able to modify as they need to on any
13 particular shift?

14 A. I mean, they follow that, but modifying it as needed.

15 Q. And maybe that's a poor question on my part. So we
16 talked about schedules as well as lineups last week?

17 A. Okay.

18 Q. When they come on to the first shift, do they view the
19 lineup of the associates?

20 A. Yes.

21 Q. And what flexibility do they have in modifying the
22 lineup to fit the needs of the shift?

23 A. They can decide where they want to place associates as
24 far as stations. They decide when to give breaks based on
25 sales, how the customers are coming in. If it is busy, then

1 you are not going to give breaks. But as it slows down,
2 that's when you need to give breaks. They would make those
3 decisions.

4 Q. Just based on your experience in working at various
5 steak'n Shake restaurants, can you give a rough estimate of
6 what percentage of your employees are of the high school to
7 college age?

8 A. I'd say 50 to 60 percent.

9 Q. And in your experience, did that group, age group of
10 employees require more supervision?

11 A. Yes.

12 Q. So they can't, in your experience, come in and work 10
13 hours without any direction?

14 A. No.

15 Q. Now this managing and directing associate's work, is
16 that something you also address in the manager's training
17 program?

18 A. Yes.

19 Q. And how do you address that?

20 A. When we talk about checking outside work, just every day
21 how you watch the procedures, and make sure that they are
22 doing things correctly.

23 Q. Looking at the box three again, it also says, "After
24 managing and directing associate's work", it says "evaluate
25 their performance". Do you see that?

1 A. Yes.

2 Q. Is this also the responsibility of managers at your
3 store?

4 A. Yes.

5 Q. And again, this is something that is indicated for the
6 general manager, the restaurant manager, and the manager.
7 Can you explain how that's a joint responsibility of the
8 whole team, the management team?

9 A. Well, you want to watch your associates and make sure
10 that they are doing things correctly, fryers, grill, they
11 have to use a bun board on the buns to make sure that the
12 buns are evenly toasted. It affects the quality of the steak
13 burger.

14 So if they are not using the bun board, then it is
15 up to the manager to make sure that they tell them. Where is
16 your bun board. You have to have a bun board. That's just
17 one specific example. But when they are dropping fries, they
18 have to make sure the basket is half full. If it is too
19 full, then the fries aren't going to cook correctly. So the
20 manager makes sure they are following the procedure.

21 Q. So as general manager, do you do the formal evaluation
22 of the associates?

23 A. I do.

24 Q. And that's something you delegate to the manager level?

25 A. Yes.

1 Q. And what are the circumstances of that?

2 A. I don't work -- I'm not working with all of the
3 associates all of the time. So if the manager works with an
4 associate more than I do, so then I would have them evaluate
5 them.

6 Q. And do you assist in completing the evaluation?

7 A. I do until they are trained to know how to do it.

8 Q. So even if a manager generally is not going to be
9 completing the formal evaluation, do you expect them on a
10 day-to-day basis to do informal coaching and counseling on
11 employees?

12 A. Yes.

13 Q. And is that something that you also cover in the manager
14 training program?

15 A. Yes.

16 Q. Let's look to the fourth box on the certification,
17 "Review clock-in and clock-out times of hourly associates to
18 ensure proper hours recorded"; do you see that?

19 A. Excuse me, I do.

20 Q. And is that also the responsibility of managers at your
21 store?

22 A. Yes.

23 Q. And can you explain how they would carry out that
24 responsibility?

25 A. They would check throughout the shift how labor is, and

1 if labor is high, then there are some things that it could
2 be, too many associates on the clock versus how many
3 customers, or maybe somebody forgot to clock out. And so the
4 manager would have to go and clock that associate out.

5 Q. And where do they do that?

6 A. In the back office computer.

7 Q. Is that something they have to login and then correct?

8 A. Yes.

9 Q. And can they do that without calling you first, or do
10 they have to call you first to get permission?

11 A. No, they don't have to call me.

12 Q. And is that something you also covered in manager's
13 training?

14 A. Yes.

15 Q. So the next clause of that box, if you look back to the
16 certification, "Child labor requirements are met"; do you see
17 that?

18 A. I do.

19 Q. Is that also the responsibility of the manager in your
20 store?

21 A. Yes.

22 Q. And can you give us an example of how that comes into
23 play for managers?

24 A. In Missouri, we don't have labor laws pertaining to 16
25 and older. So Steak'n Shake doesn't hire anybody under 16.

1 So that's something that we really don't have to worry about.

2 Q. So if someone came in and is under 16 and wanted to
3 apply to work there, would the manager have to turn them
4 away?

5 A. Yes.

6 Q. And is that something that you also cover in manager's
7 training?

8 A. Yes.

9 Q. So looking back to the certification, the last clause of
10 the fourth box, "Proper breaks are given"; do you see that?

11 A. I do.

12 Q. And I think you just referenced this. Is this also the
13 responsibility of the manager in your store?

14 A. Yes.

15 Q. Now we talked briefly about schedules a bit ago, but do
16 the schedules also have set break times on this for
17 employees?

18 A. They have a spot that says when the associate should go
19 on breaks.

20 Q. Now we did hear testimony last week from managers who
21 said they simply follow breaks on the schedule without any
22 discretion to revise them. And in your experience, is that
23 the case?

24 A. No.

25 Q. So managers don't have to simply follow the breaks set

1 on a schedule?

2 A. Correct.

3 Q. And why is that?

4 A. It is just a guideline. If it is busy, if a bus comes
5 in, and it says you are supposed to send your grill operator
6 on break at two o'clock, and then a bus pulls up, you can't
7 send your grill operator on break at two o'clock.

8 Q. And addressing the employee breaks, is that something
9 you also cover in manager training?

10 A. Yes.

11 Q. Let's look back to the fifth box on the certification,
12 "Maintain cash controls, make deposits"?

13 A. Yes.

14 Q. And are those also the responsibilities of the managers
15 at your store?

16 A. Yes.

17 Q. And can you explain to the jury a little bit about how
18 managers would carry out those responsibilities?

19 A. At the end of their shift, they would pull the cash from
20 the drawers, take it back to the office, count it, write down
21 the amount on a form, put the other amount in the computer so
22 it communicates to corporate the deposit that you are going
23 to take to the bank, and then you would take the deposit to
24 the bank.

25 If a change order is needed, so we have to have

1 quarters, dimes, nickles, and pennies, ones, fives, tens to
2 hand back to the guest. So if you need to get that amount of
3 change from the bank, you would have to do it as the manager,
4 or whoever is running the shift at that time would have to do
5 a change order.

6 Q. In terms of closing out drawers, is that something they
7 can simply delegate to the associate who is assigned to a
8 drawer?

9 A. No.

10 Q. why not?

11 A. They don't have the access to do that.

12 Q. And this cash control managing deposit, that sort of
13 thing, is that also something you would cover in manager
14 training?

15 A. Yes.

16 Q. All right. Looking to the last part of that fifth box
17 on the certification, do you see it reads, "Audit food safety
18 and cleanliness standards"?

19 A. Yes.

20 Q. Is that also a responsibility of the manager in your
21 store?

22 A. Yes.

23 Q. And can you explain to us how they carry out that?

24 A. With a 14 point walk, they would -- there is places on
25 that form that ask you to take temperatures of the meat of

1 the walk-in cooler, of the walk-in freezer, of the tomatoes,
2 the cheese, the chili, and you have to make sure all of the
3 food temperatures are not in the food danger zone. So they
4 would have to check those.

5 They would also have to make sure that nothing is
6 out of date. They would check dates out on the food, throw
7 away anything that's out of date. Cleanliness, they would
8 check the associate's side work. Is it clean. Do they need
9 to sweep, mop, write something down, change pans, things like
10 that.

11 Q. Is that also something that you would cover during the
12 management training program?

13 A. Yes.

14 Q. The sixth box on the certification, do you see where it
15 says, "Forecast sales and labor"?

16 A. Yes.

17 Q. Is this watching labor also the responsibility of
18 managers at your store?

19 A. Yes.

20 Q. And I will think you got into this a little bit earlier.
21 what is it that they are checking to look at the labor
22 numbers?

23 A. There is reports that show if your plus on labor, so how
24 many customers are coming in versus how many employees you
25 have. So Steak'n Shake has a formula that tells you if you

1 have this many customers, you should have this many
2 employees. And so it is up to the manager to watch and make
3 those decisions of okay it looks like there is not very many
4 customers, but I've got a lot of employees. So let me send
5 somebody on break, or let me send somebody home, or get this
6 person started on the side work so they can leave early.

7 Q. Is that something that managers proactively do over the
8 course of the shift, or do they need to be directed by you,
9 or the district manager, or the general manager to do that?

10 A. No, they should be able to do that.

11 Q. Do they have to call you or the district manager for any
12 kind of assistance?

13 A. No.

14 Q. I know we referenced briefly schedules and lineups
15 earlier. Are those something that the managers are expected
16 to look at when the schedule comes out, or when they walk in
17 the door for the shift?

18 A. They should look before they are walking in the door for
19 their shift, if there is any misses they can address those.
20 So if the general manager or whoever is making the schedule
21 forgets or misses putting the fountain person on for that
22 day, and they need a fountain person, then they can look at
23 the schedule. When the schedule comes out, they can say
24 something to the general manager, "I need a fountain person.
25 Can I have someone come in and do the fountain. Sure."

1 Q. And how do you address this in the manager's training
2 program?

3 A. We talk about making sure that whenever the schedule is
4 posted, that you print off your lineups, you look at them for
5 the following week.

6 Q. Okay. If you can turn your attention back to the
7 certification, the sixth box, you will see the next clause is
8 "order food"; do you see that?

9 A. Yes.

10 Q. Is that something you also have managers do at your
11 store?

12 A. Yes.

13 Q. And how often do they have to do that?

14 A. If they are in charge of the food order, we get two
15 trucks a week. They would do two orders a week.

16 Q. Is that simply clicking send on a preordered number of
17 boxes, or buns, or burgers, or what do they have to do to
18 make that food order?

19 A. They have to walk around and check to make sure that the
20 numbers are correct. It does give you a what we called a
21 suggested order. So it tells you kind of what to order, but
22 you have to go around, and we add a few meats, few fries to
23 make sure that we don't run out, and it doesn't give you any
24 suggested order for the paper products, so like cups,
25 napkins, straws. So they would have to see how many they

1 have in the store, and order what they think they need.

2 Q. Okay. Let's turn back to the certification, the sixth
3 box, you will see the last clause that says "Ensure timely
4 associate training"; do you see that?

5 A. I do.

6 Q. And is this also a responsibility that managers at your
7 store have?

8 A. Yes.

9 Q. And how does that come to play during the course of
10 their shifts?

11 A. If there is a trainer on shift, then they would have to
12 print out the papers from the computer for the trainer to
13 work with the new associates, check to make sure that the
14 trainers are doing what they are supposed to be doing,
15 training them correctly, following the task outlines, showing
16 them what they need to do.

17 Q. If you have a production trainer, a service trainer
18 working one-on-one with the associate, the manager is kind of
19 above that to make sure it is completed?

20 A. Correct.

21 Q. Okay. Is that also something that you cover when you
22 are training managers?

23 A. Yes.

24 Q. Let's look to the last box on the certification, you see
25 where it reads "Participate in the hiring decisions"?

1 A. Yes.

2 Q. Is this also the responsibility of a manager at your
3 store?

4 A. Yes.

5 Q. And how do they carry out that responsibility?

6 A. Our applications come through what's called a talent
7 brief. So they could check talent briefs every day. There
8 are some days that it gets missed, but every day or every
9 other day they would check talent brief. They would call the
10 applicant and have them come in for an interview, interview
11 that applicant, and if they think that they would be a good
12 fit for the team, they would set up a second interview with a
13 general manager or a restaurant manager.

14 Q. Can you put that down for a moment and pull up Exhibit
15 R, which has also been admitted. And can you tell me if you
16 recognize this document?

17 A. I do.

18 Q. And what is this?

19 A. The select the best, it is our interviewing guidelines.

20 Q. And we did hear some last week about the select the best
21 process for interviewing applicants, and is this kind of a
22 multistep interview process?

23 A. Yes.

24 Q. And what role does the manager play in that interview
25 process?

1 A. It kind of sets expectations with the applicant so they
2 go over the uniform code. They ask them their availability.
3 They kind of ask questions. There are certain questions on
4 the select the best so they would go through and ask
5 questions. Then they would make the decision on whether to
6 pass on that applicant, because they couldn't meet certain
7 criteria, or they would set them up with a second interview.

8 Q. Is there some kind of form or reading sheets they
9 complete as they are going through the first interview?

10 A. Yes.

11 Q. And we heard some testimony last week of managers who
12 describe that rating for them kind of simply just a checklist
13 of basic information to see if they fit the box to move them
14 on, would you agree with that?

15 A. No. I mean, they have to make the decision on whether
16 that person seems like they would be a good fit for the
17 restaurant.

18 Q. So you allowed them to make the decision if they should
19 pass on this particular person, or whether it makes sense to
20 get them into the second interview?

21 A. Yes.

22 Q. And as a general manager, do you rely on your managers
23 to make suggestions about people that you are going to hire?

24 A. Yes.

25 Q. And as a general manager, do you have the final

1 authority on whether to hire someone or not?

2 A. Yes.

3 Q. Do you sometimes allow your manager to make that
4 decision?

5 A. I do.

6 Q. If you can if you can put that down and flip back to the
7 certification, please. Okay, then on the manager column once
8 more. If you had to stay on a monthly basis, how frequently
9 are your managers having to screen for interviews?

10 A. Five to 10 interviews a month.

11 Q. All right. Then going to that interviewing and hiring
12 process, is that something that you also addressed during the
13 manager's training?

14 A. Yes.

15 Q. Look back to the box seven on the certification, do you
16 see where it says "Participate in promotion decisions"?

17 A. Yes.

18 Q. And this is also -- can you zoom out, actually the whole
19 certification, thank you. "Participate in promotion
20 decisions", is this also the responsibility of managers at
21 your store?

22 A. Yes.

23 Q. And how do they participate in promotion decisions?

24 A. If they have an associate that they feel is doing a
25 really good job, then we would talk about whether they should

1 be a trainer.

2 Q. And what role do you expect the manager to take in
3 moving that person towards becoming a trainer?

4 A. Again, I'm not there all of the time, so I would rely on
5 my managers to make sure that as a trainer they have to be
6 trained on every position. So I would make sure that the
7 manager was completing that. Making sure that they are
8 training them, or the production trainer is training them, so
9 they can get to the next level.

10 Q. And as a general manager, do you rely on your manager's
11 suggestions about people that they should be promoted?

12 A. Of course.

13 Q. Can you give us an example of how that has occurred in
14 your store?

15 A. I had a really good grill guy on second shift. I didn't
16 work with him very much. My managers said that they thought
17 that he should be a production trainer. So we moved forward
18 with that, and had him fill out the paperwork and get his
19 file ready for trainer class.

20 Q. So if you will see on the certification form, the
21 participation and promotion decisions, do you see that's
22 listed under general manager, restaurant manager, and
23 manager?

24 A. Yes.

25 Q. How do you believe that's a joint responsibility of the

1 whole management team?

2 A. I'm sorry, could you repeat that?

3 Q. Yes. I was asking it is listed under each category of
4 managers, so if you can explain how that's a joint
5 responsibility of the whole management team?

6 A. The promotions?

7 Q. Yes.

8 A. Yes. Once we've discussed them coming to me with
9 suggestions, and us talking about whether we think that
10 person would be a good trainer or not.

11 Q. So it is something that all of you are watching
12 employees who maybe have potential or want to promote into
13 another position?

