IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEPHANIE JOSEPH, *et al.*, Plaintiffs, v. QUALITY DINING, INC. and GRAYLING CORPORATION, Defendants.	5:16-cv-01907-JLS

PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANTS QUALITY DINING, INC. AND GRAYLING CORPORATION'S MOTION TO DISMISS

Dated: June 3, 2016

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I. INTRODUCTION AND SUMMARY OF THE ARGUMENT

This is a class/collective action lawsuit is brought on behalf of servers who worked in Chili's Grill & Bar ("Chili's") restaurants owned by Defendants Quality Dining, Inc. ("Quality Dining") and Grayling Corporation's ("Grayling"). According to the servers, Defendants have violated the minimum wage provisions of the Fair Labor Standards Act ("FLSA") and the Pennsylvania Minimum Wage Act ("PMWA") by requiring servers to share their tips with restaurant expediters who do not directly interact with restaurant customers. A similar class/collective lawsuit recently settled in the Middle District of Pennsylvania for $1.3 million. See Ford v. Lehigh Valley Restaurant Group, Inc., 2016 U.S. Dist. LEXIS 31732 (M.D. Pa. Mar. 10, 2016).

The current action was started by two servers named Stephanie Joseph and Ryan Rutherford. See Amended Complaint (Doc. 6). Since then, ***15*** additional servers have joined the lawsuit as party plaintiffs pursuant to 29 U.S.C. § 216(b). These Plaintiffs include: Freedom Barrow, Kristen Cenicacelaya, Alexandria Colombo, Hayden Fox, Breanna Fresoli, Timothy Hahn, Kristin Jonnson, Amber Kline, Dawn Kroboth, Kristin Kurtz, Franki Mengoni, Catherine Rennig, Tara Saylor-Attrill, Taylor Schmajer, and Nicholas Soden. See Docs. 10, 13-26.

Defendants have filed a filed a motion asking the Court to compel this class/collective action lawsuit to arbitration (the "Motion"). See Doc. 9. This brief responds to Defendants' Motion on behalf of the 17 Plaintiffs. As discussed herein, the Motion should not be granted in its current form.

As a threshold matter, Defendants have only demonstrated that 2 of the 17 Plaintiffs – Stephanie Joseph and Ryan Rutherford – signed arbitration agreements. See Doc. 9-3. In the absence of any evidence that the other 15 Plaintiffs signed arbitration agreements, the claims of

these individuals cannot be compelled to arbitration. See Section III.B infra.

Moreover, even with respect to the legal claims of Ms. Joseph and Mr. Rutherford, the "gateway" issue of whether they may bring their claims on a class or collective basis cannot be ignored. This Court necessarily must decide whether it or the arbitrator will resolve the availability of class/collective arbitration. As our Court of Appeals has explained, "the availability of class arbitration is a 'question of arbitrability' for a court to decide unless the parties unmistakably provide otherwise." Opalinski v. Robert Half International, Inc., 761 F.3d 326, 335-36 (3d Cir. 2014).

Defendants appear to take the position that all gateway "arbitrability" issues – including the availability of class/collective arbitration – should be resolved by the arbitrator. See Def. Brief. (Doc. 9-1) at pp. 5-6. Ms. Joseph and Mr. Rutherford have no objection to such an approach, as long as they will be free to argue to the arbitrator that class/collective arbitration is permissible. Thus, if the Court sends the claims of Ms. Joseph and Mr. Rutherford to arbitration without deciding the availability of class/collective arbitration, it should clearly indicate that the availability of class/collective arbitration remains an open issue for the arbitrator to resolve.

If, on the other hand, the Court concludes that it – rather than the arbitrator – must resolve the availability of class/collective arbitration, then the Court will need to turn its attention to two important substantive arguments raised by Ms. Joseph and Mr. Rutherford: **First**, Ms. Joseph never waived her right to bring her claims on a class or collective basis. See Section III.D infra. **Second**, as recently explained by the Seventh Circuit Court of Appeals, class/collective action waivers in employment arbitration agreements violate the NLRA and must be stricken as unenforceable. See Section III.E infra.

II. BACKGROUND

A. Procedural History and Legal Claims.

On March 22, 2016, Ms. Joseph and Mr. Rutherford filed a class action complaint in the Lehigh County Court of Common Pleas alleging that Quality Dining violated the PMWA. See Doc. 1 at Exhibit A. The complaint was later amended to add Grayling as a co-defendant and to add an FLSA claim. See Am. Cpl. (Doc. 6). The FLSA claim is asserted as a collective action pursuant to 29 U.S.C. § 216(b), while the PMWA claim is asserted as a Rule 23 class action claim. See id. To date, 17 current/former servers are participating in the action as Plaintiffs. The 17 Plaintiffs include: Stephanie Joseph, Ryan Rutherford, Freedom Barrow, Kristen Cenicacelaya, Alexandria Colombo, Hayden Fox, Breanna Fresoli, Timothy Hahn, Stephanie Joseph, Kristin Jonnson, Amber Kline, Dawn Kroboth, Kristin Kurtz, Franki Mengoni, Catherine Rennig, Ryan Rutherford, Tara Saylor-Attrill, Taylor Schmajer, and Nicholas Soden. See Docs. 7, 10, 12, 13-26.

Plaintiffs have worked as servers at Chili's restaurants in Pennsylvania owned and operated by Defendants. They were paid an hourly wage of $2.83 plus tips. Thus, in attempting to satisfy the federal and state mandate that workers receive a minimum wage of $7.25/hour, Defendants utilized a "tip credit" in the amount of $4.42 ($7.25-$2.83) for each hour worked by servers. Defendants also maintained a company-wide policy of requiring servers to contribute a portion of their tips to a "tip pool" shared with expediters who had no direct interaction with customers. See generally Am. Cpl. (Doc. 6).

