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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Common Pleas Court
D. Garrison Hill, Circuit Court Judge

Case No.: 2014-002464

RECEIVED
APR 01 2015
SC Court of Appeals

Laurin Stinson.....Respondent,

vs.

Hans & Franz, LLC d/b/a Hans & Franz Biergarten, Addys Dutch Café and Restaurant, Addy
Sulley, and Juergen Haubach.....Appellants.

RECORD ON APPEAL

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Attorney for Appellants
January 15, 2015

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
FILED-CLERK OF COURT CASE NUMBER 2013CP2303057
GREENVILLE CO. S.C.

Laurin Stinson

PAUL B. WICKENS ~~SHIR~~ Hans & Franz LLC

Hans & Franz
Biergarten
Addy Sulley

2013 NOV 14 PM 3:52

Addy Dutch Cafe And
Restaurant
Jurgen Haubach

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

9/21/14 MOTION TO COMPEL IS GRANTED. Mr. Rackersbuhl
~~shall~~ shall file complete responses to discovery on
or before December 1, 2013, or sanctions will be imposed.
This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s)-below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge

000003

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2303057

Lauren Stinson

2014 MAR 11 PM 1:04 Hans & Franz, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Plaintiff's Motion for Summary Judgment is respectfully denied. A genuine issue of material fact exists as to the treatment of deductions, wages, and tips as well as the credit card service charge and "breakage" issue and their interplay with § 203(m). 29USC § 203(m). Court finds that viewing the complaint in the light most favorable to the Plaintiff further development of the facts is necessary to clarify application of the law.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2138

Date _____

For Clerk of Court Office Use Only

This judgment was entered on 3/11/14, and a copy mailed first class or placed in the appropriate attorney's box on 3/11/14, to attorneys of record or to parties (when appearing pro se) as follows:

Charles Alexander Cable

ATTORNEY(S) FOR THE PLAINTIFF(S)

John G Redkenbeil

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

**Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court**

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

[illegible]

FORM 4

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT

GREENVILLE CO. S.C.

Laurin Stinson

PAUL B. WICKENSIMER

2014 OCT 3 PM 3 17

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2303057

Hans & Franz LLC

Hans & Franz

Addys Dutch Cafe And
Restaurant

Biergarten
Addy Sulley

Jurgen Haubach

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
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☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion for Partial Summary Judgment is granted. Mr. Charles A. Cable, Esq. is requested to submit a proposed order to the Court by October 15, 2014.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Ham / m
Circuit Court Judge

2138

Judge Code

10/1/2014

Date

DS-14
For Clerk of Court Office Use Only

This judgment was entered on *10-3-14*, and a copy mailed first class or placed in the appropriate attorney's box on *10-3-14*, to attorneys of record or to parties (when appearing pro se) as follows:

Charles Alexander Cable 207 Whitsett Street Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

John G. Reckenbeil Law Office Of John G. Reckenbeil, LLC
P.O. Box 1633 Spartanburg, SC 29304

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2013CP2303057

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS/ME
2019 OCT 17 PM 4:55

Laurin Stinson vs. Hans & Franz LLC

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
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- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

RECEIVED

NOV 17 2014

SC Court of Appeals

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

NOTICE

This is a notice to you that an Order Granting Plaintiff's Motion For Partial Summary Judgment And Entry Of Judgment in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to bk Lukas@greenvillecounty.org. If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE .

Brian Patrick Murphy Stephenson & Murphy, LLC
207 Whitsett Street Greenville, SC 29601-3117

John G. Reckenbeil PO Box 1633 Spartanburg, SC
29304

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

State of South Carolina

County of Greenville

IN THE COURT OF COMMON PLEAS

2013-CP-23-03057

Laurin Stinson,

Plaintiff,
v.

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and
Jurgen Haubach,

Defendants.

Order Granting Plaintiff's
Motion for Partial
Summary Judgment
and Entry of Judgment

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
OCT 17 PM 4 53

Introduction and Procedural Background

Plaintiff, Laurin Stinson commenced this action on May 30, 2013. On June 11, 2014, Stinson moved for partial summary judgment regarding Count I.¹ Plaintiff submitted a memorandum law supporting her claims. Defendants likewise submitted a memorandum. The Court held oral argument in this matter on August 11, 2014 where counsel for both sides ably presented their respective positions. Both sides submitted additional written argument in September, 2014. Stinson was represented by C. Alexander Cable, Esquire. The Defendants were represented by John G. Reckenbeil, Esquire. After review of the evidence in this case, including the pleadings, discovery, affidavits, and upon review of the written submissions by counsel and the applicable law, this Court hereby **GRANTS** Plaintiff's motion for partial summary judgment as to liability and damages.

¹ Plaintiff has brought three claims against Defendants: (1) non-payment of minimum wage under the Fair Labor Standards Act (FLSA), (2) non-payment of overtime under the FLSA, and (3) non-payment of wages under the South Carolina Payment of Wages Act. Only Count I, non-payment of minimum wage is before the Court and the Court makes no findings regarding Plaintiff's other claims.