14 A. Correct.

15 Q. Is that something you also cover during manager
16 training?

17 A. I'm not sure.

18 Q. In terms of associate development, that sort of thing?

19 A. Yes, yes.

20 Q. If you can zoom back into the manager column, we will
21 get down to the bottom. Do you see where it says,
22 "Participate in discipline decisions"?

23 A. Yes.

24 Q. Is this also a responsibility of managers at your store?

25 A. Yes.

1 Q. Can you explain to the jury how managers can participate
2 in discipline?

3 A. If an associate is -- if you have an associate that's
4 late, the manager would talk to them. If it becomes an
5 ongoing issue, then the manager would have to write them up
6 for that.

7 Q. So would a manager be able to issue verbal counseling
8 with the employee coming in late without getting your
9 approval?

10 A. Yes.

11 Q. Would they be able to complete a written write up of
12 that person without getting your approval?

13 A. Yes.

14 Q. When is it that you have to step in and give approval
15 for discipline decisions?

16 A. Termination.

17 Q. As a general manager, do you rely on your managers to
18 give you recommendations, or talk with you about employees
19 who need discipline?

20 A. Yes.

21 Q. Can you give us an example of when that has occurred?

22 A. Whenever, as I was saying before, if an associate is
23 late, and they are consistently late, then the manager would
24 need to write them up. It is better to do it at that time
25 than to wait for the general manager to come in and find a

1 time with that associate to do that. So I rely on my
2 managers to do that kind of discipline.

3 Q. And employee discipline, is that something you cover
4 during manager training?

5 A. Yes.

6 Q. Looking to the last item on the certification, do you
7 see where it reads, "Participate in termination decisions"?

8 A. Yes.

9 Q. Okay. While you just described you have to give the
10 final approval on termination decisions. Participating in
11 those, is that something you expect of your managers as well?

12 A. Yes.

13 Q. And can you give us an example of how your managers have
14 played a role in a termination decision?

15 A. Yes. So I had an associate that worked overnights,
16 third shift, and sometimes she would lose her cool. So she
17 had cursed in the dining room, and the manager let me know
18 about that, and I suggested that we terminate her.

19 Q. Did the manager take any steps of discipline towards
20 that employee?

21 A. No, she sent her home at that time.

22 Q. But in terms of like what you said, proceeding to
23 termination, she had to get your weigh in on that?

24 A. Yes.

25 Q. And as a general manager, do you rely on your manager's

1 suggestions or concerns about employees who need to be fired?

2 A. Yes.

3 Q. Now you can take that exhibit down. Last week we heard
4 about some issues facing Steak'n Shake restaurants in terms
5 of understaffing. As a training store, is that something
6 that you have to deal with from time to time understaffing?

7 A. Yes.

8 Q. Is it a reoccurring issue?

9 A. Yes.

10 Q. And in your experience at multiple Steak'n Shake stores,
11 how do managers have the ability to work against
12 understaffing?

13 A. They have to make sure that they are checking
14 applications, and calling, and setting up interviews, making
15 those things happen.

16 Q. How do you train managers if they are coming through
17 your training program to be aware that turnover is an issue,
18 and here is what you can do to deal with it?

19 A. We talk about turnover as far as making sure that you
20 are flexible with the associate's schedules, you know, high
21 school kids don't want to work every weekend. You have to
22 work around their extracurricular activities, things like
23 that. So making sure that you are flexible with scheduling,
24 that helps with turnover.

25 Also how the shift is set up so nobody wants to

1 work in chaos. So if the manager isn't setting the shift up
2 like we talked about with the 14 point program, then the
3 shift just turns to chaos. So nobody wants to work in that.
4 so I think a lot of people quit because of that. That
5 affects turnover.

6 Q. I'm sorry?

7 A. No, I'm sorry.

8 Q. Now in addition to all of these requirements that we
9 have just gone over, and the things a manager has to focus on
10 over the course of a shift, sometimes they do have to step in
11 on stations, would you agree with that?

12 A. Yes.

13 Q. Now do those management duties disappear or cease if
14 they have to step onto a station?

15 A. No.

16 Q. Now when managers are going through the training
17 program, or if you are counseling your own managers, how do
18 you prepare them to handle that situation of being able to
19 step in and out of different stations?

20 A. When I'm training managers, or when I see my own
21 managers, you have to get in the station, help that associate
22 out, and then get out so you are not stuck on a station.
23 There are some days that you will be on a station, but you
24 still have to do all of your management responsibilities.

25 Q. So when you are working a shift as a general manager, do

1 you also occasionally have to step onto a station?

2 A. I do.

3 Q. Could you say how much time you are spending on the
4 floor during the course of one of your shifts?

5 A. On the floor as being just in the restaurant?

6 Q. Being on your feet, moving around the restaurant?

7 A. Depends on the day, so average seven hours.

8 Q. And are you giving that in a course of a 10 hour shift?

9 A. Yes.

10 Q. Could you separate the amount of time that you are
11 focusing on management tasks versus helping on a production
12 and service duty?

13 A. As far as hours, or I'm sorry.

14 Q. I guess I should -- let me ask it a different way. The
15 times that you have to step in and assist on a station, you
16 know, do your management responsibilities go away?

17 A. No.

18 Q. Now looking -- if you can pull up the certification once
19 more. Looking at the certification, from your observations
20 of the manager in your store, would you agree that managers
21 are devoting the most of their shift to management
22 responsibilities?

23 A. Yes.

24 Q. That's even the case in sometimes they have to assist on
25 stations?

1 A. Yes, because even if you are on a station, you are still
2 having to do all of the manager's responsibilities.

3 Q. Okay.

4 A. So if you are working front dress, for instance, you are
5 dressing a burger, and a server comes to you and says, "This
6 coupon is not working. I can't get this coupon to work."
7 You have to stop what you are doing. Go up front while,
8 "well, the coupon isn't working, because you didn't ring in
9 the order correctly. So let me void this off and re-ring it
10 and now the coupon works." Then you go back to dressing
11 burgers.

12 MS. DUCKWORTH: I don't have any other questions
13 right now.

14 THE COURT: Mr. Donelon, Mr. Craig?

15 MR. CRAIG: Thank you, Judge. May I proceed, your
16 Honor.

17 THE COURT: You may.

18 **CROSS-EXAMINATION**

19 BY MR. CRAIG:

20 Q. Hello, Ms. Sanchez.

21 A. Hello.

22 Q. Hello again, right.

23 A. Yes.

24 Q. Okay. Do you remember about six months ago I took your
25 deposition in this case?

1 A. Yes.

2 Q. And that is because you agreed to be a witness on behalf
3 of Steak'n Shake; is that correct?

4 A. Correct.

5 Q. And here you are, okay. Do you recall back when I asked
6 you -- before I asked you any questions, you were sworn in to
7 tell the truth?

8 A. Correct.

9 Q. And in fact, you ensured me you would tell the truth in
10 your deposition?

11 A. Yes.

12 Q. In fact, you did tell the truth in your deposition; is
13 that fair to say?

14 A. Yes.

15 Q. I'm going to hand you a copy of your deposition now,
16 because we may get into it possibly, okay.

17 A. Okay.

18 Q. Did you have an opportunity to read your deposition
19 before today?

20 A. I did.

21 Q. Okay good. So I'd just like to start by making sure the
22 jury understands the scope of your experiences that you just
23 testified about.

24 A. Okay.

25 Q. So for example, the relevant timeframe of this case is

1 September 2012 to the present, okay?

2 A. Okay.

3 Q. If that's not correct, someone will tell me. So as I
4 understand it, the last time you actually were in the manager
5 position was back in 2000?

6 A. Correct.

7 Q. And you have been the general manager at the Steak'n
8 Shake restaurant in Washington since November of 2014?

9 A. Correct.

10 Q. Continuously?

11 A. Yes.

12 Q. So for just over four years, you have been working out
13 in Washington, right?

14 A. Yes.

15 Q. And since November of 2014, you have not worked at any
16 other Steak'n Shake restaurants; is that correct?

17 A. Correct.

18 Q. So certainly as it relates to the last four plus years,
19 your experiences are going to be limited to that one Steak'n
20 Shake restaurant you have worked at out in Washington, true?

21 A. Yes.

22 Q. And for that matter, your restaurant manager, Stacey
23 Odom has been working continuously out in Washington with you
24 for at least the last three plus years; is that correct?

25 A. Yes.

1 Q. And you and Ms. Odom work together at the same
2 restaurant?

3 A. Yes.

4 Q. And it is your understanding she will be coming in and
5 testifying after you?

6 A. She is.

7 Q. Okay, good. And your and Ms. Odom's restaurant in
8 Washington is a training restaurant?

9 A. Yes.

10 Q. And it has been a training restaurant since at least
11 2015?

12 A. Yes.

13 Q. So for the last four years, you and Ms. Odom have been
14 working strictly at a training restaurant; is that correct?

15 A. Yes.

16 Q. And of course, the vast majority of restaurants in the
17 St. Louis group market are not training restaurants; is that
18 correct?

19 A. Correct.

20 Q. So, for example, anyone who is hired to be a manager at
21 steak'n Shake is first going to spend several weeks at a
22 training restaurant like yours first; is that correct?

23 A. Yes, seven to eight.

24 Q. And then they get assigned to their official restaurant,
25 which likely will not be a training restaurant; is that true?

1 A. Correct.

2 Q. And while they are at the training restaurant such as
3 yours, one thing the managers in training do is they learn
4 the various production and service duties; is that true?

5 A. Correct.

6 Q. And in fact, the managers in training become experts in
7 all of the station work; is that correct?

8 A. Yes.

9 Q. And it is also a fact that the managers in training
10 spend a lot of time actually performing the production and
11 service duties at the training restaurant; is that true?

12 A. For the first three weeks, they are training on the
13 station, and then they get some extra practice throughout the
14 next four weeks.

15 Q. My question though is the managers in training actually
16 spend a lot of time actually performing the various
17 production and service duties at the training restaurant; is
18 that correct?

19 A. Yes, correct.

20 Q. Okay. And so in that sense, the managers in training
21 are there helping to perform the production and service
22 duties with the permanently assigned employees; is that
23 correct?

24 A. Yes.

25 Q. And so at a training restaurant like yours, you have the

1 permanent assigned employees, plus you have the managers in
2 training rotating through; is that correct?

3 A. Correct.

4 Q. So you have some extra bodies there working at a
5 training restaurant as opposed to a non-training restaurant;
6 is that correct?

7 A. Correct.

8 Q. And again, the typical steak'n Shake restaurants are not
9 training restaurants; is that true?

10 A. Correct.

11 Q. And the typical steak'n Shake restaurants are not going
12 to have those managers in training rotating through to help
13 with the production and service duties; is that correct?

14 A. Correct.

15 Q. And so when counsel asked you about the labor budgets
16 being the same at a training restaurant and a non-training
17 restaurant, what you are referring to are the labor budgets
18 for the hourly employees; is that correct?

19 A. Correct.

20 Q. Okay. And for that matter, I recall you testified in
21 your deposition that you actually, at least six months ago,
22 had two restaurant managers assigned to your restaurant; is
23 that correct?

24 A. Correct.

25 Q. Do you still have two restaurant managers?

1 A. I do.

2 Q. Okay. So you have Ms. Odom and then another restaurant
3 manager?

4 A. Right.

5 Q. All right. So to summarize at your training restaurant
6 in Washington, there is the general manager, which is you, of
7 course?

8 A. Correct.

9 Q. And then you have two restaurant managers, right?

10 A. Yes. One is on limited duty though.

11 Q. Okay. But you have had two restaurant managers assigned
12 at your restaurant; is that correct?

13 A. Yes.

14 Q. And you have obviously the permanently assigned managers
15 at your restaurant?

16 A. Correct.

17 Q. And then you also have the managers in training rotating
18 through the restaurant?

19 A. Correct.

20 Q. And then of course you have the hourly employees; is
21 that correct?

22 A. Correct.

23 Q. Including the production trainers and the service
24 trainers?

25 A. Yes.

1 Q. Okay. I want to ask you about your experiences as they
2 relate to managers at Steak'n Shake.

3 A. Okay.

4 Q. Based on the scope of your experiences that we have
5 discussed.

6 A. Okay.

7 Q. Okay. I want to start with things we can agree on.

8 A. Okay.

9 Q. It is always better to agree than disagree, right?

10 A. Sure.

11 Q. Okay. Alright, so for example, based on your
12 observations, understaffing of labor has been an ongoing and
13 constant issue at Steak'n Shake restaurants, true?

14 A. True.

15 Q. And when we say understaffed, we are referring to the
16 understaffing of the hourly production and service workers;
17 is that correct?

18 A. Correct.

19 Q. And you would agree that being understaffed on an hourly
20 basis causes problems with getting the production and service
21 duties performed; is that correct?

22 A. Yes.

23 Q. And being understaffed means salaried management
24 employees have to perform more of the production and service
25 duties; is that correct?

1 A. Yes.

2 Q. And based on your observations, even at the training
3 store, managers are performing those production and service
4 duties every day; is that true?

5 A. Every day?

6 Q. Every day?

7 A. Yes.

8 Q. Okay. On any average typical day, even at a training
9 store such as yours, managers are doing things likes dropping
10 fries?

11 A. Yes.

12 Q. Delivering things like delivering food to the customers?

13 A. Yes.

14 Q. They are helping out at the grill and dress stations?

15 A. Yes.

16 Q. They are cleaning up after customers?

17 A. Yes.

18 Q. They are making shakes and getting drinks for the
19 customers?

20 A. Yes.

21 Q. They are taking delivery and the drive-thru orders?

22 A. Yes.

23 Q. And they are cashing customers out at the register?

24 A. Yes.

25 Q. And these are all production and service manual labor

1 duties; is that correct?

2 A. Yes.

3 Q. That we would see managers performing on an average
4 typical day even at a training restaurant like yours in
5 Washington; is that correct?

6 A. Yes.

7 Q. And the reality is that managers very often have to
8 perform these manual labor duties because of the
9 understaffing problems that we discussed; is that true?

10 A. Yes.

11 Q. And these are production and service duties that hourly
12 employees are hired to perform?

13 A. Yes.

14 Q. Based on your experience without quality products and
15 quality services, the restaurants will fail?

16 A. Yes.

17 Q. And based on your experience, if the production and
18 service duties don't get performed, the restaurant will not
19 succeed, true?

20 A. Correct.

21 Q. And this is why managers are directed to perform
22 production and service duties first and foremost; is that
23 correct?

24 A. No. I think it is their job to make sure that those
25 things are happening.

1 Q. Do you recall I asked you a question in your deposition
2 about whether managers must perform the production and
3 service duties first and foremost; do you recall that
4 question?

5 A. I do not specifically, no.

6 Q. Let me put this is up. Then I'll ask you the question,
7 and we can look at your deposition, if we need to. If I can
8 get the highlighter out of my jacket. Okay, let me show you
9 what has been marked as Plaintiff's Exhibit 7. It has been
10 admitted. It is a document everyone is very familiar with I
11 think by now. I think counsel went over this. The one you
12 signed as a restaurant manager, right?

13 A. Correct.

14 Q. Okay. It is a certification of job duties?

15 A. Yes.

16 Q. That's what this document is. And so this may ring a
17 bell, remember we went over this line here, "Although you
18 will be expected to assist your associates with guest service
19 whenever necessary, you should -- should devote the majority
20 of your day to your primary management tasks." Do you
21 remember we talked about that in your deposition?

22 A. Yes.

23 Q. And do you recall and you agreed to that means managers
24 must always perform production and service duties first when
25 necessary?

1 A. Yes.

2 Q. All right. And the truth is that what managers are
3 supposed to spend a majority of their time on in theory does
4 not always happen in reality; is that correct?