The FLSA and the PMWA both: (i) allow a restaurant to utilize customer tips to satisfy a portion of its minimum wage obligations to servers and (ii) permit "the pooling of tips" among restaurant employees. See 29 U.S.C. § 203(m); 43 P.S. § 333.103(d)(2). But there's a catch:

restaurants utilizing tips to satisfy its minimum wage obligations may not allow tip pool proceeds to be shared with restaurant employees who do not "customarily and regularly receive tips." 29 U.S.C. § 203(m); 43 P.S. § 333.103(d)(2). Pennsylvania courts have held that an employee must have direct customer interaction as part of their duties to be properly part of a tip pool. See, e.g., Ford v. Lehigh Valley Restaurant Group, Inc., 2014 U.S. Dist. LEXIS 92801, *12-13 (M.D. Pa. July 9, 2014).

Plaintiffs allege that Defendants' expediters did not have the necessary direct customer interaction to be included in the Defendants' tip pool. By requiring servers to pay a portion of their tips to employees performing the work of expediters, Defendants could not take the tip credit and violated the PMWA by not paying its servers at least $7.25 an hour. See generally Am. Cpl. (Doc. 6).

Defendants removed this lawsuit to this Court on April 22, 2016 pursuant to the Class Action Fairness Act. See generally Doc. 1. Therein, Defendants estimated that the potential unpaid wages of Plaintiffs and other class/collective members totaled $5,188,013.01. See id. at ¶ 23.

On May 4, 2016, Defendants filed their Motion seeking to dismiss this case and require Plaintiffs to pursue their wage claims in arbitration pursuant to the Federal Arbitration Act ("FAA"). See Doc. 9-2. Defendants' Motion is premised on mandatory Arbitration Agreements signed by Ms. Joseph and Mr. Rutherford. See Doc. 9. Neither Ms. Joseph nor Mr. Rutherford were able to opt-out of the Arbitration Agreements they signed. Id. The Arbitration Agreement executed by Mr. Rutherford states:

> Only one Employee may be a party to any particular arbitration unless otherwise agreed by the parties. Each arbitration is limited to the claims of the Employee who is a party to that arbitration and shall not include claims pertaining to any other Employee unless otherwise agreed by the parties.

See Doc. 9-3 at Exhibit B ¶ 4 (the "Class/Collective Waiver"). Notably, the Arbitration Agreement signed by Ms. Joseph does ***not*** contain a Class/Collective Waiver. See Section III.D infra. Finally, Defendants fail to provide any Arbitration Agreements for the 15 Plaintiffs other than Ms. Joseph and Mr. Rutherford.

B. Defendants' Business Response to this Lawsuit.

On April 28, 2016 – approximately one month after the commencement of this $5,000,000 lawsuit – Defendants issued a memo to "ALL EMPLOYEES" (including current servers covered by his case) stating that they must sign and return "a copy of the Company's revised version of its Arbitration Agreement" by May 4, 2016. See Exhibit 1. According to Defendants, "[e]ntering this version of the Arbitration Agreement is a condition of employment." Id. These new Arbitration Agreements contained "CLASS AND COLLECTIVE ACTION WAIVERS." Id. at p.2 ¶ 8. A few days later, Defendants sent current employees a "Broadcast Message" stating "Corporate will not allow you to work past Thursday 5/5/16 if you do not hand in your arbitration agreement. Please get them back to management ASAP." See Exhibit 2.

In addition, Plaintiffs have learned that within days of completing their "Arbitration Agreement blitz," Defendants stopped requiring servers to pay a portion of their tips to expediters. As discussed above, this is the precise practice that is being challenged in this lawsuit.

C. Mr. Rutherford files a charge with the National Labor Relations Board.

On May 3, 2016, Mr. Rutherford filed a charge with the National Labor Relations Board ("NLRB"). See Exhibit 3. Therein, Mr. Rutherford alleged that the Arbitration Agreement's mandatory Class/Collective Waiver violates Section 8(a)(1) of the NLRA by interfering with employees' right to engage in concerted activity under Section 7 of the NLRA. Id. A field

attorney from the NLRB is currently investigating these charges and is expected to make her findings on the legality of Defendants' Class/Collective Waiver in the coming weeks.

III. ARGUMENT

A. Standard.

When "confronted with a motion to stay proceedings pursuant to 9 U.S.C. § 3, the appropriate standard of review for the district court is that employed in evaluating motions for summary judgment under Federal Rule of Civil Procedure 56(c)." Choice v. Option One Mortgage Corp., 2003 U.S. Dist. LEXIS 9714, *11-12 (E.D. Pa. May 12, 2003)); see also Par-Knit Mills, Inc. v. Stockbridge Fabrics Co., 636 F.2d 51, 54 n.9 (3d Cir. 1980) ("Application of [the summary judgment] standard to [arbitration determinations] is appropriate inasmuch as the district court's order to arbitrate is in effect a summary disposition of the issue of whether or not there had been a meeting of the minds on the agreement to arbitrate.").

B. 15 of the Plaintiffs cannot be compelled to arbitration in the absence of evidence that they signed an Arbitration Agreement.

Defendants have only demonstrated that 2 of the 17 Plaintiffs – Stephanie Joseph and Ryan Rutherford – signed Arbitration Agreements. See Doc. 9-3. In the absence of any evidence that the other 15 Plaintiffs signed arbitration agreements, the claims of these individuals cannot be compelled to arbitration.

C. This Court must decide whether it or the arbitrator should determine the availability of class or collective arbitration

Initially, this Court must decide whether it or the arbitrator should decide the availability of class/collective arbitration. Our Court of Appeals has explained that "the availability of class arbitration is a 'question of arbitrability' for a court to decide unless the parties unmistakably provide otherwise." Opalinski v. Robert Half International, Inc., 761 F.3d 326, 335-36 (3d Cir.

2014). Defendants appear to take the position that all gateway "arbitrability" issues – including the availability of class/collective arbitration – should be resolved by the arbitrator. See Def. Brief. (Doc. 9-1) at pp. 5-6.

Ms. Joseph and Mr. Rutherford have no objection to such an approach, as long as they will be free to argue to the arbitrator that class/collective arbitration is permissible. Thus, if the Court sends the claims of Ms. Joseph and Mr. Rutherford to arbitration without deciding the availability of class/collective arbitration, these Plaintiffs respectfully request that the Court's order clearly indicate that the availability of class/collective arbitration remains an open issue for the arbitrator to decide.

D. If the Court decides the availability of class/collective arbitration, it should hold that Ms. Joseph is permitted to pursue class/collective arbitration under the plain terms of her Arbitration Agreement.

Crucially, the Arbitration Agreements signed by Ms. Joseph and Mr. Rutherford are very different. Mr. Rutherford's Arbitration Agreement bears a footer indicating that it was created in 2012. See Doc. 9-3 at pp. 8-9. Paragraph 4 of this 2012 Arbitration Agreement contains the class/collective action waiver language:

> Only one Employee may be a party to any particular arbitration unless otherwise agreed by the parties. Each arbitration is limited to the claims of the Employee who is a party to that arbitration and shall not include claims pertaining to any other Employee unless otherwise agreed by the parties.

Id. at p. 9, ¶ 4.

Ms. Joseph, on the other hand, signed an Arbitration Agreement that bears a footer indicating that it was created in December 2001. See Doc. 9-3 at pp. 5-6. Notably absent from Paragraph 4 of this 2001 Arbitration Agreement is any class/collective action waiver language. See id. at p.6, ¶ 4. Moreover, careful examination of the 2001 Arbitration Agreement will reveal

absolutely no language preventing Ms. Joseph from pursuing legal claims on a class or collective basis. See id. at pp. 5-6.

Thus, if this Court decides to address the availability of class/collective arbitration, it should hold that Ms. Joseph is permitted to arbitrate her claims on a class/collective basis. "An agreement to arbitrate is simply a contract, fashioned by the parties according to their intentions." Ballay v. Legg Mason Wood Walker, Inc., 878 F.2d 729, 733 (3d Cir. Pa. 1989). In determining these intentions, district courts utilize basic contract interpretation principles and interpret the plain meaning of the *actual* contract language. See, e.g., Brown v. City of Philadelphia, 2010 U.S. Dist. LEXIS 119163, *11-17 (E.D. Pa. Nov. 9, 2010). Defendants – having failed to present Ms. Joseph with a version of the Arbitration Agreement containing any class/collective waiver language – cannot now impose on Ms. Joseph a material contractual term that has absolutely no basis in the contractual language.

Defendants might try to argue that Ms. Joseph is somehow bound by the "Rules for the Resolution of Employment Disputes" document attached to their motion papers. See Doc. 9-3 at pp. 11-35. But this document bears a footer indicating that it was created in September 2002. See id. at pp. 12-35. That's well *after* the creation of the December 2001 Arbitration Agreement signed by Ms. Joseph. And there is not one shred of evidence contradicting the common sense notion that the December 2001 Arbitration Agreement presented to and signed by Ms. Joseph would have been accompanied by the "Rules" document in effect in December 2001.

E. If the Court decides the availability of class/collective arbitration, it should hold that Defendants' Class/Collective Waiver is invalid and unenforceable because it violates the NLRA.

As discussed below, if the Court chooses to decide the availability of class/collective arbitration, Defendants' Motion should be denied because the Arbitration Agreement's

mandatory Class/Collective Waiver requires that employees arbitrate their claims on an individual basis in violation of the NLRA.

1. The Section 7 right to engage in "concerted activities" includes participation in class and collective action lawsuits concerning wages and work conditions.

Section 7 of the NLRA states that "[e]mployees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." 29 U.S.C. § 157. Both federal courts and the NLRB have interpreted Section 7 as protecting the concerted pursuit of work-related legal claims such as this lawsuit. See Lewis v. Epic Sys. Corp., 2016 U.S. App. LEXIS 9638, *10 (7th Cir. May 26, 2016); Totten v. Kellogg Brown & Root, LLC, 2016 U.S. Dist. LEXIS 10424, *19-22 (C.D. Cal. Jan. 22, 2016); Herrington v. Waterstone Mortgage Corp., 2012 U.S. Dist. LEXIS 36220, *10-11 (W.D. Wis. Mar. 16, 2012); Harco Trucking, LLC, 344 NLRB 478, 478-79 (2005); Le Madri Rest., 331 NLRB 269, 275 (2000); United Parcel Serv., Inc., 252 NLRB 1015, 1018, 1026 & n.26 (1980), enforced, 677 F.2d 421 (6th Cir. 1982); Trinity Trucking & Materials Corp., 221 NLRB 364, 365 (1975), enforced mem., 567 F.2d 391 (7th Cir. 1977).

Just last week, the Seventh Circuit addressed this very issue and held that Section 7 gives workers the right to file and participate in class and collective action lawsuits:

> Section 7's "other concerted activities" have long been held to include "resort to administrative and judicial forums." Eastex, Inc. v. NLRB, 437 U.S. 556, 566, 98 S. Ct. 2505, 57 L. Ed. 2d 428 (1978) (collecting cases). Similarly, both courts and the Board have held that filing a collective or class action suit constitutes "concerted activit[y]" under Section 7. See Brady v. Nat'l Football League, 644 F.3d 661, 673 (8th Cir. 2011) ("[A] lawsuit filed in good faith by a group of employees to achieve more favorable terms or conditions of employment *is* 'concerted activity' under § 7 of the National Labor Relations Act."); Altex Ready Mixed Concrete Corp. v. NLRB, 542 F.2d 295, 297 (5th Cir. 1976) (same); Leviton Mfg. Co. v. NLRB, 486 F.2d 686, 689 (1st Cir. 1973) (same); Mohave