5 A. Correct.

6 Q. In other words, what a manager may be responsible for on
7 paper is not the same as what the job duties they may
8 actually be performing, correct?

9 A. Correct.

10 Q. And that would apply to job duties they are supposed to
11 do, or job duties that are expected of them isn't necessarily
12 what they are actually doing, correct?

13 A. Correct.

14 Q. Let me ask you one more question related to the topic of
15 understaffing, and then we'll move on.

16 A. Okay.

17 Q. Steak'n Shake has a corporate controlled labor
18 scheduling system that determines the number of hours that
19 can be scheduled at the restaurant for the hourly workers; is
20 that correct?

21 A. Correct.

22 Q. And even as a general manager, there are corporate
23 mandated parameters that you have to adhere to; is that
24 correct?

25 A. Correct.

1 Q. And the schedules at the restaurant have to be reviewed
2 and approved by the district manager?

3 A. Yes.

4 Q. And you would agree as a general manager, the managers
5 have not had any involvement in handling the scheduling of
6 the employees; is that correct?

7 A. Correct.

8 Q. All right. I think another thing we can agree on is
9 that pretty much every task at the restaurant is controlled
10 by a mandatory Steak'n Shake policy or procedure; is that
11 correct?

12 A. Correct.

13 Q. And these mandatory policies and procedures are actually
14 referred to as nonnegotiable; is that true?

15 A. Correct.

16 Q. And you would agree that managers may not deviate from
17 the nonnegotiable steak'n Shake policies and procedures?

18 A. Correct.

19 Q. And in fact, managers must follow these nonnegotiable
20 policies and procedures 100 percent of the time; is that
21 true?

22 A. True.

23 Q. And in fact, you as a general manager demand that your
24 employees follow these nonnegotiable steak'n Shake policies
25 and procedures 100 percent of the time?

1 A. Yes.

2 Q. So for this reason, the manager's role at Steak'n Shake
3 is to just do the job as directed by Steak'n Shake's policies
4 and procedures, correct?

5 A. Yes.

6 Q. And the manager's role at Steak'n Shake is not to be --
7 is not to decide how that work gets done at the restaurant;
8 is that true?

9 A. I don't understand.

10 Q. The manager's role at Steak'n Shake is not to be
11 deciding how the work gets done. How the work gets done is
12 controlled by the mandatory Steak'n Shake's policies and
13 procedures?

14 A. Yes.

15 Q. All right. Let's talk a little bit about the roles of
16 the general manager and the restaurant manager.

17 A. Okay.

18 Q. Okay. I believe you held both positions at one time; is
19 that correct?

20 A. I have.

21 Q. You would agree that the general manager is the person
22 ultimately responsible for everything within the four walls
23 of the restaurant; is that correct?

24 A. Correct.

25 Q. And as a general manager, you are the supervisor over

1 all of the employees at the restaurant, true?

2 A. Correct.

3 Q. That includes the managers?

4 A. Yes.

5 Q. And that includes the hourly employees?

6 A. Yes.

7 Q. And even when you are not physically present at the
8 restaurant, you are still their supervisor; is that correct?

9 A. Yes.

10 Q. And as a general manager, you have duties and authority
11 that managers certainly do not have?

12 A. Yes.

13 Q. I'm sorry, I may have spoken over you.

14 A. That's correct.

15 Q. Thank you. Now above the restaurant level, you have a
16 district manager as your supervisor, correct?

17 A. Not at this point in time, but the time before, yes.

18 Q. There has been some change recently?

19 A. There has.

20 Q. Okay. How about we talk since 2012 to the present,
21 overall have you had a district manager as your supervisor?

22 A. Yes.

23 Q. All right, that's fair. And based on your experience
24 over that period of time, the district managers are involved
25 in the day-to-day functions of the restaurant?

1 A. Yes.

2 Q. All right. And so, for example, the district managers
3 are able to remotely watch the ongoing performance of the
4 restaurant as the day progresses?

5 A. Yes.

6 Q. And things that the district manager will be watching on
7 a daily basis include the restaurant sales numbers?

8 A. Yes.

9 Q. The restaurant's drive thru times?

10 A. Yes.

11 Q. And also the hourly labor numbers; is that correct?

12 A. Correct.

13 Q. And in your experience if hourly labor is deemed too
14 high, the district manager will contact you or the restaurant
15 about that; is that correct?

16 A. Yes.

17 Q. And the district manager might call, text, or even
18 e-mail?

19 A. Yes.

20 Q. And the district manager will tell you to get rid of
21 some labor; is that correct?

22 A. Yes.

23 Q. Which means get rid of the hourly labor; is that
24 correct?

25 A. Yes.

1 Q. I'm sorry, go ahead.

2 A. Yes.

3 Q. Thank you. And the district managers tell you to get
4 rid of hourly workers who perform production and service
5 work; is that correct?

6 A. Correct.

7 Q. All right. Below the general manager of course is the
8 restaurant manager; is that correct?

9 A. Yes.

10 Q. Thank you. And you would agree that a restaurant
11 manager has duties and responsibilities that prepare them for
12 the general manager's job?

13 A. Yes.

14 Q. And these are duties and responsibilities that someone
15 in the manager's position is not necessarily going to have,
16 correct?

17 A. Correct.

18 Q. And again, at your training restaurant, you have two
19 restaurant managers?

20 A. Correct.

21 Q. So we discussed that when managers are hired, they first
22 go to a training restaurant for their training before they
23 are assigned out likely to a non-training restaurant, right?

24 A. Yes.

25 Q. Okay. But when the hourly production and service

1 employees are hired, they are actually trained at the
2 restaurant they are assigned to?

3 A. Yes.

4 Q. And it is the production and service trainers who are
5 specifically responsible for the training of those hourly
6 workers; is that correct?

7 A. Correct, if the store has trainers.

8 Q. If the store has trainers, but the production and
9 service trainers are the employees designated the
10 responsibility for training the hourly employees; is that
11 correct, that's why they are called trainers?

12 A. Right.

13 Q. And production and service trainers are also hourly
14 overtime eligible employees?

15 A. Yes.

16 Q. All right. So I think another thing we can agree on is
17 that the general manager is the person responsible at the
18 restaurant for handling any sort of human resource type of
19 employee complaints; is that correct?

20 A. Correct.

21 Q. And it is not the manager's duty to resolve any sort of
22 employee human resource type of complaint?

23 A. Correct.

24 Q. There is another thing we can agree on that is the
25 managers do not decide the pay rates or pay raises of

1 employees, correct?

2 A. That's correct.

3 Q. All right. And you would agree that if an employee has
4 a problem with their pay, they need to take it up with either
5 a GM or HR?

6 A. Yes.

7 Q. But for sure the managers are not responsible for
8 handling any sort of complaints that employees have about
9 their pay, correct?

10 A. Correct.

11 Q. All right. Let's talk about your experience with
12 managers hiring and firing employees.

13 A. Okay.

14 Q. Okay. I want to start with firing.

15 A. Okay.

16 Q. You would agree that the general manager is the person
17 with the authority to fire employees at the restaurant?

18 A. Correct.

19 Q. All right. And you would also agree that the managers
20 do not have the authority to fire employees on behalf of
21 steak'n Shake?

22 A. Correct.

23 Q. Now let's talk about managers hiring employees at
24 steak'n Shake.

25 A. Okay.

1 Q. Okay. As an initial matter, you would absolutely agree
2 that it is steak'n Shake's corporate policy that managers do
3 not have the authority to hire employees on their own; is
4 that correct?

5 A. Correct.

6 Q. All right. But as I recall, counsel asked you if you
7 had delegated that authority to managers. Do you recall that
8 question?

9 A. Yes.

10 Q. But the truth is that your training restaurant in
11 Washington, based on your deposition testimony, you said you
12 allowed one manager to hire two people on their own; is that
13 correct?

14 A. Yes.

15 Q. One manager, correct?

16 A. Since then, I have had another manager.

17 Q. Since your deposition six months ago?

18 A. Yes.

19 Q. At the time of your deposition, there was one?

20 A. Yes.

21 Q. There has been another one since?

22 A. Yes.

23 Q. Okay. And this would be over the last four years that
24 you have been at the Washington restaurant; is that correct?

25 A. Correct.

1 Q. But again, you admit that it is Steak'n Shake's normal
2 practice and normal procedure for managers not to be making
3 hiring decisions, correct?

4 A. Correct.

5 Q. I want to ask you a little bit about your observations
6 of manager's involvement with interviewing?

7 A. Okay.

8 Q. When we visited six months ago, I asked you about your
9 observations with manager's interviewing; do you recall that?

10 A. Yes.

11 Q. You would agree that the normal practice is for managers
12 to participate in just the first or initial interviews?

13 A. Correct.

14 Q. And then you as a general manager, or one of your two
15 restaurant managers will conduct that second final interview?

16 A. Correct.

17 Q. And the general manager will ultimately make the hiring
18 decision?

19 A. Correct.

20 Q. Maybe with the restaurant manager as well I think you
21 said?

22 A. Yes.

23 Q. Okay. Now as far as interviewing goes, I want to make
24 sure we are clear on this. You estimated that over the last
25 four years that your managers have handled first interviews

1 typically once a week; do you recall that?

2 A. Yes.

3 Q. Okay. And sometimes no interviews at all in a week?

4 A. Correct.

5 Q. I think you estimated that these initial interviews last
6 about 15 minutes each?

7 A. Yes.

8 Q. So at least as of six months ago about one, 15-minute
9 initial interview a week on average by the manager; is that
10 correct?

11 A. Yes.

12 Q. And I think you did testify that the managers have to
13 use a mandatory Steak'n Shake interview form in that
14 interview, correct?

15 A. Correct.

16 Q. And they have to make sure by using that form that the
17 applicant meets the Steak'n Shake's minimum requirements that
18 are set out?

19 A. Yes.

20 Q. I want to ask you a little bit about managers handling
21 the performance evaluations?

22 A. Okay.

23 Q. Okay. And I think you might have said that you have
24 delegated that as well. Did you say that in your testimony?

25 A. I have.

1 Q. Do you recall we discussed that at your deposition as
2 well; is that right?

3 A. Yes.

4 Q. In your deposition, you had stated that over the last
5 four years, you could only identify one manager who handled
6 one employee's performance evaluation; do you recall that?

7 A. Yes.

8 Q. Is that still true?

9 A. Yes.

10 Q. Okay. So we are talking about one manager conducting
11 one performance evaluation?

12 A. Yes.

13 Q. Okay. And that one manager who handled that one
14 performance evaluation, that was back in 2016?

15 A. Yes.

16 Q. Okay. And you don't remember the name of the employee
17 who got the performance evaluation; is that correct?

18 A. Correct.

19 Q. But this performance evaluation would have been in
20 writing?

21 A. Correct.

22 Q. And it would be in Steak'n Shake's records unless it was
23 destroyed; is that correct?

24 A. Correct.

25 Q. All right. Let me ask you about discipline of

1 employees.

2 A. Okay.

3 Q. Okay, thank you. As I recall your deposition testimony,
4 you recall two managers who have handed out written
5 disciplines over the last four years; do you recall that?

6 A. Yes.

7 Q. Do you want some water?

8 A. I'm good.

9 Q. Two managers over the last four years, correct?

10 A. Correct.

11 Q. And again, that would be at the training restaurant in
12 Washington?

13 A. Yes.

14 Q. And I think you said you don't remember how many write
15 ups that these two manager did; is that correct?

16 A. Correct.

17 Q. And again, based on your understanding since they were
18 write ups, they were in writing, correct?

19 A. Correct.

20 Q. Steak'n Shake should still have them in their records
21 somewhere?

22 A. Correct.

23 Q. And I think you testified to this on direct. You would
24 agree that as the general manager, you are the person
25 ultimately responsible for discipline at your restaurant; is

1 that correct?

2 A. Correct.

3 Q. And actually based on your observations, managers spend
4 very little overall time involved in any sort of written
5 discipline, correct?

6 A. Written, yes.

7 Q. All right. Let's stick with things we can agree on.
8 Managers are typically scheduled to work 50 hours a week,
9 correct?

10 A. Correct.

11 Q. And in fact, sometimes managers will work more than
12 50 hours a week?

13 A. Yes.

14 Q. And I think you may remember in your deposition I asked
15 you a long list of various tasks. Some of them sounded odd,
16 but I asked you if you had ever personally observed managers
17 performing all of the different tasks; do you remember that?

18 A. Yes.

19 Q. Okay, thank you. I do need to do that one more time; is
20 that fair?

21 A. Yes.

22 Q. Okay. I'll just go down the list. You tell me if you
23 have ever personally observed managers performing those
24 tasks?

25 A. All right.

1 Q. Tax work for Steak'n Shake?

2 A. No.

3 Q. Finance work for Steak'n Shake?

4 A. No.

5 Q. I want to ask you about accounting, but I want to make
6 sure we are on the same page on accounting. I'm not talking
7 about cashing a customer's bill, hourly employees do that; is
8 that correct?

9 A. Correct.

10 Q. Actual accounting work, right, CPA, balancing books?

11 A. No.

12 Q. No. You don't see managers performing that stuff?

13 A. Correct.

14 Q. Okay. Obtaining insurance for Steak'n Shake?

15 A. No.

16 Q. Advertising work for Steak'n Shake?

17 A. No.

18 Q. Marketing work for Steak'n Shake?

19 A. No.

20 Q. Doing any sort of research on behalf of Steak'n Shake?

21 A. No.

22 Q. I want to ask you about safety and security at your
23 restaurant. Do you recall we talked about that a little bit
24 in your deposition?

25 A. Yes.

1 Q. I think you agreed that all employees at Steak'n Shake
2 have a responsible for safety and security at the restaurant,
3 true?

4 A. True.

5 Q. And I think we discussed that managers have
6 responsibility for things like the food safety line check?

7 A. Yes.

8 Q. I think you discussed that with Steak'n Shake's
9 attorney, right?

10 A. Yes.

11 Q. Okay. That's where temperatures of food, things like
12 that, are taken?

13 A. Correct.

14 Q. But you agree that an hourly operation supervisor can
15 also be responsible for that duty as well, true?

16 A. True, if they are running the shift.

17 Q. Right. But an hourly employee could have that same
18 responsibility; is that correct?

19 A. Yes.

20 Q. All right. Back to those tasks that you personally
21 observed managers performing, human resource work for Steak'n
22 Shake?

23 A. No.

24 Q. Employee benefits?

25 A. No.

1 Q. Labor relations?

2 A. No.

3 Q. I'm going to combine a few to make it quicker, public
4 relations, government relations?

5 A. No.

6 Q. Any computer network?

7 A. No.

8 Q. Any internet or database administration?

9 A. No.

10 Q. Choosing and hiring contractors for work that needs to
11 be done at the restaurant?

12 A. No.

13 Q. And I think you discussed a little bit about repairs
14 sometimes that are required at the restaurants?

15 A. Yes.

16 Q. Okay. I recall it seemed consistent with your testimony
17 in your deposition. What a manager can do is fill out a form
18 and send it to Steak'n Shake's maintenance?

19 A. Correct.

20 Q. And the maintenance takes over?

21 A. Correct.

22 Q. What about back to those tasks, what about negotiating
23 any contracts for Steak'n Shake?

24 A. No.

25 Q. What about determining the type of equipment that can be

1 used at the restaurant?

2 A. No.

3 Q. what about making determinations or setting the labor
4 expense budgets for restaurants?

5 A. No.

6 Q. what about formulating any new or different operating or
7 management policies?

8 A. No.

9 Q. what about providing advice to corporate management as
10 to how Steak'n Shake should run its business?

11 A. No.

12 Q. All right. while we are on the subject of giving advice
13 to corporate management, I believe in your deposition you had
14 told me that once a year Steak'n Shake's corporate comes to
15 St. Louis to meet with restaurant management?