> Elec. Co-op., Inc. v. NLRB, 206 F.3d 1183, 1189, 340 U.S. App. D.C. 391 (D.C. Cir. 2000) (single employee's filing of a judicial petition constituted "concerted action" under NLRA where "supported by fellow employees"); D. R. Horton, 357 N.L.R.B. 2277, at 2278 n.4 (collecting cases). This precedent is in line with the Supreme Court's rule recognizing that even when an employee acts alone, she may "engage in concerted activities" where she "intends to induce group activity" or "acts as a representative of at least one other employee." NLRB v. City Disposal Systems, Inc., 465 U.S. 822, 831, 104 S. Ct. 1505, 79 L. Ed. 2d 839 (1984).
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> The NLRA does not define "concerted activities." The ordinary meaning of the word "concerted" is: "jointly arranged, planned, or carried out; coordinated." *Concerted*, NEW OXFORD AMERICAN DICTIONARY 359 (3d ed. 2010). Activities are "thing[s] that a person or group does or has done" or "actions taken by a group in order to achieve their aims." Id. at 16. Collective or class legal proceedings fit well within the ordinary understanding of "concerted activities."
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> The NLRA's history and purpose confirm that the phrase "concerted activities" in Section 7 should be read broadly to include resort to representative, joint, collective, or class legal remedies. (There is no hint that it is limited to actions taken by a formally recognized union.) Congress recognized that, before the NLRA, "a single employee was helpless in dealing with an employer," and "that union was essential to give laborers opportunity to deal on an equality with their employer." NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 33, 57 S. Ct. 615, 81 L. Ed. 893 (1937). In enacting the NLRA, Congress's purpose was to "to equalize the bargaining power of the employee with that of his employer by allowing employees to band together in confronting an employer regarding the terms and conditions of their employment." City Disposal Systems, 465 U.S. at 835. Congress gave "no indication that [it] intended to limit this protection to situations in which an employee's activity and that of his fellow employees combine with one another in any particular way." Id.
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> Collective, representative, and class legal remedies allow employees to band together and thereby equalize bargaining power. See Phillips Petrol. Co. v. Shutts, 472 U.S. 797, 809, 105 S. Ct. 2965, 86 L. Ed. 2d 628 (1985) (noting that the class action procedure allows plaintiffs who would otherwise "have no realistic day in court" to enforce their rights); Harry Kalven, Jr. & Maurice Rosenfield, The Contemporary Function of the Class Suit, 8 U. CHI. L. REV. 684, 686 (1941) (noting that class suits allow those "individually in a poor position to seek legal redress" to do so, and that "an effective and inclusive group remedy" is necessary to ensure proper enforcement of rights). Given Section 7's intentionally broad sweep, there is no reason to think that Congress meant to exclude collective remedies from its compass.

Lewis, 2016 U.S. App. LEXIS 9638, at *5-7; see also id. at *10 ("Congress was aware of class,

representative, and collective legal proceedings when it enacted the NLRA. The plain language of Section 7 encompasses them, and there is no evidence Congress intended them to be excluded.").

Consistent with the above authority, Plaintiffs' filing of, and participation in, this class/collective action is a "concerted activity" protected by Section 7 of the NLRA.

2. Class/Collective Waivers in Defendants' Arbitration Agreements interfere with employees' right to engage in concerted legal activity in violation of Section 8(a)(1) of the NLRA.

An employer violates Section 8(a)(1) of the NLRA by "interfere[ing] with, restrain[ing], or coerc[ing] employees in the exercise of the rights guaranteed in section 7." 29 U.S.C. § 158(a)(1). As the Seventh Circuit observed in Lewis: "A contract that limits Section 7 rights that is agreed to as a condition of continued employment qualifies as 'interfer[ing] with' or 'restrain[ing] . . . employees in the exercise' of those rights in violation of Section 8(a)(1)." 2016 U.S. App. LEXIS 9638, *13.

The Seventh Circuit is not alone. The NLRB and several district courts agree that arbitration agreements precluding class/collective litigation violate Section 8(a)(1). See, e.g., ZEP, Inc., 363 NLRB 192 (2016); Securitas Sec. Servs. USA, Inc., 363 NLRB 182 (2016); CVS RX Servs., 363 NLRB 180 (2016); Bloomingdale's, Inc., 363 NLRB 172 (2016); UnitedHealth Group, Inc., 363 NLRB 134 (2016); 24 Hour Fitness USA, Inc., 363 NLRB 84 (2015); Kmart Corp., 363 NLRB 66 (2015); Chesapeake Energy Corp., 362 NLRB 80 (2015); Herrington, 993 F. Supp. 2d at 943-46; Totten, 2016 U.S. Dist. LEXIS 10424, at *34-49.

Defendants' mandatory Class/Collective Waiver clearly impinges on employees' Section 7 right to participate in concerted legal activity by requiring employees, as a condition of their employment, to assert their work related claims in arbitration strictly on an individual basis.

Thus, the Class/Collective Waiver is illegal under Section 8(a)(1) of the NLRA and unenforceable.

3. Because Defendants' mandatory Class/Collective Waiver violates the NLRA, it is not enforceable under the FAA.

It is anticipated that Defendants' will argue that the FAA's purportedly pro-arbitration edicts trump Mr. Rutherford's NLRA rights and requires that the Arbitration Agreement and its mandatory Class/Collective Waiver be enforced in totality. This argument, however, would ignore the FAA's express savings clause in addition to the Supreme Court's instruction that arbitration agreements waiving substantive rights (such as those under Section 7 of the NLRA) are unenforceable.

The FAA was enacted to ensure that "courts [] place arbitration agreements on an equal footing with other contracts, and enforce them according to their terms." AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 339 (2011). However, the Supreme Court has held that that FAA is not limitless. See Proma Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 404 n.12 (1967) (FAA's purpose is "to make arbitration agreements as enforceable as other contracts, ***but not more so***." (emphasis supplied)).

Section 2 of the FAA states that arbitration agreements are "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The FAA's enforcement requirement combined with the savings-clause "reflect[s] both a liberal policy favoring arbitration and the fundamental principle that arbitration is a matter of contract." Concepcion, 563 U.S. at 339.

In essence, "[t]he FAA's savings clause permits agreements to arbitrate to be invalidated by generally applicable contract defenses, … but not by defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue." Lewis, 2016

U.S. App. LEXIS 9638, at *15 (quoting Concepcion, 563 U.S. at 339). "***Illegality*** is one of those grounds." See id. at *16 (emphasis supplied); accord Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, 444 (2006); see also Kaiser Steel Corp. v. Mullins, 455 U.S. 72, 83-84 (1982) ("a federal court has a duty to determine whether a contract violates federal law before enforcing it.").

Defendants' mandatory Class/Collective Waiver falls squarely within the FAA's savings clause. As discussed above, this provision is illegal under the NLRA because it infringes on employees' Section 7 rights in violation of Section 8(a)(1). The Seventh Circuit reached this same conclusion in Lewis, holding:

> The NLRA prohibits the enforcement of contract provisions like [the employer's], which strip away employees' rights to engage in "concerted activities." Because the provision at issue is unlawful under Section 7 of the NLRA, it is illegal, and meets the criteria of the FAA's saving clause for nonenforcement.
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> Illegality is a standard contract defense contemplated by the FAA's savings clause. See Buckeye Check Cashing, 546 U.S. at 444. If the NLRA does not render an arbitration provision sufficiently illegal to trigger the savings clause, the savings clause does not mean what it says.

2016 U.S. App. LEXIS 9638, at *17, *22; see also id. at *23 ("To immunize an arbitration agreement from judicial challenge on a traditional ground such as illegality would be to elevate it over other forms of contract-a situation inconsistent with the savings clause.'") (internal quotations omitted); Totten, 2016 U.S. Dist. LEXIS 10424, at *40 (a class action waiver that violates the NLRA "falls squarely within the ambit of the FAA's savings clause.").[1]

[1] By fitting within the FAA's savings clause, the NLRA and the FAA are not in conflict. Thus, the Court does not need to determine if the NLRA contains a "contrary congressional command" overruling the FAA. That analysis is necessary only when another federal statute irreconcilably conflicts with the FAA, requiring a determination of which one controls. Since no conflict exists between the FAA and the NLRA, both statues are able to be given full effect. See Lewis, 2016

Consistent with the FAA's savings clause, the Supreme Court also has held that arbitration agreements are invalid and unenforceable if they require a party to waive substantive federal rights. See Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 26 (1991) ("'[B]y agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum.'") (quoting Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, 473 U.S. 614, 628 (1985)); see also Lewis, 2016 U.S. App. LEXIS 9638, at *25 ("Arbitration agreements that act as a 'prospective waiver of a party's *right to pursue* statutory remedies'—that is, of a substantive right—are not enforceable.") (quoting American Express Co. v. Italian Colors Restaurant, __ U.S. __, 133 S. Ct. 2304, 2310 (2013)).

Under this principle, federal courts have not hesitated to invalidate contractual provisions (including those in arbitration agreements) that interfere with substantive statutory rights provided under federal laws such as the NLRA. See Kaiser Steel Corp. v. Mullins, 455 U.S. 72, 86 (1982) ("While only the [NLRB] may provide affirmative remedies for unfair labor practices, a court may not enforce a contract provision which violates [the NLRA]. Were the rule otherwise, parties could be compelled to comply with contract clauses, the lawfulness of which would be insulated from review by any court."); see also Lewis, 2016 U.S. App. LEXIS 9638, at *25 (citing examples).

Section 7's right "to engage in other concerted activities" is the type of substantive federal protection that the Supreme Court has held cannot be waived through an arbitration agreement. The Seventh Circuit reached this exact conclusion in Lewis, holding:

The right to collective action in section 7 of the NLRA is not, however, merely a

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U.S. App. LEXIS 9638, at *16-17 ("no conflict between the NLRA and the FAA, let alone an irreconcilable one").

> procedural one. It instead lies as the heart of the restructuring of employer/employee relationships that Congress meant to achieve in the statute.
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> That Section 7's rights are "substantive" is plain from the structure of the NLRA: Section 7 is the NLRA's *only* substantive provision. Every other provision of the statute serves to enforce the rights Section 7 protects. Compare 29 U.S.C. § 157 with id. §§ 151-169.
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> But just because the Section 7 right is associational does not mean that it is not substantive. It would be odd indeed to consider associational rights, such as the one guaranteed by the First Amendment to the U.S. Constitution, non-substantive.

2016 U.S. App. LEXIS 9638, at *23-24, *26. Several district courts have agreed, rejecting the argument that Section 7's protections are merely procedural and able to be waived by agreement. See, e.g., Herrington, 993 F. Supp. 2d at 943-44 ("Again, it is well established that an arbitration agreement may not require a party to waive a substantive federal right."); Totten, 2016 U.S. Dist. LEXIS 10424, at *34-*40 ("The Supreme Court has already established that a valid arbitration agreement cannot require a party to waive a substantive federal right.").[2]

F. In the alternative, the Court could deny Defendants' Motion without prejudice until after either the NLRB completes its investigation or the Third Circuit addresses the legality of class/collective waivers.

An alternative for the Court would be to deny Defendants' motion without prejudice to re-file at a later point in the litigation. Plaintiffs would not oppose such a ruling for two reasons:

First, as discussed in Section II.C supra, the NLRB currently is investigating Defendants' Arbitration Agreements and is expected to make its findings shortly. The Supreme Court has

[2] It is anticipated that Defendants will argue that the Court should ignore the Seventh Circuit's Lewis opinion and instead rely on the 2013 opinion by a divided Fifth Circuit Court of Appeals that overturned the NLRB's D.R. Horton, Inc., 357 NLRB No. 184 (2012) decision and held that the right to concerted litigation activity under Section 7 of the NLRA is not a protected substantive right that cannot be waived by an arbitration agreement. See D.R. Horton, Inc. v. NLRB, 737 F.3d 344 (5th Cir. 2013). However, the Seventh Circuit in Lewis and each of the federal district courts listed above have explicitly refused to follow the Fifth Circuit's holding.

previously held that the NLRB's interpretations of the NLRA are to be given considerable deference. See ABF Freight System, Inc. v. NLRB, 510 U.S. 317, 324 (1994). A finding, for either side, by the NLRB on the legality of Defendants' Class/Collective Waiver under the NLRA will be pertinent to this analysis.

Second, an appeal is currently pending before the Third Circuit in a case titled The Rose Group v. NLRB, App. No. 15-4092 (3d. Cir.). The employer in Rose Group is seeking judicial review of an NLRB finding that a mandatory arbitration provision prohibiting the pursuit of class or collective actions violates the NLRA. See The Rose Group, 2015 NLRB 932 (Dec. 22, 2015). In reaching this conclusion, the NLRB asserts many of the arguments Plaintiffs make above. Id. A ruling by the Third Circuit on this issue will obviously have substantial impact on the parties' respective arguments and warrants a delay in the Court ruling on Defendants' Motion.

IV. CONCLUSION

For the reasons discussed above, Plaintiffs respectfully request that Defendants' Motion be denied.