16 A. Yes.

17 Q. Do you recall that testimony?

18 A. Yes.

19 Q. And who actually presides over those meetings?

20 A. Sardar Biglari.

21 Q. Sardar Biglari, who is that?

22 A. CEO.

23 Q. Of Steak'n Shake?

24 A. Correct.

25 Q. And I think you said Mr. Biglari was at the road show?

1 A. Correct.

2 Q. And these road shows took place at the hotel conference
3 room in St. Louis, something like that?

4 A. Yes.

5 Q. And Mr. Biglari and other executives will discuss the
6 business?

7 A. Correct.

8 Q. And the employees from the St. Louis group market attend
9 Mr. Biglari's road shows or the district managers and general
10 managers; is that correct?

11 A. Correct.

12 MR. CRAIG: Ma'am, I have no further questions,
13 thank you.

14 THE COURT: Ms. Duckworth.

15 MS. DUCKWORTH: A few questions.

16 **REDIRECT EXAMINATION**

17 BY MS. DUCKWORTH:

18 Q. Okay. Mr. Craig asked you about managers performing
19 production and service duties during the course of their
20 shift; do you recall that?

21 A. Yes.

22 Q. Now, as general manager, do you expect that managers will
23 step in and out of stations as needed, or stay on the station
24 the entire time?

25 A. Step in and out as needed.

1 Q. Now before you were a general manager at the Washington
2 store, were you also a general manager at Cave Springs in
3 O'Fallon?

4 A. Yes.

5 Q. And when you were working at those stores, would you say
6 that the description of what a manager does was different at
7 those other stores?

8 A. No.

9 Q. You expected the same responsibilities of managers at
10 those other stores?

11 A. Correct.

12 Q. Now do you recall Mr. Craig also asked you about certain
13 Steak'n Shake policies that are set out by corporate that all
14 employees have to follow; do you recall that?

15 A. Yes.

16 Q. As a general manager, do you also have to follow those
17 nonnegotiable rules and Steak'n Shake's policies?

18 A. Yes.

19 Q. And in your experience working at multiple Steak'n Shake
20 stores, why does it make sense to have consistent companywide
21 policies?

22 A. well, there is a certain way to -- I mean, so that it is
23 consistent over every store so that when a customer goes to
24 the Steak'n Shake at Cave Springs, they are going to get a
25 six ounces of chili at that Steak'n Shake, and a six ounces

1 of chili in a cup at Washington Steak'n Shake, everywhere
2 they go. So the consistency is that the customer should
3 expect.

4 Q. When you are not physically present in a store in the
5 Washington store, but you have a manager who is the manager
6 on duty, are they the highest-ranking person at the store?

7 A. Yes.

8 Q. And do you expect them to be in charge?

9 A. Yes.

10 Q. And do you expect them to manage and lead shifts even if
11 you are not physically present?

12 A. Yes.

13 MS. DUCKWORTH: I have no further questions.

14 THE COURT: Mr. Craig?

15 **RE CROSS EXAMINATION**

16 BY MR. CRAIG:

17 Q. Again, ma'am, expectations are not the same as reality
18 necessarily, true?

19 A. Correct.

20 MR. CRAIG: Thank you, Ms. Sanchez. No further
21 questions.

22 THE COURT: Any other questions, Ms. Duckworth?

23 MS. DUCKWORTH: No, your Honor.

24 THE COURT: You can step down. Ladies and
25 gentlemen, before we start another witness, it may be a good

1 time to go ahead and take a quick break and stretch your legs
2 and get a drink of water. If you will leave your notebooks
3 on your chair.

4 (At 10:31 a.m., the proceedings stood in temporary
5 recess. At 10:50 a.m., the proceedings returned to open
6 court.)

7 THE COURT: You may proceed.

8 MS. WILLIAMS: Thank you, your Honor, we call Stacy
9 Odom.

10 THE COURT: Ms. Odom, if you will step up here, the
11 Clerk will administer the oath. If you will speak into the
12 microphone, it will help amplify your voice. Counsel, you
13 may proceed.

14 STACEE ODOM,
15 being produced and sworn, testified as follows:

16 DIRECT EXAMINATION

17 MS. WILLIAMS:

18 Q. Thank you, good morning.

19 A. Good morning.

20 Q. Please state your name for the record?

21 A. Stacey Odom.

22 Q. Are you employed?

23 A. I am.

24 Q. Where do you work?

25 A. I work for Steak'n Shake.

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

Case no.: 1:21-cv-1507-TWP-MG

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION**

Exhibit L

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MISSOURI

3 SANDRA DRAKE, et al.,)
4 Plaintiffs,)
5 vs.) Cause No. 4:14CV-1535JAR
6 STEAK'N SHAKE OPERATIONS INC.,)
7 Defendant.)

8 PARTIAL TRIAL TRANSCRIPT
9 (Testimony of Christina Sanchez & Stacey Odom)

10 BEFORE THE HONORABLE JOHN A. ROSS
11 UNITED STATES DISTRICT JUDGE

12 FEBRUARY 25, 2019

13 APPEARANCES

14 For Plaintiffs:

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25 Ms. Erin Williams
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26 Reported by:

27 Lisa M. Paczkowski, CCR, RPR
28 Official Court Reporter
29 United States District Court
30 111 South 10th Street
31 St. Louis, MO 63102
32 (314)244-7985

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2 and get a drink of water. If you will leave your notebooks
3 on your chair.

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17 MS. WILLIAMS:

18 Q. Thank you, good morning.

19 A. Good morning.

20 Q. Please state your name for the record?

21 A. Stacey Odom.

22 Q. Are you employed?

23 A. I am.

24 Q. Where do you work?

25 A. I work for Steak'n Shake.

1 Q. How long have you been employed by Steak'n Shake?

2 A. It has been 16 and a half years.

3 Q. Can you walk us through your career progression
4 generally where did you start, what position, what store, and
5 take us up through today?

6 A. Okay. I was hired as a manager in training in 2002 in
7 Kansas City. I completed my training there and was a manager
8 in a restaurant in Gladstone, Missouri. I was promoted to
9 restaurant manager, and then a few maybe six months later, I
10 was promoted to general manager, moved to the Joplin,
11 Missouri location. And then from there, that restaurant was
12 sold to a franchise owner, and they moved the corporation and
13 I moved to Sullivan, Missouri and was general manager for
14 that restaurant. After being a general manager there, I was
15 then moved to Washington, Missouri, and I was a regular
16 manager at that store for about two months, and then
17 transferred to another location where I was a manager and
18 then transferred back to Washington. Again, I was promoted
19 to restaurant manager, and then have been a general manager
20 once more at two other locations, and then came back to
21 Washington as a restaurant manager.

22 Q. And it sounds like you have worked in every level of
23 management the store manager, restaurant manager, and the
24 general manager; is that correct?

25 A. Yes, it is.

1 Q. Have you always been in corporate owned stores as
2 opposed to franchises?

3 A. I have.

4 Q. And is it fair to say that you have worked at multiple
5 stores throughout the state of Missouri?

6 A. Yes, that is correct.

7 Q. And you currently work in the Washington, Missouri store
8 which is a corporate owned store?

9 A. Yes.

10 Q. Did you say you are a restaurant manager there?

11 A. Currently I am.

12 Q. Are you happy in your role as a restaurant manager?

13 A. Yes.

14 Q. Do you have a typical shift that you usually work?

15 A. I typically work second shift which is the evening
16 shift.

17 Q. Can you give us an idea of the flow of the business on
18 steak'n Shake, when is it busy, when is it slow, and if it is
19 different than weekday versus weekend?

20 A. Typically weekdays we get the dinner rush, which is, you
21 know, usually around the time the sunsets when people come in
22 for dinner. And then after that, it tends to slow down.

23 Once 10 o'clock rolls around, we get a little bit of a rush
24 from people that are getting off of their second shift jobs,
25 and then we get it slows down again, and then that's a

1 typical weekday, and then the weekend is different. It
2 varies like the dinner rush will start at the same time, but
3 it will last a little bit longer, and then we have the late
4 night rush, and then after about one o'clock, we also tend to
5 get a bar rush if people are out and about.

6 Q. Right, got it. So it sounds like it is not busy for a
7 full 10 hour shift; is that fair to say?

8 A. Yes.

9 Q. You do have lulls in there?

10 A. Yes.

11 Q. Now the Washington, Missouri store, is that a training
12 store?

13 A. It is.

14 Q. So do you have then firsthand observations and
15 involvement in how managers are trained?

16 A. Yes.

17 Q. And I want to focus in on the training that managers
18 receive, and just for the sake of clarity, I'm talking about
19 the people who hold the title of manager. As we go through
20 this line of questioning, so I'm clear, but so on what sort
21 of topics do managers train in your store?

22 A. A manager in training would do every aspect of a
23 manager's job. They would be trained on that. Typically
24 when a manager in training works with me, it will be on
25 second shift, and they have already completed training on

1 each station within the restaurant and have also begun doing
2 things like deposits, and food safety line checks. And when
3 they come to second shift, what I train them on are things
4 like doing the end of day process that managers do when they
5 work second shift.

6 Q. Let me back up and ask a couple of followup questions,
7 by the time the mangers are working at Steak'n Shake, they
8 have had the station training?

9 A. They have had all of their station training.

10 Q. And it is accurate to say that managers are trained to
11 work all of the stations in the restaurant?

12 A. Yes.

13 Q. And do you know why that is?

14 A. In order for them to be able to manage properly, and in
15 order to jump in and help when needed, they have to know
16 number one how to run that station, and in order for them to
17 coach an associate if something is not being done or made
18 properly, then they have to know the right way.

19 Q. And then so when they are training with you on second
20 shift, there are certain second shifts or sort of end of the
21 day responsibilities that you do with them?

22 A. Yes.

23 Q. Can you explain more specifically what those are?

24 A. Certainly. For second shift, they have to do an
25 inventory of I believe it is five items every night. They

1 have to gather up things like the discount, and the coupons,
2 and put those away, and do a deposit after midnight, as well
3 as do a food safety line check, and make sure items are at
4 the proper temps, and so everything is put away properly.

5 Q. Are they learning from you generally how to run a second
6 shift through the dinner rush, and the later night rush that
7 you mentioned?

8 A. Yes, they learn that as well.

9 Q. And do you ever put managers in training in charge of
10 the store as part of the training process?

11 A. Yes.

12 Q. How does that work?

13 A. Generally what I will do is when I have a manager in
14 training, the first night I will put the items, put the items
15 that we need to complete I will show them, walk them through
16 those processes, and then by the second or third night, I
17 will tell them okay, you are in charge if an employee comes
18 to me with a question or asking for something, I will tell
19 them that they need to go to you, and you will make that
20 decision, and let them basically run the shift while I'm
21 still there to help them and guide them when needed.

22 Q. Are the managers trained on how to make a schedule?

23 A. Yes. They learn how to with the labor scheduling
24 system.

25 Q. Are managers trained on how to do, or how to order food

1 or supplies?

2 A. Yes, that's actually something that I do with them while
3 they are training with me on second shift.

4 Q. Are managers trained on how to receive a truck order
5 with the food or supplies that has been ordered?

6 A. Yes.

7 Q. Are the managers trained on how to do the bank or safe
8 deposits?

9 A. Yes.

10 Q. Are the managers trained on how to balance the
11 registers, and other money like coupons, and discounts, and
12 gift cards?

13 A. Definitely.

14 Q. Are managers trained on the topic of shift management?

15 A. Yes.

16 Q. Are they trained on hiring processes, how to get good
17 employees?

18 A. Yes.

19 Q. Are they trained on how to retain or keep good
20 employees?

21 A. Yes.

22 Q. Do you interview or recruitment training on second
23 shift?

24 A. Yes. Typically if I do an interview, it will be at the
25 beginning of my shift. So if I am scheduled to be in the

1 restaurant at three or four, depending upon the day, then
2 sometimes there will be an interview for me that day when I
3 arrive.

4 Q. Are there other sorts of recruiting activities that you
5 train managers to do in the lull later in the evening shift?

6 A. Generally after dinner if there is a lull, you know,
7 that's the time that I will take to check the applications
8 and call and set up for interviews.

9 Q. And do you include the managers in training in that
10 process?

11 A. Yes, of course.

12 Q. And is there a reason do you think it is important for
13 managers to be involved in recruiting and interviewing even
14 on the second shift?

15 A. Definitely.

16 Q. Can you say why?

17 A. If you are working that shift, you as a manager are
18 going to know what you need, what stations need to be hired
19 for and filled more so than the manager who is working second
20 shift every week, once a week, or every -- once every two
21 weeks.

22 Q. Okay. Are managers trained on hospitality towards
23 guests?

24 A. Yes.

25 Q. Are managers trained on leading from the front?

1 A. Yes.

2 Q. Are managers trained on how to communicate shift
3 expectations and goals to associates?

4 A. Yes.

5 Q. Are you familiar with the concept of a huddle?

6 A. I am.

7 Q. Is that something that you train managers to do on a
8 second shift?

9 A. Usually they are trained on the first shift, but if they
10 have any questions over it, I can obviously help and guide
11 them through it. We can do a huddle on the second shift as
12 well.

13 Q. And if -- it is one of those situations where you are
14 putting them in charge of the shift while you are there still
15 there. Everyone is communicating the shift goals and
16 expectations to the employees?

17 A. Yes.

18 Q. Are managers trained on how to manage associate work,
19 including providing coaching and feedback?

20 A. Yes.

21 Q. Are managers trained on how to review employee clock-in
22 and clock-out times?

23 A. Yes.

24 Q. Are managers trained on how to make sure the proper
25 breaks are being run at the proper times?

1 A. Yes.

2 Q. And in your experience, is there something do you advise
3 managers in training that they should simply follow the
4 lineup on breaks, or are they supposed to use independent
5 thought when it would be best to run breaks?

6 A. I always use independent thought, and teach that when I
7 train a manager.

8 Q. Are managers trained on -- or I think you said this
9 already, are they trained on auditing and making sure food is
10 safe?

11 A. Yes.

12 Q. Are they trained on how to ensure cleanliness in the
13 restaurant?

14 A. Yes.

15 Q. Are they trained on how to ensure that the employees are
16 being properly trained?

17 A. Yes.

18 Q. And are they trained on the forecasting sales and labor,
19 and making sure that labor is running within a particular
20 budget?

21 A. Yes.

22 Q. Are they trained when it comes to training managers on
23 how to plan schedules, are there expectations given that they
24 should come into a shift, and look at the schedule and the
25 lineup, and figure out where to go from there, or is the

1 training about looking at the schedule when it comes out, and
2 maybe making a plan ahead of time?

3 A. what I was always taught it is something that I would
4 like to teach any manager that I train is that when the
5 schedule is posted, you should look at your shifts that you
6 are the manager for, and plan what you're going to do for
7 that shift. what stations each person is going to be on, and
8 have a plan in place. That way should anything come up, you
9 can adjust accordingly, and work your plan and plan your
10 work.

11 Q. Okay, thank you. So in the training that managers go
12 through in your experience, is it both hands-on training and
13 then also more like classroom or computer-based training?

14 A. Yes.

15 Q. Is there paperwork or booklets that they receive they
16 are supposed to learn or fill out?

17 A. Yes. Each station has -- it outlines what have to be
18 completed for it, as well as learning the station hands on,
19 and then also there is different videos for stations that
20 they can watch.

21 Q. Are there videos or other computer modules for some of
22 the other skills like guest hospitality, or managing cash
23 deposits, or things like that?

24 A. Yes, there are videos for those as well.

25 Q. Are managers trained on the labor scheduling system?

1 A. Yes.

2 Q. As a restaurant manager, you participate in this
3 training of managers in training, right?

4 A. Yes.

5 Q. Now as you work in the store in Washington as a
6 restaurant manager, do you have the opportunity to observe
7 and manage, to observe other managers?

8 A. Yes, I do.

9 Q. Now, I'm getting away from the managers in training, and
10 I'm talking about people who are managers in the store with
11 you?

12 A. Yes.

13 Q. Have you had the opportunity to observe managers in the
14 other stores where you have worked before Washington?

15 A. Yes.

16 Q. So in your experience, do managers -- I want to ask you
17 do they get involved in tasks. Do managers coach employees?

18 A. Yes.

19 Q. How often would you say?

20 A. Every day.

21 Q. In your experience, do managers either train employees
22 themselves, or oversee to make sure that the trainers are
23 doing the necessary training?

24 A. Yes.

25 Q. Is that an expectation of a manager in your estimation?

1 A. Yes.

2 Q. In your experience, do managers assign and sometimes
3 reassign stations for employees?

4 A. Always.

5 Q. Is that something that happens every day?

6 A. Yes.

7 Q. Do managers assign side work and cleaning duties to
8 employees?

9 A. Yes.

10 Q. Is that something that happens every day?

11 A. Always.

12 Q. And then do the managers are they the ones responsible
13 for ensuring that the side work and cleaning has been
14 completed?

15 A. Yes.

16 Q. In your experience do managers actually run breaks for
17 the employees?

18 A. At times they have, yes.

19 Q. And do managers have a role in disciplining employees?

20 A. Yes.

21 Q. What sort of role do they have in that, in the
22 discipline?

23 A. A manager can have a verbal warning with an associate.
24 They can do an oral conversation with them. They can
25 document the conversation that they have had, and whether it

1 is good or bad. It can be either. They can do a written
2 warning, or I have even had, in my own experience as a
3 manager, sent an employee home based on what they are doing
4 on their shift.

5 Q. Do managers, in your experience, actually participate in
6 the interviewing of job applicants?

7 A. Yes.

8 Q. Do you have -- can you say about how often that occurs?

9 A. A manager I would say at least once a week.

10 Q. Is that true even if a store is not fully-staffed. They
11 are spending at least once a week on interviews?

12 A. I would hope more, but at least once a week.

13 Q. All right. In your experience, do managers actually
14 make recommendations on hiring and promotion of employees?

15 A. Yes.

16 Q. And is that true across the various stores you have
17 worked at for Steak'n Shake?

18 A. Yes.

19 Q. In your experience, have managers made recommendations
20 on the termination decisions?

21 A. Yes.

22 Q. And in your experience, do managers have the code to the
23 safe?

24 A. No.

25 Q. They don't?

1 A. I'm sorry, repeat that, please.

2 Q. In your experience, do managers have the code to the
3 safe for the store?

4 A. Yes.

5 Q. And are they responsible for making sure the deposits
6 get into the safe, and that they are correct?

7 A. Yes.

8 Q. In your experience are managers responsible for
9 enforcing company policies?

10 A. Yes.

11 Q. Are managers responsible for food temperature checks and
12 other food safety measures?

13 A. Yes.

14 Q. Now on something like that, is a manager allowed to
15 delegate that responsibility to somebody else?

16 A. They can. They should followup.

17 Q. Is it ultimately the manager's responsibility to make
18 sure it is completed correctly?

19 A. Yes.

20 Q. Are managers responsible for the daily inventory you
21 mentioned?

22 A. Yes.

23 Q. Every shift?

24 A. Every shift.

25 Q. Do managers actually do the work of either making food

1 orders or checking in food orders?

2 A. Yes.

3 Q. Do managers make decisions on who to put on particular
4 stations throughout their shift?

5 A. Yes.

6 Q. Do managers make decisions on when they would be best
7 served to jump on a station, and when they would be best
8 served to jump off that station?

9 A. Yes.

10 Q. Do managers, in your experience, directly handle a
11 customer's complaint?

12 A. Yes.

13 Q. Do they directly handle complaints or conflicts between
14 employees?

15 A. Yes.

16 Q. Now in talking about the food ordering, I understand
17 that there is a computer system that makes recommendations on
18 what amounts of different foods are needed; is that accurate?

19 A. Yes.

20 Q. Now in your experience, are managers simply supposed to
21 follow the recommendations from the computer?

22 A. No.

23 Q. Can you say why not?

24 A. If they only followed the recommendations based on the
25 computer, then they wouldn't order any paper codes, or they

1 wouldn't order nearly enough food items that the restaurant
2 would need.

3 Q. So are the computer recommendations just a guideline?

4 A. Yes.

5 Q. So the manager then would have to put in some thought as
6 to what's going on in the restaurant, what's coming up, and
7 how much we have used and what else we need; is that fair to
8 say?

9 A. Definitely.

10 Q. Now is it accurate to say that managers sometimes do
11 work on stations or serve tables, serve guests at tables in
12 the restaurant?

13 A. Yes.

14 Q. And under what kind of circumstances, in your
15 experience, do managers perform that sort of station work?

16 A. In my experience, it has been only when the restaurant
17 is understaffed.

18 Q. Does it happen when you get a mad rush that was
19 unexpected?

20 A. Yes.

21 Q. And in those sorts of situations when a manager is going
22 to jump on a station, who makes the decision about when to
23 work a station?

24 A. The manager would make that decision.

25 Q. Does the manager have the authority to move other

1 employees around to make it more efficient?

2 A. Definitely.

3 Q. Is the manager's purpose simply to manage the -- strike
4 that. Are managers responsible for actually managing the
5 employees in the store to make sure that the tasks get done?

6 A. Yes.

7 Q. If a manager does not have control or management over
8 the employees in the store, does he end up having to do
9 everything himself?

10 A. I would say most of the time, yeah.

11 Q. And that is probably not the most efficient way to give
12 guests food service, is that a fair statement?

13 A. That's definitely fair.

14 Q. When a manager is working on a station, is he still
15 responsible for managing the store?

16 A. Always.

17 Q. And do those manager functions take priority?

18 A. Manager functions, yes.

19 Q. what sort of functions do managers have or do managers
20 perform during those lulls we talked about earlier, after the
21 dinner rush, before the later night crowd?

22 A. During the lull, that's the time to run breaks, to make
23 sure your employees get that time that they need, doing calls
24 for interviews, doing any manager task that can be done at
25 that time. Setting yourself up for a successful shift.

1 Q. Do you personally think a manager's most important
2 function is making food?

3 A. Is what?

4 Q. Is making food?

5 A. I wouldn't say that's the most important function.

6 Q. what would you say is their most important function?

7 A. Running a shift, being in charge, and making sure that
8 things are being delegated and completed.

9 Q. Making sure the other employees are doing their jobs?

10 A. Correct.

11 Q. In your experience, let me ask you this. In your
12 experience with various stores you have worked at, would it
13 be accurate to say at least half of the employees are high
14 school, college age?

15 A. Yes.

16 Q. Now in your experience, do those employees need
17 supervision?

18 A. Definitely, some more than others.

19 Q. Sure. Is it fair to say some of them wouldn't do
20 anything at all if they didn't have somebody on top of them?

21 A. Some of them, yeah.

22 Q. So do you think that a manager on a given shift is
23 actively involved in making sure employees are doing their
24 jobs and staying on task?

25 A. Yes.

1 Q. Do you, in your experience, do managers exercise
2 independent judgment on say how to handle a customer's
3 complaint?

4 A. They use the learned system which outlines the steps to
5 take in order to resolve a customer complaint, but what they
6 do to resolve it is their own judgment.

7 Q. And their judgment would be based on an assessment of
8 the overall situation with this particular customer?

9 A. Yes.

10 Q. I think we have heard testimony so far that there is an
11 array of options from a simple apology, and I hear you, we
12 are sorry this happened, to making a whole new meal, or comp
13 the entire bill; is that fair to say?

14 A. Yes.

15 Q. So the manager is the one who decides where on the
16 spectrum the appropriate response is?

17 A. Yes.

18 Q. Do managers exercise their own independent judgments in
19 how to best manage the labor and associates on their shifts?

20 A. Yes.

21 Q. In terms of the interviewing process, does a manager
22 have the authority to after a first interview say, you know
23 what, we are not going to move forward with this person?

24 A. Yes.

25 Q. The manager can make a decision not to hire someone

1 without it ever getting to the general manager?

2 A. Correct.

3 Q. In your experience, what authority do managers have, or
4 what spectrum of authority do they have with respect to
5 actually hiring employees?

6 A. I have seen managers hire an employee and offer them a
7 position. I have seen them pass on the applicant, and say no
8 we are not going to hire you, or set up the applicant with a
9 second interview with the general manager.

10 Q. But in your experience, have there been instances where
11 a manager had the authority to actually make a job offer on
12 the spot or on his own?

13 A. Yes.

14 Q. Do managers exercise their independent judgment in
15 making those decisions on when or how much of a disciplinary
16 action to issue to an employee?

17 A. Say that again?

18 Q. It was a bad question. Do managers make or exercise
19 independent judgment first of all on when to issue discipline
20 to employees?

21 A. Yes.

22 Q. And do they make judgment on how severe, or whether it
23 should be a simple coaching conversation, or something more
24 serious like a written warning?

25 A. Yes.

1 Q. In your training of managers, do you encourage them to
2 be a part of that disciplinary process?

3 A. Yes.

4 Q. Do you have an opinion on whether or not the manager is
5 ultimately responsible for whether his shift is successful?

6 A. Yes, I believe that they are the reason whether a shift
7 is successful or not.

8 Q. Plan your work, and then work your plan?

9 A. Correct.

10 Q. In your experience, do managers have benefits, and paid
11 vacations, and the opportunity to bonus?

12 A. Yes.

13 Q. Can you put up Exhibit H-5, which has been admitted,
14 please. All right, now Ms. Odom, do you recognize this
15 document?

16 A. Yes, I do.

17 Q. Is that your signature at the bottom?

18 A. Yes, it is.

19 Q. Before your name was Odom?

20 A. Yes.

21 Q. Got it. All right, so this certification of job duties
22 management is a familiar document to you?

23 A. Yes.

24 Q. Is this something that managers, besides you in your
25 experience, are signing through their employment with Steak'n

1 Shake?

2 A. Yes.

3 Q. Can you call out the manager column, please. I have
4 been going through these things already. I don't want to
5 repeat myself. I want to ask you to scan through, and I know
6 you are familiar with this document, and tell me, in your
7 experience, these tasks are actually what Steak'n Shake
8 expects managers to be doing on their shift?

9 A. Yes.

10 Q. Are managers actually evaluated on their performance of
11 these functions?

12 A. Yes.

13 Q. You can take it down, thanks. Now you as a restaurant
14 manager, do you spend most of your time on shifts like back
15 in the office, or are you out in the kitchen and dining room?

16 A. I spend little bit of time in the office.

17 Q. You are working on your feet the whole day?

18 A. Yes.

19 Q. Do you ever jump on a station?

20 A. Yes.

21 Q. So even though you are a restaurant manager, you are a
22 level above, you still get in the trenches with the employees
23 and do hourly work from time to time?

24 A. Yes.

25 Q. And when you are doing that, do you make a decision of

1 when it is best to jump on?

2 A. Yes.

3 Q. when you are working at a station alongside employees,
4 do you still consider yourself to be their boss?

5 A. Definitely.

6 Q. And when a manager is working alongside employees on a
7 station, do you consider that manager to be their boss?

8 A. Yes.

9 Q. And do you expect the employees in the store to respond
10 to them and treat them as if they are the boss?

11 A. Yes.

12 MS. WILLIAMS: I have no further questions, thank
13 you.

14 THE COURT: Mr. Craig, Mr. Donelson.

15 MR. CRAIG: May I proceed?

16 THE COURT: You may.

17 **CROSS-EXAMINATION**

18 BY MR. CRAIG:

19 Q. Hello, Ms. Odom?

20 A. Yes.

21 Q. Hello again.

22 A. Right.

23 Q. Do you remember me?

24 A. Yes.

25 Q. I'm memorable, so that's good. Do you recall that about

1 six months ago I took your deposition along with Ms. Sanchez?

2 A. Yes.

3 Q. And it was because you agreed to be a witness for
4 steak'n Shake, correct?

5 A. Correct.

6 Q. Obviously you currently work for Steak'n Shake?

7 A. Yes.

8 Q. You intend to continue to work for Steak'n Shake,
9 correct?

10 A. Yes.

11 Q. Okay, fair enough. And before you answered any of my
12 questions, you were sworn in to tell the truth?

13 A. Yes.

14 Q. And in fact, you assured me that you would tell the
15 truth in your deposition?

16 A. Yes.

17 Q. And I think, in fact, you did tell the truth in your
18 deposition, correct?

19 A. Yes.

20 Q. All right. Do you understand you have been sworn under
21 oath here again today to tell the truth?

22 A. Yes.

23 Q. I'm going to hand you a copy of your deposition in case
24 you need to refer to it, is that okay?

25 A. Uh-huh.

1 Q. Have you had an opportunity to review your deposition?

2 A. Yes.

3 Q. Okay, very good. All right, I want to start with making
4 sure the jury understands the scope of your experiences that
5 you just testified to, okay?

6 A. Okay.

7 Q. And for example, the statute of limitations privy here,
8 the relevant time period of this lawsuit is September of 2012
9 to the present, all right?

10 A. Okay.

11 Q. And so, for example, you have not been in an actual
12 manager role since February of 2011; is that correct?

13 A. I believe so. I'm not entirely certain of the date.

14 Q. Well, I asked you about that in your deposition. I know
15 you said February of 2011. Does that sound correct to you?

16 A. It sounds like it would be the right timeframe.

17 Q. I can show you your deposition if you are unsure?

18 A. That's fine.

19 Q. Can we agree that February of 2011 was the last time you
20 were in the manager's role?

21 A. Yes.

22 Q. All right. I'm pretty sure I got that right. It has
23 been almost exactly eight years since you have held the role
24 of manager; is that correct?

25 A. Okay, yes.

1 Q. My math is right, thank you. And since February of 2016
2 right up to the present, you have been a restaurant manager
3 at the Steak'n Shake restaurant in Washington?

4 A. Yes.

5 Q. So for the last three years, you have been a restaurant
6 manager at the restaurant in Washington, Missouri?

7 A. Yes.

8 Q. All right. And over the last three years, you can't
9 recall working in any other Steak'n Shake restaurants; is
10 that correct?

11 A. Yes, I recall other stores that I have worked at.

12 Q. In the last three years?

13 A. Well obviously, I have only worked at Washington. I
14 filled in briefly at other restaurants for a shift or two
15 before in that time.

16 Q. Okay. And that's why I was asking, in your deposition
17 you stated that you could not recall any other restaurants
18 that you worked at in the last three years since you went to
19 Washington. That's why I'm asking. Do you recall saying
20 that in your deposition?

21 A. Yes.

22 Q. Okay. So over the last three years are you saying you
23 now recall having worked some shifts at other restaurants?

24 A. Yes, just recently within the last couple of months I
25 worked at the location in Wentzville to help fill in.

1 Q. At the time of your deposition, you had not worked in
2 any other restaurants?

3 A. Yes.

4 Q. Since that, there has been a couple times?

5 A. Yes.

6 Q. Okay, fair enough. So as it relates to those last three
7 full years, your experiences are by and large limited to your
8 time at the Washington restaurant; is that fair to say?

9 A. Yes.

10 Q. And for that matter, your general manager, Ms. Sanchez,
11 has also been working continuously with you these last three
12 years at the Washington location; is that correct?