Dated: June 3, 2016

Respectfully,

/s/ R. Andrew Santillo
Peter Winebrake
R. Andrew Santillo
Mark J. Gottesfeld
Winebrake & Santillo, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
(215) 884-2491

Plaintiffs' Counsel

Exhibit 1

TO: ALL EMPLOYEES

FROM: HUMAN RESOURCES

DATE: April 28, 2016

REGARDING: **Arbitration Agreement**

Attached is a copy of the Company's revised version of its Arbitration Agreement. Please take the time to read this Arbitration Agreement. Entering this version of the Arbitration Agreement is a condition of employment. **IT APPLIES TO YOU**. Going forward, the Arbitration Agreement will govern all covered legal disputes between you and the Company.

Please sign and return the Arbitration Agreement to your Store Manager by May 4, 2016. If you have any questions regarding the Arbitration Agreement, please contact your Human Resources Manager, Trish Norvell at 574-243-6216.

ARBITRATION AGREEMENT

This Arbitration Agreement is a contract, is a condition of employment, and covers important issues relating to Your rights. It is Your responsibility to read it and understand it. You are free to seek assistance from independent advisors of Your choice outside the Company.

El Acuerdo de Arbitraje es un contrato, es una condición de empleo, y cubre aspectos importantes de tus derechos. Es tu responsabilidad leerlo y entenderlo. Tienes la libertad de buscar asistencia de asesores independientes de tu elección fuera de la Empresa.

1. **INTRODUCTION:** This Arbitration Agreement ("Agreement") is between me (sometimes referred to as "me", "I", "You" or "Your") and my employer ("Employer"). For purposes of this Agreement, any reference to "Employer" will include Quality Dining, Inc. (a holding company that does not employ any individuals) and any direct or indirect parents and subsidiaries and affiliates (including without limitation, Southwest Dining, Inc., Grayling Corporation, Full Service Dining, Inc., Bravokilo, Inc., Bravogrand, Inc., Bravoflorida, LLC, and Bravotampa, LLC) for whom You apply for employment, are employed or were employed at any time. The Federal Arbitration Act (9 U.S.C. § 1 et seq.) governs this Agreement, which evidences a transaction involving commerce. Employer and I agree that the mutual obligations by Employer and me to arbitrate disputes provide adequate consideration for this Agreement. **All disputes covered by this Agreement will be decided by an arbitrator through final and binding arbitration and not by way of court or jury trial.**

2. **DISPUTES COVERED BY THE AGREEMENT:** Employer and I mutually contract and agree to the resolution by arbitration of all disputes, claims or controversies, past, present or future, including without limitation, claims arising out of or related to my application for employment, employment, or the termination of my employment that Employer may have against me or that I may have against Employer, or its

- officers, directors, employees, or agents in their capacity as such or otherwise;
- benefit plans or the plans' sponsors, fiduciaries, administrators, affiliates and agents;
- franchisors (including without limitation, Chili's Restaurants and any affiliates);
- successors and assigns;

each and all of which may enforce this Agreement as direct or third-party beneficiaries.

Except as it otherwise provides, this Agreement applies to the resolution of disputes that otherwise would be resolved in a court of law or before a forum other than arbitration under applicable state, federal or other law. Except if the claim is expressly listed in the "Claims Not Covered by the Agreement" section below, this Agreement applies, without limitation, to claims based upon or related to discrimination, harassment, retaliation, defamation (including post-employment defamation or retaliation), breach of a contract or covenant, fraud, negligence, breach of fiduciary duty, trade secrets, unfair competition, wages, minimum wage and overtime or other compensation claimed to be owed, breaks and rest periods, seating, termination, tort claims, equitable claims, and claims arising under the Uniform Trade Secrets Act, Civil Rights Act of 1964, 42 U.S.C. § 1981, Americans With Disabilities Act, Age Discrimination in Employment Act, Worker Adjustment and Retraining Notification Act, Fair Credit Reporting Act, Family Medical Leave Act, Fair Labor Standards Act, Uniformed Services Employment and Reemployment Rights Act, Employee Retirement Income Security Act (except for claims for employee benefits under any benefit plan sponsored by Employer and (a) covered by the Employee Retirement Income Security Act of 1974 or (b) funded by insurance), Affordable Care Act, Genetic Information Non-Discrimination Act, each as amended, and state statutes or regulations addressing the same or similar subject matters, and all other federal or state legal claims arising out of or relating to Your application for employment, employment or the termination of employment.

The Arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Agreement including, but not limited to any claim that all or any part of this Agreement is void or voidable. However, as stated in the "Class and Collective Action Waivers" section below, the preceding sentence will not apply to the Class Action Waiver or Collective Action Waiver.

3. **CLAIMS NOT COVERED BY THE AGREEMENT:** The following claims are not covered disputes and are excluded under this Agreement: (i) Workers' Compensation benefit claims; (ii) state unemployment or disability insurance compensation claims; (iii) claims for benefits under employee benefit plans covered by ERISA; and (iv) claims that controlling federal statutes or lawful, enforceable federal Executive Orders bar from the coverage of mandatory pre-dispute arbitration agreements.

Employer or I may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief in connection with an arbitrable controversy, including without limitation any controversy under any applicable restrictive covenant(s) or confidentiality obligations entered into between me and Employer; provided, however, that all determinations of final relief will be decided in arbitration, and pursuing the temporary or preliminary injunctive relief will not constitute a waiver of rights under this Agreement.

4. **ROLE OF GOVERNMENTAL AGENCIES:** Nothing in this Agreement prevents You from making a report to or filing a claim or charge with a government agency, including without limitation the Equal Employment Opportunity Commission, U.S. Department of Labor, U.S. Securities and Exchange Commission, National Labor Relations Board, or Office of Federal Contract Compliance Programs. Nothing in this Agreement prevents the investigation by a government agency of any report, claim or charge otherwise covered by this Agreement. This Agreement also does not prevent federal administrative agencies from adjudicating claims and awarding remedies based on those claims, even if the claims would otherwise be covered by this Agreement. Nothing in this Agreement prevents or excuses a party from satisfying any conditions precedent or exhausting administrative

remedies under applicable law before bringing a claim in arbitration. Employer will not retaliate against me for filing a claim with an administrative agency or for exercising rights (individually or in concert with others) under Section 7 of the National Labor Relations Act.