13 A. Yes.

14 Q. And obviously you know Ms. Sanchez has testified prior
15 to you?

16 A. Yes.

17 Q. And again, the three of you worked together at the same
18 restaurant these last three years?

19 A. Yes.

20 Q. And your Washington Steak'n Shake restaurant is a
21 training restaurant, correct?

22 A. Yes.

23 Q. And Ms. Sanchez testified it has been a training
24 restaurant since 2015, does that sound right to you?

25 A. That sounds accurate.

1 Q. So when you went over to the Washington location as a
2 restaurant manager, it was already a training location,
3 correct?

4 A. Correct.

5 Q. And the vast majority of restaurants in St. Louis,
6 Missouri group market are not training restaurants; is that
7 correct?

8 A. Correct.

9 Q. And so, for example, anyone who is hired as a manager is
10 first going to go to a training restaurant like yours for
11 several weeks of training, and then get assigned to another
12 restaurant; is that correct?

13 A. Yes.

14 Q. And then the restaurant they get assigned to is likely
15 not going to be a training restaurant; is that correct?

16 A. Yes.

17 Q. And while they are at your training restaurant, one
18 thing these managers in training are doing is learning the
19 production and service duties, right?

20 A. Correct.

21 Q. One other thing they are also doing is they are
22 performing the production and service duties as well,
23 correct?

24 A. Correct.

25 Q. And so as a training restaurant like yours, you have

1 these managers in training who are there in addition to the
2 regular employees who are assigned there; is that correct?

3 A. Yes.

4 Q. Including in addition to the regular managers you have
5 assigned there?

6 A. Correct.

7 Q. And the typical steak'n Shake restaurants are not going
8 to have the managers in training rotating through, helping
9 out with the production of service duties; is that true?

10 A. True.

11 Q. And just as an aside, I think you testified about
12 working in some restaurants in the Kansas City area?

13 A. Yes.

14 Q. At the time those were corporate owned restaurants; is
15 that correct?

16 A. Yes.

17 Q. Okay. They are no longer corporate owned restaurants,
18 correct?

19 A. Yes.

20 Q. The corporation restaurants in Missouri are now by and
21 large clustered in the St. Louis Metro area; is that correct?

22 A. To my understanding, yes.

23 Q. All right. I'm going to do as I did with Ms. Sanchez,
24 and try to see if we can agree on some things.

25 A. Okay.

1 Q. All right. For example, you would agree that
2 understaffing of labor has been an issue at more than one
3 Steak'n Shake restaurant you have worked at, true?

4 A. Yes.

5 Q. And specifically understaffing of the hourly paid
6 production and service workers, correct?

7 A. Yes.

8 Q. Has been an issue at more than one restaurant you have
9 worked at; is that true?

10 A. Yes.

11 Q. Based on your experience when a restaurant has an issue
12 with understaffing of hourly production and service workers,
13 managers have to step in to perform those duties; is that
14 correct?

15 A. Correct.

16 Q. And based on your experience at those restaurants,
17 managers are performing those production and service duties;
18 is that correct?

19 A. Yes.

20 Q. And whatever management type duties they may have, a
21 manager's number one priority is making sure production of
22 service duties get it done for the customers, correct?

23 A. Yes.

24 Q. And based on your experience, managers spend most of
25 their actual time on their feet performing production and

1 services duties; is that correct?

2 A. Correct.

3 Q. And again, you would agree that the most important
4 priority at Steak'n Shake restaurant is production and
5 service work on behalf of the customer; is that true?

6 A. Yes.

7 Q. Based on your experience, without quality products and
8 without quality service, the restaurant would fail, true?

9 A. Yes.

10 Q. And based on your experience if the production -- if the
11 production and service duties don't get performed, the
12 restaurant will not succeed; is that correct?

13 A. Yes.

14 Q. And let me ask you one more thing here on the staffing,
15 and then we will move on. Steak'n Shake has a corporate
16 controlled labor scheduling system that determines the number
17 of hours that can be scheduled work at the restaurant; is
18 that true?

19 A. Yes.

20 Q. And specifically the corporate labor system controls the
21 hours that can be scheduled and worked by the hourly paid
22 employees; is that correct?

23 A. Say that again?

24 Q. Sure. The corporate labor system controls the number of
25 hours that can be scheduled and worked by the hourly

1 employees?

2 A. Yes, but the manager specifically in my experience, most
3 of the time it is the general manager can go in and make
4 adjustments to that.

5 Q. Right. Steak'n Shake corporate has certain parameters
6 that are enforced on the restaurant; is that correct?

7 A. Yes.

8 Q. And the general manager has some opportunity to modify
9 that based on the situation; is that correct?

10 A. Yes.

11 Q. But the district manager must always review and approve
12 the schedules, true?

13 A. Yes.

14 Q. And just managers certainly cannot decide how many hours
15 can be allocated to the restaurants they work in, correct?

16 A. Correct.

17 Q. And certainly managers do not have the authority to
18 schedule hourly employees overtime without authority,
19 correct?

20 A. Correct.

21 Q. All right. One thing I think we can agree on also is
22 that every task at a Steak'n Shake restaurant has a mandatory
23 policies and procedures that dictates how that task is to be
24 done; is that correct?

25 A. Yes.

1 Q. And these mandatory policies and procedures are referred
2 to as nonnegotiable?

3 A. Yes.

4 Q. And you would agree that managers may not deviate from
5 these nonnegotiable steak'n shake policies and procedures; is
6 that correct?

7 A. Yes.

8 Q. In fact, managers must follow the nonnegotiable policies
9 and procedures 100 percent of the time?

10 A. Yes.

11 Q. And for this reason, a manager's role at Steak'n Shake
12 is just do the job as directed by steak'n shake's policies
13 and procedures, correct?

14 A. Yes.

15 Q. The manager's role is not to decide how that work gets
16 done; is that correct?

17 A. Yes.

18 Q. All right. I want to ask you a little bit about the
19 role of the general manager and the restaurant manager at
20 steak'n shake restaurants.

21 A. Okay.

22 Q. I think you testified that you have held both positions;
23 is that correct?

24 A. Yes.

25 Q. You would agree that the general manager is the person

1 who is ultimately responsible for everything within the four
2 walls of the restaurant; is that correct?

3 A. Yes.

4 Q. In fact, the general manager is definitely the person
5 that has to make sure everything is being done, true?

6 A. Yes.

7 Q. And the general manager obviously is your supervisor?

8 A. Correct.

9 Q. Of course, and the general manager is always your
10 supervisor?

11 A. Correct.

12 Q. Meaning that even when Ms. Sanchez is absent from the
13 restaurant, she is still a GM is your supervisor, correct?

14 A. Correct.

15 Q. And the general manager has duties and authority that a
16 manager does not have, correct?

17 A. Yes.

18 Q. And the general manager's job is to ensure that the
19 restaurant is operating consistently?

20 A. Yes.

21 Q. And the general manager's job is to make sure that all
22 of the employees are doing their tasks as they are assigned;
23 is that correct?

24 A. Yes.

25 Q. Above the restaurant level, the general manager has to

1 answer to a district manager, correct?

2 A. Yes.

3 Q. I know Ms. Sanchez said right now there is not a
4 district manager?

5 A. Correct.

6 Q. But generally historically, there is a district manager
7 above the general manager; is that correct?

8 A. Yes.

9 Q. Okay. And when I took your deposition six months ago,
10 in fact, you had gotten a new district manager about a week
11 earlier; is that right?

12 A. Yes.

13 Q. Okay. And so I asked you how often you had seen your
14 previous district manager who had been there for a longer
15 period of time.

16 A. Yes.

17 Q. Okay. And you said that your district manager was in
18 your restaurant on a frequent basis; do you recall that?

19 A. Yes.

20 Q. Now regarding the restaurant manager position, that's
21 your job title, right?

22 A. Correct.

23 Q. And I think there are two restaurant managers at your
24 restaurant?

25 A. Yes.

1 Q. And you would agree that the restaurant manager position
2 is for someone specifically training to become a general
3 manager, correct?

4 A. The restaurant manager, yes.

5 Q. The restaurant manager. And you would also agree that
6 the position of the manager is not for someone who is
7 specifically training to become a general manager, correct?

8 A. Not specifically, but they can, you know, work their way
9 up to it.

10 Q. But at the time as a manager, a person in the manager
11 position is not someone who is specifically training to
12 become a general manager; is that correct?

13 A. Correct.

14 Q. And you would agree that a person in the restaurant
15 manager position is someone who has the ability and the
16 experience to be a general manager, true?

17 A. Yes.

18 Q. As opposed to someone in just the manager position who
19 is not necessarily going to have that ability and experience;
20 is that correct?

21 A. Correct.

22 Q. Based on your experience, the restaurant manager has
23 duties and responsibilities that prepares them for the
24 general manager job; is that correct?

25 A. Yes.

1 Q. But these are duties and responsibilities that someone
2 in the manager position is not necessarily going to have; is
3 that correct?

4 A. Correct, but they can always train on those things.

5 Q. Over time, they could work up to that, correct?

6 A. Yes.

7 Q. All right. Let's see what else we can agree on here.
8 We discussed that when managers get hired they go first to a
9 training restaurant?

10 A. Yes.

11 Q. When the hourly production of service employees are
12 hired, they are actually trained at the restaurant they are
13 going to be assigned to; is that correct?

14 A. Yes.

15 Q. And the employees who have the formal responsibility for
16 the training of the hourly workers are the production
17 trainers and the service trainers; is that correct?

18 A. Yes.

19 Q. And the production and service trainers are also hourly
20 paid overtime eligible employees?

21 A. Yes.

22 Q. And managers do not have any formal responsibility to
23 train the hourly production and service employees, correct?

24 A. Ultimately, they are in charge of the training. They
25 have to make sure that the task outlines are completed. That

1 they follow up with the trainer and to make sure that
2 everything in there has been covered that is necessary to
3 train the employee.

4 Q. Let me ask you this, is it your belief that managers
5 have a formal responsibility to train production and hourly
6 employees?

7 A. They have a responsibility to train them to make sure
8 that they are trained properly.

9 Q. well, the reason I'm asking, do you recall I asked you
10 that specific question in your deposition?

11 A. Yes.

12 Q. I asked if managers have any formal responsibility to
13 train hourly employees; do you remember that question?

14 A. Yes.

15 Q. Do you remember you answered no?

16 A. I don't recall that, no.

17 Q. That's an example. We will look at your deposition.
18 Are you familiar with your deposition?

19 A. Yes.

20 Q. Okay. Go to page 113, just let me know when you are
21 there; do you see it?

22 A. Yes.

23 Q. We are going to read lines 14 to 19, hopefully very
24 slowly for the court reporter. I'll ask you the question and
25 you can read your answer to the jury; is that fair?

1 A. Yes.

2 Q. All right. The question was, "The manager does not have
3 the formal responsibility to train employees like the
4 production service trainers, true." And can you read your
5 answer to the jury?

6 A. "Yes."

7 Q. And the followup question was, "Yes, it is true." And
8 your answer was?

9 A. "Yes, it is true."

10 Q. Is this a true answer?

11 A. I would say that at the time I was just wasn't thinking
12 of in the aspect of a file, and making sure that it is
13 completed.

14 Q. I see. You would agree that managers do not have the
15 formal responsibility for handling or resolving employee
16 complaints?

17 A. Say that again?

18 Q. Sure. Managers do not have the formal responsibility
19 for handling and resolving employee complaints?

20 A. Depending on the complaint, they can help resolve any.

21 Q. How about any HR type of complaints, discrimination, pay
22 issues, managers have no responsibility for resolving those
23 types of complaints?

24 A. Correct.

25 Q. And in fact, why don't I show you Exhibit 73 has been

1 admitted already into evidence. Does this document look
2 familiar to you?

3 A. Yes.

4 Q. We went over it in your deposition?

5 A. Yes.

6 Q. It is called "Revision to the Steak'n Shake complaint
7 procedure"; do you see that?

8 A. Yes.

9 Q. Just so real quick, this is a document that you signed
10 back in 2006, right?

11 A. Yes.

12 Q. I think you would have been a general manager at that
13 time?

14 A. I was, yes.

15 Q. Okay. And this 2006 policy, the highlighted part, it
16 says specifically "We have removed managers from the
17 reporting chain as a source for receiving and responding to
18 associate concerns. The term managers includes restaurant
19 managers, managers, and managers in training, basically at
20 the restaurant level to ensure an appropriate response to any
21 work concern you have, you should immediately report your
22 concern to your general manager, or to any of the other five
23 reporting sources set forth below." Did I read that
24 accurately?

25 A. Yes.

1 Q. Okay. So this 2006 Steak'n Shake policy actually
2 eliminated the managers from the formal reporting chain for
3 employee complaints?

4 A. Yes.

5 Q. And this is Steak'n Shake's policy right up to today as
6 far as you know; is that correct?

7 A. Correct.

8 Q. And in fact, this is an example of a responsibility and
9 an authority that only the general manager has at the
10 restaurant; is that correct?

11 A. Yes.

12 Q. All right. Based on your experience, managers do not
13 decide employee's pay rates or pay raises, correct?

14 A. If they are doing a review on that employee, they can
15 definitely have input.

16 Q. All right. My question, ma'am, is that managers do not
17 decide employee pay rates or pay raises; is that correct?

18 A. Correct.

19 Q. And you would agree that if an employee has a problem
20 with their pay, they need to take it up to the general
21 manager or HR; is that correct?

22 A. Correct.

23 Q. And for sure managers are not responsible for handling
24 or resolving any complaints employees have about their pay;
25 is that correct?

1 A. Correct.

2 Q. Let's talk a little bit about your experience with
3 hiring and firing employees?

4 A. Okay.

5 Q. Specifically as it relates to managers?

6 A. Okay.

7 Q. Okay. We are going to start with firing. You are not
8 able to specifically identify under oath any managers who
9 have fired employees on their own; is that correct?

10 A. Correct.

11 Q. Now let's talk about your own managers hiring employees?

12 A. Okay.

13 Q. And one thing we need to note at the outset here is that
14 you honestly are not clear on what Steak'n Shake's policy is
15 with respect to managers hiring; is that correct?

16 A. Correct.

17 Q. So whether managers actually have the authority to hire
18 employees is something we honestly need to take up with
19 someone else; is that fair?

20 A. For the official policy, yes.

21 Q. Okay. So for example, we can take it up with a Steak'n
22 Shake corporate executive who would know that answer?

23 A. Yes.

24 Q. And speaking of corporate executives, do you recall in
25 your deposition I asked you about a Steak'n Shake executive

1 named Susan Summers?

2 A. Yes.

3 Q. And you said you thought her name rang a bell, but you
4 weren't sure if you had actually seen her in one of your
5 restaurants, correct?

6 A. Yes.

7 Q. And I know you answered this in your direct examination,
8 but did you say you have been employed at steak'n Shake since
9 2002?

10 A. That is correct.

11 Q. You always worked at steak'n Shake corporate
12 restaurants; is that correct?

13 A. Yes.

14 Q. And you cannot state under oath whether you have ever
15 actually seen Ms. Summers even one time in a restaurant of
16 yours, correct?

17 A. In a restaurant, no.

18 Q. You have seen her elsewhere?

19 A. Yes.

20 Q. You have never actually seen her in a restaurant?

21 A. Yes.

22 Q. Okay. Fair enough, all right, now as far as managers
23 hiring employees on their own, we discussed that at length in
24 your deposition; do you recall that?

25 A. Yes.

1 Q. Okay. And as I recall your testimony, you had talked
2 about you observing managers hiring at your Washington
3 training restaurant; is that correct?