5. **INFORMAL RESOLUTION AND OPEN DOOR POLICY:** This Agreement does not in any way prevent or excuse me or the Company from using informal avenues to raise or resolve concerns—including disputes which are covered under this Agreement. I understand that I may raise concerns with my managers. Many times addressing concerns with my immediate manager will lead to a resolution. If I feel uncomfortable raising concerns with my immediate manager, or my manager does not respond to my concerns, I may raise the concerns with my manager's supervisor—including my General Manager or Area Director. I am also encouraged to bring concerns to the attention of the Company's Human Resources Department pursuant to the Company's open-door policy.

6. **VOLUNTARY MEDIATION:** Mediation is a voluntary, non-binding process where a neutral third-party (a mediator) works with the parties to reach a mutually agreeable settlement of the dispute. If a settlement is not reached, the mediator has no authority to impose one. I may request Mediation by making a written request for mediation of a dispute to the Legal Department, currently at Quality Dining Attn: Legal/Mediation Intake, 4220 Edison Lakes Parkway, Mishawaka, IN 46545. If the Company requests mediation, it will make a written request at the last home address I provided in writing to the Company. Both parties must mutually agree to mediation before any mediation occurs and neither party has any obligation under this Agreement to mediate a dispute. Mediation is completely voluntary and is not a prerequisite to arbitration of a dispute. Employer will pay all of the fees and costs of Mediation. If the dispute is resolved in mediation, the parties will execute a settlement agreement documenting the resolution reached in mediation. If the dispute has not been resolved by or pursued in the Informal Resolution and Open Door Policy or Mediation and is subject to arbitration under this Agreement, You and Employer must pursue the dispute only in arbitration and not in court. Arbitration of such disputes is mandatory under this Agreement.

To the extent the parties mediate under this Agreement, the applicable statute of limitations (legal deadline) for either party's legal claim(s) is tolled during the mediation process. In other words, if mediation is initiated, the deadline for filing an arbitration demand is extended by the time it takes for Mediation to be conducted.

7. **INITIATING ARBITRATION DEMAND:** Employer and I agree that the aggrieved party must make a written request for arbitration of any claim to the other party no later than the expiration of the statute of limitations (deadline for filing) that the applicable state or federal law prescribes for the claim. Any written request for arbitration to Employer, or its officers, directors, employees or agents will be sent to its Legal Department, currently at Quality Dining Attn: Legal/Mediation Intake, 4220 Edison Lakes Parkway, Mishawaka, IN 46545, by U.S. Mail or hand delivery. A telephone call does not constitute notice for purposes of initiating an arbitration demand. I will be given any written request for arbitration at the last home address I provided in writing to Employer. The request for arbitration shall include identification of the parties, a statement of the legal and factual basis of the claim(s), and a specification of the remedy sought. The Arbitrator will resolve all disputes regarding whether the demand for arbitration was proper and on time.

8. **CLASS AND COLLECTIVE ACTION WAIVERS:**

a. EMPLOYER AND I WAIVE ANY RIGHT FOR ANY DISPUTE TO BE BROUGHT, HEARD, DECIDED OR ARBITRATED AS A CLASS ACTION and the Arbitrator will have no authority to hear or preside over any such claim ("Class Action Waiver"). Notwithstanding any other clause in this Agreement, the Class Action Waiver is not severable from this Agreement in any instance in which the dispute is brought as a class action.

b. EMPLOYER AND I WAIVE ANY RIGHT FOR ANY DISPUTE TO BE BROUGHT, HEARD, DECIDED OR ARBITRATED AS A COLLECTIVE ACTION and the Arbitrator will have no authority to hear or preside over any such claim ("Collective Action Waiver"). Notwithstanding any other clause in this Agreement, the Collective Action Waiver is not severable from this Agreement in any instance in which the dispute is brought as a collective action.

Notwithstanding any other clause or language in this Agreement or any rules or procedures that might otherwise apply because of virtue of this Agreement (including without limitation the American Arbitration Association Rules discussed below) or any amendments or modifications to those rules, any claim that the Class Action Waiver or Collective Action Waiver or any portion of the Class Action Waiver or Collective Action Waiver is unenforceable, inapplicable, unconscionable, or void or voidable, will be determined only by a court of competent jurisdiction and not by an arbitrator.

9. **PROCEDURES AND RULES:** The arbitration will be held under the auspices of the American Arbitration Association ("AAA"), and except as provided in this Agreement, will be under the then current Employment Arbitration Rules of the AAA ("AAA Rules") (the AAA Rules are available through Employer's Human Resources Department or via the internet at www.adr.org/employment). Unless the parties jointly agree otherwise, the Arbitrator will be an attorney experienced in employment law and licensed to practice law in the state in which the arbitration is convened or a retired judge from any jurisdiction (the "Arbitrator"). Unless the parties jointly agree otherwise, the arbitration will take place in or near the city in which I am or was last employed by Employer.

The Arbitrator will be selected as follows: The AAA will give each party a list of nine (9) arbitrators drawn from its panel of arbitrators. Each party will have ten (10) calendar days from the postmark date on the list to strike all names on the list it deems unacceptable. If only one common name remains on the lists of all parties, that individual will be designated as the Arbitrator. If more than one common name remains on the lists of all parties, the parties will strike names alternately from the list of common names until only one remains, with the party to strike first to be determined by a coin toss. If no common name remains on the lists of all parties, AAA will furnish an additional list of nine (9) arbitrators from which the parties will strike alternately, with the party striking first to be determined by a coin toss, until only one name remains. That person will be designated as the Arbitrator. If the individual selected cannot serve, AAA will issue another panel of nine (9) arbitrators and repeat the alternate selection process. If AAA will not

administer the arbitration, either party may apply to a court of competent jurisdiction with authority over the location where the arbitration will be conducted to appoint a neutral Arbitrator.

The Arbitrator may award to me or Employer any remedy to which that party is entitled under applicable law (including, but not limited to, legal, equitable and injunctive relief), but such remedies are limited to those that would be available to a party in his or her individual capacity in a court of law for the disputes presented to and decided by the Arbitrator.