4 A. Yes.

5 Q. And that would be the entire time that Ms. Sanchez has
6 been the general manager; is that correct?

7 A. Yes.

8 Q. Okay. So obviously she testified before you, and so she
9 answered -- she discussed that issue, and would you agree
10 with me that since she was the GM in Washington at that time,
11 that she needed to answer about whether managers had the
12 actual authority to hire an employee?

13 A. Yes.

14 Q. Okay. And then as I recall your testimony, you also
15 stated that you had observed managers, a couple managers
16 hiring when you were a general manager; is that correct?

17 A. Yes.

18 Q. And that would have been when you were the general
19 manager at the Wentzville Steak'n Shake in 2015?

20 A. Yes.

21 Q. And you were promoted to general manager and transferred
22 to Wentzville in June of 2015; is that correct?

23 A. Yes.

24 Q. And that period as a general manager actually lasted
25 four months; is that correct?

1 A. At that location, yes.

2 Q. As GM at Wentzville?

3 A. Yes.

4 Q. You were the general manager at Wentzville from June to
5 October 2015, correct.

6 A. Yes.

7 Q. Roughly four months?

8 A. Yes.

9 Q. And it was during that four-month period that you
10 testified you observed managers hiring?

11 A. Yes.

12 Q. And, in fact, under your authority; is that correct?

13 A. Yes.

14 Q. And then after those four months in October of 2015, you
15 were transferred as GM to Lake St. Louis?

16 A. Correct.

17 Q. That lasted I think another five months, correct?

18 A. Yes.

19 Q. But this is your life here, and then in February of
20 2016, you were demoted to restaurant manager and transferred
21 to the Washington location; is that correct?

22 A. Yes, at my request.

23 Q. No problem. And that's where you have been ever since,
24 correct?

25 A. Yes.

1 Q. Let's talk a little bit about your observations of
2 managers interviewing potential employees. When we visited
3 six months ago, you said there was one manager at your
4 training restaurant that conducts about one interview a week;
5 do you recall that?

6 A. Yes.

7 Q. And this manager conducts the initial or first
8 interview; is that correct?

9 A. Yes.

10 Q. I think you estimate these first interviews typically
11 last from 10 to 20 minutes?

12 A. Yes.

13 Q. So on average, as the manager does about one, 10 to
14 20-minute interview a week; is that correct?

15 A. Yes.

16 Q. And this manager has to use that mandatory Steak'n Shake
17 corporate interview form and packet; is that correct?

18 A. Yes.

19 Q. And this mandatory Steak'n Shake interview form has
20 specific information on it that has to be obtained from the
21 applicant, and then a grade gets assigned?

22 A. Yes.

23 Q. And if the applicant meets the minimum requirement set
24 by Steak'n Shake, then they can get forwarded to the RM or
25 the GM for a second interview; is that correct?

1 A. Yes.

2 Q. Now as far as employee performance evaluations go, again
3 I think you testified that a manager -- you observed a
4 manager performing the performance evaluation, but it would
5 have been under general manager Sanchez at your training
6 restaurant; is that correct?

7 A. Yes.

8 Q. So again, she answered for that. So I won't ask you
9 about that. But you do believe that these written
10 performance evaluations would have been done by managers
11 obviously would be in writing, right?

12 A. Yes.

13 Q. And as far as you knew, those records should still
14 exist; is that correct?

15 A. Yes.

16 Q. Let's talk a little bit about your observations of
17 managers performing written discipline?

18 A. Okay.

19 Q. Ultimately, you can identify under oath one manager who
20 you state performed written discipline of an employee; is
21 that correct?

22 A. Yes.

23 Q. And you don't know the name of the employee who actually
24 received the discipline; is that correct?

25 A. Correct.

1 Q. But again, you believe that any disciplinary write ups
2 done by this one manager would still be in writing somewhere
3 again in Steak'n Shake's records?

4 A. Somewhere, yes.

5 Q. Okay. And as far as formal disciplining of employees
6 go, do you agree that managers actually have very minimal
7 involvement in that process; is that correct?

8 A. It is on their discretion whether or not they fill out
9 that disciplinary form, or write it down and keep it and put
10 it in the file.

11 Q. We discussed this a little bit in your deposition the
12 concept of theory versus reality; do you remember that?

13 A. Yes.

14 Q. And I think we discussed that in reality, managers have
15 very minimal involvement, for whatever reason, have very
16 minimal involvement in the actual formal disciplinary
17 process; is that correct?

18 A. Yes.

19 Q. Now managers are typically scheduled to work 50 hours a
20 week; is that correct?

21 A. Yes.

22 Q. And in fact, sometimes they may work more than the
23 scheduled 50 hours a week; is that correct?

24 A. Yes.

25 Q. Also do you remember in your deposition I asked if you

1 had personally observed managers performing a whole laundry
2 list of various tasks?

3 A. Yes.

4 Q. I have to do that one more time. We will get through it
5 quickly. I'll just ask you whether you have personally
6 observed managers doing these various things.

7 A. Okay.

8 Q. Okay. Tax work for Steak'n Shake?

9 A. No.

10 Q. Finance work for Steak'n Shake?

11 A. No.

12 Q. Accounting work for Steak'n Shake?

13 A. No.

14 Q. Budgeting work for Steak'n Shake?

15 A. No.

16 Q. Obtaining insurance for Steak'n Shake?

17 A. No.

18 Q. Advertising or marketing work for Steak'n Shake?

19 A. No.

20 Q. Have you seen managers being asked to conduct research
21 on behalf of Steak'n Shake?

22 A. No.

23 Q. I want to ask you a little bit about quality control.

24 A. Okay.

25 Q. Okay. All employees at the restaurant are responsible

1 for quality control; is that correct?

2 A. Yes.

3 Q. And things like checking temperatures of food, that's a
4 responsibility managers have?

5 A. Yes.

6 Q. But it can also be the responsibility of an operation
7 supervisor also; is that correct?

8 A. Yes.

9 Q. And an operation supervisor is an hourly paid overtime
10 eligible employee also; is that correct?

11 A. Yes.

12 Q. All right. Let's talk about purchasing work.

13 A. Okay.

14 Q. Okay. At the restaurant there, I think you discussed
15 this with defense counsel, there is a corporate order system
16 that is used which forecasts sales and gives the number of
17 items that should be ordered?

18 A. Yes.

19 Q. And managers do not determine what items can be carried
20 or offered at the restaurant; is that correct?

21 A. Correct.

22 Q. Managers do not determine the price of the food items
23 that are sold at the restaurant?

24 A. Correct.

25 Q. Now with respect to safety and security at the

1 restaurant, again every employee is responsible for safety
2 and security at the restaurant; is that correct?

3 A. Yes.

4 Q. And managers are responsible for things like making sure
5 the back door is closed and locked?

6 A. Yes.

7 Q. And that's because Steak'n Shake's policy requires the
8 back door to be closed and locked 100 percent of the time?

9 A. Yes.

10 Q. And again, an hourly paid operations supervisor could be
11 responsible for that if they have the keys on that shift,
12 correct?

13 A. If they are in charge, yes.

14 Q. They have the keys?

15 A. Yes.

16 Q. And back to all of these duties, whether you have
17 personally observed a manager performing them?

18 A. Okay.

19 Q. Human resource work for Steak'n Shake?

20 A. In regard to what?

21 Q. Have they ever worked for the human resources
22 department?

23 A. No.

24 Q. Employee benefits?

25 A. No.

1 Q. Labor, public, or government relations?

2 A. No.

3 Q. Any computer network, work for Steak'n Shake?

4 A. No.

5 Q. Internet or database administration?

6 A. No.

7 Q. Legal and regulatory compliance work on behalf of
8 steak'n Shake?

9 A. No.

10 Q. Have you seen them negotiating with vendors or
11 contractors with Steak'n Shake?

12 A. No.

13 Q. what about choosing and hiring contractors for work or
14 repairs at the restaurant?

15 A. No.

16 Q. And again, as far as repairs go, a manager can fill out
17 a form whether it is online or paper form, and submit it to
18 the Steak'n Shake's corporate maintenance department,
19 correct?

20 A. Yes.

21 Q. And then corporate maintenance handles it from there; is
22 that correct?

23 A. Correct.

24 Q. Back to when you observed any task manager actually
25 performing. Have you ever seen them negotiating any sort of

1 contracts on behalf of Steak'n Shake?

2 A. No.

3 Q. Have you ever seen them deciding what type of equipment
4 can be used at the restaurant?

5 A. No.

6 Q. what about setting the restaurants labor or expense
7 budgets?

8 A. No.

9 Q. Are you aware of managers ever providing advice to
10 corporate management as to how Steak'n Shake's business
11 should be run?

12 A. No.

13 Q. Are you aware of managers ever formulating any new or
14 different operating or management policies?

15 A. No.

16 Q. Just about done here. You may recall I asked in your
17 deposition this, but I'll ask you again. Has anyone from
18 steak'n Shake ever asked you to describe to them the job
19 duties that managers actually perform a majority of the
20 time?

21 A. No, no, not that I can recall.

22 Q. Certainly not Ms. Summers?

23 A. No.

24 Q. Certainly not a corporate legal executive by the name of
25 Berry Page?

1 A. No.

2 MR. CRAIG: I have no further questions. Thank
3 you, ma'am.

4 THE COURT: Ms. Williams?

5 MS. WILLIAMS: I have a few follow ups, your Honor.

6 **REDIRECT EXAMINATION**

7 BY MS. WILLIAMS:

8 Q. I want to follow up on a couple of things. With respect
9 to the interview process, now even when the managers are
10 using their forms, the Steak'n Shake created forms and the
11 packet to conduct an interview, do they still have to make a
12 judgment call to decide whether this applicant would be a
13 good fit, or an addition to the team you have at the store?

14 A. Yes. They can decide whether or not to end the
15 interview process after that first interview or continue it.

16 Q. And you were asked some questions about Steak'n Shake's
17 policies governing how work is done, the nonnegotiable; do
18 you recall that?

19 A. Yes.

20 Q. Do you have an understanding of why Steak'n Shake has
21 policies about how things should be done?

22 A. In order to make it consistent between all of the
23 stores, that way everyone does the same job.

24 Q. And then it would be the same for a guest whether they
25 go into a store in St. Louis, Missouri, or in Indianapolis?

1 A. Right.

2 Q. And then finally, in your experience, does every store
3 have a production trainer on staff?

4 A. Not necessarily.

5 Q. I'm sorry?

6 A. It is up to the management team to evaluate and
7 designate someone that they think could be in that position
8 and develop them.

9 Q. Does every store have a service trainer on staff?

10 A. No.

11 Q. For the same reason?

12 A. Same process for that.

13 Q. So a store that doesn't have a production trainer or a
14 service trainer, what role does a manager have in training
15 employees?

16 A. They would again be involved in training. Whether there
17 is a trainer or not, they would have to step in and maybe
18 even help train that person on a station as well as making
19 sure that the file and paperwork things are completed.

20 MS. WILLIAMS: I have no further questions, thank
21 you.

22 THE COURT: Mr. Craig, any other questions?

23 MR. CRAIG: No further questions.

24 THE COURT: You can step down, thank you.

25 (End of requested proceedings.)

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REPORTER'S CERTIFICATE

I, Lisa M. Paczkowski, Registered Professional Reporter, do hereby certify that I am a duly appointed official Court Reporter for the United States District Court, Eastern District of Missouri, and that the foregoing is a true and accurate reproduction of requested proceedings had in the matter of:

Sandra Drake et al, vs. Steak'n Shake

In the event copies are made of the transcript herein, the court reporter takes no responsibility for missing or damaged pages.

Dated this 10th day of September, 2021.

 /s/ Lisa M. Paczkowski
Lisa M. Paczkowski
Official Court Reporter
United States District Court
Eastern District of Missouri

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

Case no.: 1:21-cv-1507-TWP-MG

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION**

Exhibit M

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SANDRA DRAKE and RANDY SMITH,)
on behalf of themselves and others similarly)
situated,)

Plaintiffs,)

vs.)

Case No. 4:14CV01535JAR

STEAK N SHAKE OPERATIONS, INC.,)

Defendant.)

SPECIAL VERDICT FORM

Your verdict in this case will be determined by your answers to the following questions. Make sure that you read the questions and notes carefully because they explain the order in which the questions should be answered and what questions may be skipped.

Question No. 1: Has defendant Steak-N-Shake proved by the greater weight of the evidence that the executive exemption to overtime pay as set forth in Instruction 11 apply to plaintiff Managers?

_____ Yes X No

(Mark an "X" in the appropriate space)

Note: Answer Question 2 regardless if you answered "Yes" or "No" to Question No. 1.

Question No. 2: Has defendant Steak-N-Shake proved by the greater weight of the evidence that the administrative exemption to overtime pay as set forth in Instruction 12 apply to plaintiff Managers?

_____ Yes X_____ No

(Mark an "X" in the appropriate space)

Note: Answer Question 3 only if you answered "No" to Question Nos. 1 and 2. If you answered "Yes" to Question Nos. 1 or 2, you should skip Questions Nos. 3, 4 and 5 and have your foreperson sign and date this form because you have completed your deliberations on this claim.

Question No. 3: Has defendant Steak-N-Shake proved by the greater weight of the evidence that the combination exemption to overtime pay as set forth in Instruction 13 apply to plaintiff Managers?

_____ Yes X_____ No

(Mark an "X" in the appropriate space)

Note: If you answered "No" to Question No. 3, you should answer Question Nos. 4 and 5. If you answered "Yes" to Question No. 3, you should skip Questions Nos. 4 and 5 and have your foreperson sign and date this form because you have completed your deliberations on this claim.

Question No. 4: The rate at which overtime pay is calculated is based upon the understanding between plaintiff Managers and defendant Steak-N-

Shake as to the number of hours on a weekly basis the salary was intended to compensate. Was the salary paid to plaintiff Managers by defendant Steak-N-Shake intended to compensate for 50 hours in a workweek or for all the hours worked in a workweek?

50 hours All hours worked in a
workweek

(Mark an "X" in the appropriate space)

Question No. 5: Has it been proved that the defendant Steak-N-Shake's conduct was "willful" as set forth in Instruction 14?

Yes No

(Mark an "X" in the appropriate space)

Note: After answering Question No. 5, have your foreperson sign and date this form because you have completed your deliberations on this claim.

Date: 2/26/2019

Paul Atkinson
Foreperson

VERDICT

We find that the plaintiff Managers bringing claims under Missouri's wage laws should be awarded damages in the amount of:

\$ 2,883,180.95 (stating the amount)

We find that the plaintiff Managers bringing claims under the Fair Labor Standards Act should be awarded damages in the amount of:

\$ 154,988.22 (stating the amount)

Paul Attenthal
Foreperson

Dated: 2/27/2019

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

Case no.: 1:21-cv-1507-TWP-MG

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION**

Exhibit N

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

SANDRA DRAKE and RANDY SMITH)
on behalf of themselves and others)
similarly situated,)
)
Plaintiffs,)
)
vs.)
)
STEAK N SHAKE, INC)
(f/k/a STEAK N SHAKE OPERATIONS, INC),)
)
Defendant.)
)

Case No. 4:14-cv-01535-JAR

SECOND AMENDED JUDGMENT

This action came on for trial before a jury, Honorable John A. Ross, District Judge, presiding. The issues having been duly tried, the jury having duly rendered its verdict, and for the reasons set forth in the Memorandum and Order entered on this date and incorporated herein:

IT IS ORDERED AND ADJUDGED pursuant to the verdict rendered by the jury that Defendant Steak N Shake, Inc. (f/k/a Steak N Shake Operations, Inc.) owes \$5,766,361.90 for overtime pay to the plaintiff Managers bringing claims in this matter under Missouri’s wage laws (Rule 23 class).

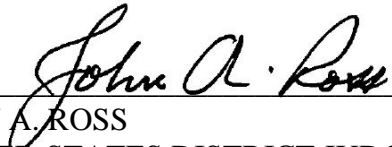
IT IS FURTHER ORDERED AND ADJUDGED pursuant to the verdict rendered by the jury that Defendant Steak N Shake, Inc. (f/k/a Steak N Shake Operations, Inc.) owes \$309,976.44 for overtime pay to the plaintiff Managers bringing claims in this matter under the Fair Labor Standards Act (FLSA class).

IT IS FURTHER ORDERED AND ADJUDGED that plaintiffs' attorney fees are assessed against Defendant Steak N Shake, Inc. (f/k/a Steak N Shake Operations, Inc.) in the amount of \$1,576,220.00.

IT IS FURTHER ORDERED AND ADJUDGED that plaintiffs' costs are assessed against Defendant Steak N Shake, Inc. (f/k/a Steak N Shake Operations, Inc.) in the amount of \$40,219.49.

IT IS FURTHER ORDERED AND ADJUDGED that plaintiffs shall recover from Defendant in these amounts, with post-judgment interest thereon as provided by law.

Dated this 19th day of June, 2019.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

Case no.: 1:21-cv-1507-TWP-MG

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION**

Exhibit O

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
Alicia Wilmoth, et al. v. Steak N Shake, Inc. & Sardar Biglari
Case No.: 1:21-cv-1507-TWP-MG

Notification to Potential Class Members

Court Approved Notice. Please read carefully. Not an Attorney Solicitation.

TO: All current and former **Managers** working for Steak N Shake from _____ to the present.

RE: Claim for **Overtime Pay** under the Fair Labor Standards Act.

1. Why Did I get this Court Approved Notice?

The purpose of this Notice is to: (i) inform you of the existence of a collective action lawsuit against Defendants Steak N Shake, Inc. and Sardar Biglari (hereafter referred to collectively as “Steak N Shake”) to recover unpaid overtime allegedly owed to “Managers” under the Fair Labor Standards Act (“FLSA”); and (ii) to instruct you on the procedure you must follow if you want to become a party-plaintiff in this lawsuit. Records reflect that you worked in this position within the past three years.

2. What is this Lawsuit About?

Alicia Wilmoth, Brandon Scott, and Albert Diana (“Plaintiffs”) brought this lawsuit against Steak N Shake on behalf of themselves and all other current and former Managers who were employed with Steak N Shake from _____ to the present. Plaintiffs contend that Steak N Shake should have paid overtime under the FLSA for hours worked over forty (40) each workweek.

Plaintiffs also seek liquidated damages in an amount equal to the alleged unpaid overtime wages, as well as attorneys’ fees and costs. If you decide to join this lawsuit, you will not be responsible for any attorneys’ fees incurred by the Plaintiffs, except to the extent that the Court may deduct a reasonable amount from your award to pay the attorneys for their services in representing you as part of the class.

3. What is Steak N Shake’s Position?

Steak N Shake denies the allegations in Plaintiffs’ lawsuit and contends Plaintiffs have been paid everything they are owed under all applicable wage laws. Steak N Shake pays its Managers on a salary basis and contends that they are properly treated as employees exempt from overtime compensation. Steak N Shake further disputes that this lawsuit should be treated as a collective action.

4. Who are the Class Members?

Plaintiffs filed this class claim on behalf of: All current and former “Managers” employed by Steak N Shake from _____ to the present.

5. How Can I Participate & Effect of Joining the Lawsuit?

Enclosed you will find a form entitled “Consent to Become a Party Plaintiff” (“Consent Form”). If you worked for Steak N Shake as a Manager and you wish to join this lawsuit as a party-plaintiff, you **must file a Consent Form**. It is extremely important that you read, sign and return the enclosed Consent Form if you choose to participate in this collective action. Your decision to participate in the lawsuit is no guarantee that you will recover any money from Steak N Shake. If you join the lawsuit, you will be bound by any judgment of

the Court, whether it is favorable or unfavorable to you. You will also be bound by any settlement agreement that may be reached and approved by the Court.

While the lawsuit is pending, you may be required to participate in this lawsuit. This includes answering written questions under oath, maintaining, preserving and producing documents in your possession regarding your employment with SNS and your income earned while working there, and possibly testifying at a deposition. You may be dismissed from the lawsuit if you do not cooperate fully. If you choose to file a Consent Form, your continued right to participate in this suit may depend on a later determination by the Court that you and the Plaintiffs are actually "similarly situated" in accordance with federal law and that your claim has been filed within the applicable statute of limitations. If you complete the enclosed Consent Form, you will be designating Plaintiffs and their attorneys to act on your behalf and to represent your interests.

6. What if I do Not Want to Join the Lawsuit?

If you do not file a consent form to join this case, you will not participate in this lawsuit and will not be bound by any judgment or settlement. This means that if the employees who join the lawsuit obtain compensation, you will not be eligible to share in the monetary award; if the employees lose, you will not be bound by that judgment. If you so choose, you may pursue your claim on your own and hire your own legal counsel. The pendency of this current lawsuit, however, will not stop the running of your statute of limitations as to any FLSA wage claims you might have unless you opt-in by returning the Consent Form.

7. Is there a Deadline to Join this Lawsuit?

Yes. The enclosed Consent Form must be returned within sixty (60) days from the date of this notice, *i.e.* postmarked, emailed or faxed no later than _____.

8. Can Steak N Shake Retaliate Against me for Joining this Lawsuit?

Under the law, it is illegal for Steak N Shake to terminate you or retaliate against you because you have joined and/or participated in this lawsuit.

9. No Opinions Expressed as to the Merits of this Case.

This Notice is for the sole purpose of providing current and former Managers with information concerning their right to join this lawsuit. The Court has expressed no opinion regarding the merits of Plaintiffs' claims or Steak N Shake's liability, if any, and individual claims may be subject to later dismissal if the Court ultimately finds that the claims lack merit or that they cannot be litigated on a class-wide basis.

10. Questions Regarding this Notice?

PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE. If you have any questions regarding this notice, you can contact the attorneys representing the Plaintiffs in this matter:

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DONELON, P.C.
4600 Madison, Suite 810
Kansas City, Missouri 64112
Tel: (816) 221-7100
Fax: (816) 709-1044
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(215) 884-2491
pwinebrake@winebrakelaw.com
asantillo@winebrakelaw.com

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

Case no.: 1:21-cv-1507-TWP-MG

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION**

Exhibit P

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

Case no.: 1:21-cv-1507-TWP-MG

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

CONSENT TO BECOME A PARTY PLAINTIFF

I, the undersigned, a current or former Manager who was employed by Steak N Shake at any time between _____ to the present, hereby consent to be a party plaintiff in the above-captioned lawsuit. By my signature below, I designate the above representative Plaintiffs and their attorneys as my agent to make decisions on my behalf concerning the litigation, the manner and method of conducting this litigation, and decisions regarding settlement, attorney's fees and costs and all other matters pertaining to this lawsuit.

Please print or type the following information:

Full Name (Print clearly)

Signature/Date

Street Address

City/State/Zip

Telephone Number

Personal Email Address

Return this form in the enclosed pre-paid envelope so that it is postmarked no later than **, to:**

Or by fax or email to:

Fax:

Email:

Questions? Call toll-free 1-844-492-6868.

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALICIA WILMOTH, BRANDON SCOTT,)
and ALBERT DIANA, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

vs.)

STEAK N SHAKE, INC.)
(an Indiana Corporation), and)
SARDAR BIGLARI)

Defendants.)

Case no.: 1:21-cv-1507-TWP-MG

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION**

Exhibit Q



Manager *Job Description*

Summary Description: The Manager is a business partner accountable for leading the Restaurant Associate team to deliver Steak 'n Shake operational and financial standards on each scheduled shift as well as building a well cross trained staff within the Restaurant. The Manager is responsible for assessing Associates performance to identify opportunities and coach for improvement. This position has accountability on his/her shift for the correct delivery of Steak 'n Shake procedures, policies and specification which deliver the Steak 'n Shake Vision and Mission. The Manager will partner directly with his/her Restaurant and General Manager and will receive market level support from his/her Human Resource Manager and Field Training Manager / Coordinator to meet the business and strategic objectives of the organization.

Department: Operations - Restaurant

Reports to: General Manager

FLSA: Exempt

Direct reports: Trainers and all Restaurant Associates

1. RESPONSIBILITIES: *Major functions/tasks performed in the job and the deliverable (report, product, output, etc.) produced.*

Primary and On-Going Accountabilities

- Effectively Manage a Steak 'n Shake Shift
- Execute the 14 point walk and correct deficiencies as they arise
- Ensure food is properly stored and prepared in compliance with food safety regulations and recipe adherence
- Ensure service, hospitality, accuracy and speed standards are achieved
- Maintain strict compliance with health, safety and security standards and procedures
- Train, coach and inspire Associates to deliver exceptional service, food quality and environment to the Guest
- Demonstrate effective decision making and problem solving skills that support the Steak 'n Shake Principles; Relentless Pursuit of Excellence, Exceed Guest Expectations, Golden Rule, Economic Objective and Entrepreneurial Approach
- Ensure accurate adherence to all State and Federal laws on assigned shift
- Lead by Example
- Has authority to discipline associates
- Recommends associates for hiring and promotion
- Recommends associates for termination

Manager 1.24.2013

Pltf. 6

Drake v. Steak-N-Shake

EDMo. 14-cv-1535

SNS-Drake000102



Specific Duties and Responsibilities	
Customer Satisfaction: Build the business by relentlessly pursuing excellence and growing customer traffic over prior year:	
Effectively interact with Guests to ensure we exceed their expectations with the highest quality food and great service	Sales Growth, TCT
Immediately address Guest concerns and complaints utilizing the Steak 'n Shake Guest Recovery Model - L.E.A.R.N.	Sales Growth, TCT
Ensure Guests are immediately recognized upon entering and as they are leaving	Sales Growth, TCT
Motivate all Associates to deliver great hospitality toward all guests and other associates	Documentation, Coaching form, Sales Growth, TCT
Create a positive team environment with knowledgeable associates working together through shift huddles and ongoing coaching	Documentation, Sales Growth, TCT
Brand Protection: Operate in accordance with our Quality, Service and Cleanliness Standards(QSC) and other food safety practices, delighting our Guest with outstanding fresh food and training our valuable people:	
Execute the 14 point walk using the "Three in One" tool- ensuring the facility is radiant, the associates are motivated, the stations are appropriately set up / re-stocked for meal periods, and constantly moving through the restaurant coaching and directing associates to ensure quality adherence and speed standards are achieved	Documentation, QSC, TCT, Food Safety, Sales Growth
Interview candidates using the Select the Best 1 st interview guide and recommend enthusiastic / Guest centric candidates to the General Manager for employment	Select the Best
Ensure associates are effectively trained using the Steak 'n Shake training program, Earning your Wings	Documentation, Training Scorecard
Monitor food quality, portioning and speed from the EXPO window and resolve any issues immediately	Documentation, Food Safety Audits, QSC
Assign and verify all side work is accurately and efficiently completed	QSC
Verify accurate adherence to the Prep and Pull and cooling charts as well as complete HACCP and line checks on assigned shift ensuring food quality and quantity	Documentation, Food Safety Audits, QSC
Ensure all Safety procedures and policies are strictly adhered to	Documentation, QSC, Accident Claims



Financial Growth: Manage profitable shifts focused on delighting our guests, increasing quality and reducing prices:	
Deploy associates appropriately as planned on the Schedule and Line up sheets	Labor Control, Sales Growth, TCT, FRR
Ensure appropriate staffing levels of well-trained associates on assigned shifts	Sales Growth, TCT, Comps.
Complete shift and daily inventory and accurately post into the back office POS System	Food Cost, FRR
Check in food delivery, ensure proper storage and post-delivery into the POS.	Food Cost, FRR
Complete food order based on commissary order guide and enter into ordering system	Food Cost, Inventory levels, FRR
Maintain strict adherence to cash handling and banking policies and procedures	COC, FRR
Complete shift tools and administration duties as assigned by General Manager	Documentation

2. SCOPE: *Impact this job has in terms of decisions made, direction given, number of employees supervised, size of organization managed or supported, impact of errors, dollars, etc.*

- Enforce procedures, training and other programs designed by Steak 'n Shake to effectively deliver the Steak 'n Shake Vision, Mission and Principles
- Interviews and recommends Associates candidates to GM within compliance of FLSA and Steak 'n Shake guidelines
- Takes responsibility for shift financial results
- Serves as a resource to colleagues and as a mentor to less experienced Managers
- Actively manages the shift ensuring speed and food quality

3. KEY RELATIONSHIPS: *Position's key contacts and relationships.*

- | | |
|--|---|
| <p>Primary:</p> <ul style="list-style-type: none"> • Restaurant Associates • Restaurant Trainers • Restaurant Management • District Manager | <p>Secondary:</p> <ul style="list-style-type: none"> • Division President • Field Training Manager • Human Resource Manager |
|--|---|



4. REQUIREMENTS: *Typical minimum requirements to perform the job.*

- High School graduate or equivalent education preferred
- Certified in all Service and Production Stations at Steak 'n Shake or equivalent experience
- ServSafe certified
- Understand Steak 'n Shake policies, procedures, state laws, Health codes, Safe food handling and Sanitation procedures
- Positive, motivating communication skills
- Strong organization and time management skills
- Strong coaching and mentoring skills
- Flexible and adaptable to changing circumstances
- Ability to read, write, perform mathematical calculations and analyze data
- Demonstrate key principles: Golden Rule, Relentless pursuit of Excellence, Exceeding guest expectations, Economic objective, Entrepreneurial approach
- Able to work in excess of 50 hours per week while standing, walking and stretching
- Able to lift, carry, push and pull 30 lbs
- Able to perform any task performed by a service or production associate
- Able to see across the restaurant to monitor and oversee the operation
- Able to legally operate a motor vehicle
- Able to hear, understand and professionally respond to guest and employee inquiries, comments and concerns

5. KEY PERFORMANCE INDICATORS: *Key indicators to be used to measure job performance.*

- Field Results Report
- Every Store Perfect measurements
- Labor Management System
- Food Management System
- Effective working relationship with Above Store Leaders, Restaurant Management, colleagues and direct reports

6. CAREER PATH: *Logical positions along the career path, vertical and/or lateral.*

- Field Training Coordinator
- Restaurant Manager
- Corporate office support Coordinator



7. Competencies: *Critical behavioral and technical competencies typically required to perform the work associated with each level.*

Competency	0-6 Months	6-12 Months	12-24 Months
1. Self Manages	Intermediate	Advanced	Advanced
2. Communicates Effectively	Intermediate	Intermediate	Advanced
3. Coaches and Develops	Intermediate	Intermediate	Advanced
4. Creates Teams	Intermediate	Advanced	Advanced
5. Manages Food Standards	Advanced	Expert	Expert
6. Manages Service Standards	Advanced	Expert	Expert
7. Manages Restaurant Environment	Intermediate	Advanced	Advanced
8. Grows the business	Intermediate	Intermediate	Advanced
9. Plans and Manages	Intermediate	Intermediate	Advanced
10. Demonstrates Financial Accountability	Intermediate	Advanced	Advanced

Note: This is not an exhaustive list of roles, activities, requirements, efforts, or working conditions associated with the position. This description is intended to be an accurate reflection of the current position. Steak n Shake reserves the right to revise the position or to require that other or different activities be performed when circumstances change (i.e., emergencies, changes in personnel or workload, rush jobs, or technological developments).