The Arbitrator will have the authority to hear and decide dispositive motions, motions to dismiss and motions for summary judgment by any party and will apply the standards governing such motions under the Federal Rules of Civil Procedure. The arbitrator will set a briefing schedule for such motions upon the request of either party.

The Arbitrator will issue a written award that will include the factual and legal basis for the decision. The decision of the Arbitrator may be entered and enforced as a final judgment in any court of competent jurisdiction.

10. DISCOVERY AND SUBPOENAS: Each party will have the right to take the deposition of two individuals and any expert witness designated by another party. Each party also will have the right to propound requests for production of documents and five (5) interrogatories to any party, and the right to subpoena witnesses and documents for the arbitration, and documents relevant to the case from third parties. Additional discovery may be had by mutual agreement of the parties or where the Arbitrator orders pursuant to a request by either party.

11. ARBITRATION FEES AND COSTS: Employer will pay the Arbitrator's and arbitration fees and costs under the AAA Rules. Each party will pay for its own costs and attorneys' fees, if any. However, if any party prevails on a claim which affords the prevailing party attorneys' fees, or if there is a written agreement providing for fees, the Arbitrator may award reasonable fees to the prevailing party as provided by law. If the law (including the common law) of the jurisdiction in which the arbitration is held requires a different allocation of arbitral fees and costs for this Agreement to be enforceable, then such law will be followed.

12. CONSTRUCTION: Except as provided in Section 8 (Class and Collective Action Waivers) above, if any provision of this Agreement is adjudged to be void, voidable or otherwise unenforceable, in whole or in part, such provision will, without affecting the validity of the remainder of the Agreement, be (i) modified to the extent necessary to render such term or provision enforceable preserving to the fullest extent possible the intent and agreements herein, or (ii) to the extent such modification is not permissible, severed from this Agreement. All remaining provisions will remain in full force and effect.

13. SOLE AND ENTIRE AGREEMENT: With one exception, noted below, unless this Agreement in its entirety is deemed void, unenforceable or invalid, this Agreement replaces any prior or concurrent oral or written statements on arbitration and is the complete agreement of the parties on the subject of arbitration or formal resolution of disputes covered by this Agreement. This Agreement will survive the termination of my employment and the expiration of any benefit, and it will apply upon re-employment by Employer if my employment is ended but later renewed. This Agreement will also continue to apply if there is any change in my duties, responsibilities, position, or title. No party is relying on any representations, oral or written, on the subject of the effect, enforceability, or meaning of this Agreement, except as specifically set forth in this Agreement. Notwithstanding any contrary language, if any, in any Team Member Guidebook and addendums or any other Employer policy or practice, this Agreement may not be modified or terminated absent a writing signed (electronically or otherwise) by both parties.

Exception: This Agreement does not prevent you from joining, opting into or participating in a pending class and/or collective action already pending on the date You enter into this Agreement. However, if (1) You previously entered into an agreement to arbitrate with Employer that prevents You from joining, opting into or participating in a class and/or collective action; (2) there is a pending class and/or collective action on the date You enter into this Agreement; and (3) you are a member of that putative class and/or putative collective, Your prior agreement to arbitrate will remain in full force and effect, including without limitation the class and/or collective action waiver.

I ACKNOWLEDGE THAT I HAVE CAREFULLY READ THIS ARBITRATION AGREEMENT AND UNDERSTAND THAT BY SIGNING IT, EMPLOYER AND I ARE GIVING UP OUR RIGHTS TO A COURT OR JURY TRIAL AND AGREEING TO ARBITRATE CLAIMS COVERED BY THIS AGREEMENT.

AGREED:

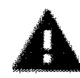
______________________________ ______________________________
EMPLOYEE SIGNATURE DATE EMPLOYEE NAME PRINTED

______________________________ ______________________________
PARENT SIGNATURE FOR MINORS DATE PARENT NAME PRINTED

[signature] President
SIGNATURE OF AUTHORIZED REPRESENTATIVE TITLE OF REPRESENTATIVE

Exhibit 2

Broadcast Messages



Corporate will not allow you to work past Thursday 5/5/16 if you do not hand in your arbitration agreement. Please get them back to management ASAP

Exhibit 3

INTERNET
FORM NLRB-501
(2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C 3512

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
04-CA-175450	05-03-16

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Quality Dining, Inc. and Grayling Corporation (collectively "Quality Dining")

b. Tel. No. (574) 271-4600

c. Cell No.

f. Fax No.

d. Address *(Street, city, state, and ZIP code)*
4220 Edison Lakes Parkway
Mishawaka, IN 46545

e. Employer Representative

g. e-Mail

h. Number of workers employed
Approximately 1,000

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Restaurant franchisee manager

j. Identify principal product or service
Chilli's Grill & Bar and Burger King restaurant franchisees

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* ______ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

Quality Dining requires all employees to sign to an "Arbitration Agreement" mandating that all "claim(s)" and "dispute(s)" with the company be arbitrated on an individual basis Specifically, the Arbitration Agreement states: "Only one Employee may be a party to any particular arbitration unless otherwise agreed by the parties. Each arbitration is limited to the claims of the Employee who is a party to that arbitration and shall not include claims pertaining to any other Employee unless otherwise agreed by the parties." By subjecting employees, such as Charging Party, to waive their right to pursue class and collective claims in all forums and arbitrate strictly on an individual basis, Quality Dining is violating section 8(a)(1) of the NLRA by interfering with employees' rights under section 7 to engage in concerted activity. See, e.g., Chesapeake Energy Corp., 362 NLRB 80 (Apr. 30, 2015).

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*

Ryan Rutherford c/o R. Andrew Santillo, Esq., Winebrake & Santillo, LLC (address in section 6 below)

4a. Address *(Street and number, city, state, and ZIP code)*

4b. Tel. No.

4c. Cell No.

4d. Fax No.

4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By [signature] *(signature of representative or person making charge)*

R. Andrew Santillo, Esq *(Print/type name and title or office, if any)*

Address 715 Twining Road, Suite 211, Dresher, PA 19025

5/3/16 *(date)*

Tel. No. 215-884-2491

Office, if any, Cell No. 215-884-2491

Fax No. 215-884-2492

e-Mail asantillo@winebrakelaw.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.