Defendants Hanz & Frans Biergarten and Addys Dutch Café and Restaurant are restaurants located in Greenville, South Carolina. Hans & Franz is owned and operated by Defendant Addy Sulley and managed by Defendant Jurgen Haubach. Both Sulley and Haubach have the power to hire and fire. Indeed, Haubach exercises "complete control" over Hans & Franz in Sulley's absence and exercises direct supervision over the staff. Sulley owns and operates the company and helps with management as needed, including assuming control when present. Defendant Sulley is also a part owner of Addy's Dutch Café and, as characterized by Defendants, acts as the "brains of the operation" for that entity.

Plaintiff, Laurin Stinson, worked for Defendants at their Hans & Franz location in Greenville, South Carolina from approximately October 25, 2011 until January 19, 2013. Plaintiff worked as a server taking orders, serving food, making and serving mixed alcoholic beverages, taking and running payments (including running credit cards), bussing tables, and seating guests.

Defendants did not pay Stinson minimum wage. Because Stinson received tips from customers for her services, Defendants utilized a "tip credit" system whereby they deducted \$5.12 per hour from servers' pay, netting Stinson \$2.13 per hour.² However, Defendants also required Stinson to remit to them a portion of her tips at the end of each shift as a "breakage" or "turn in" or "tip out" fee. This fee was paid directly to Defendants.³

² The current minimum wage is \$7.25 per hour. 29 U.S.C. § 206(a).

³ Defendants purportedly took the fee in order to cover lost or damaged items such as plates and silverware. However, the fee was taken from Stinson's pay every shift, regardless of whether she broke anything or whether anything was broken at all.

Law and Analysis

I. Standard

“Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party.” *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009) (citing Rule 56, SCRCF); *see also* Rule 56, FRCP. “[I]n cases . . . applying federal law, we hold that the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment.” *Id.* at 330-31, 673 S.E.2d at 803.

II. Plaintiff's Minimum Wage Claim

Defendants' did not pay Stinson the federally-mandated minimum wage. As set forth below, their practice and reasons for doing so renders all Defendants liable under the FLSA.

A. Defendants' practice of requiring tips to be paid as fees violated the FLSA's minimum wage requirement.

Stinson was a “tipped employee” pursuant to the FLSA. She was therefore entitled to minimum wage of \$7.25 minus any amounts withheld through a valid tip credit scheme. 29 U.S.C. § 206(a); 29 U.S.C. § 203(m); *Chisolm v. Gravitas Rest. Ltd.*, CIV.A. H-07-475, 2008 WL 838760, at *2 (S.D. Tex. Mar. 25, 2008). The tip credit allows some employers to pay as little as \$2.13 per hour to employees. *Chisolm*, 2008 WL 838760, at *2. However, the right of employers to claim the tip is not automatic. The ability to take a tip credit requires *strict* compliance with the mandates set out in § 203(m); specifically, employees must have “been informed by the employer [of the tip credit], and all tips received by such employee have been retained by the employee.” 29 U.S.C. § 203(m); *Reich v. Chez Robert, Inc.*, 28 F.3d 401, 403

(3d Cir. 1994); *Richard v. Marriott Corp.*, 549 F.2d 303, 305 (4th Cir. 1977); *Chung v. New Silver Palace Rest., Inc.*, 246 F. Supp. 2d 220, 228 (S.D.N.Y. 2002); *see also Chisolm*, 2008 WL 838760, at *2 (applying a four-factor analysis that the employer “(1) pays a cash wage of at least \$2.13 per hour; (2) informs its employees of the FLSA’s tip credit provisions; (3) permits its employees to retain all their tips; and (4) ensures that the cash wage plus the tip credit equal at least the minimum wage each week.”).

Defendants did not permit Stinson to retain all her tips. She was required to give a portion of her tips, based on sales, directly to management. Because Stinson did not retain all her tips, Defendants have unlawfully instituted a tip credit scheme that violates the FLSA.⁴

B. All Defendants are liable for non-payment of minimum wage.

Defendants were all Stinson’s employers under the FLSA and subject to liability for violations thereof.⁵ Defendants Hans & Franz and Addys Dutch Café admit that they are

⁴ Defendants acknowledge that they took sums from Stinson’s tips. Nevertheless, they suggest that because they did not deduct surcharges from Stinson’s credit card tips, this should offset or even undo their liability. This “no harm, no foul” argument cannot be sustained. The law is clear on this point: where 203(m) is violated, “the tip credit may not be claimed, regardless of whether employees suffered actual economic harm as a result.” *Solis v. Min Fang Yang*, 345 F. App’x 35, 38 (6th Cir. 2009); *see also Garcia v. Koning Restaurants Int’l, L.C.*, 12-CV-23629, 2013 WL 8150984 (S.D. Fla. May 10, 2013) (“If an employer fails to satisfy either of these preconditions, the tip credit may not be claimed, regardless of whether employees suffered actual economic harm as a result.”) (internal quotations omitted); *Dorsey v. TGT Consulting, LLC*, 888 F. Supp. 2d 670, 681 (D. Md. 2012); *Dominguez v. Quigley’s Irish Pub, Inc.*, 790 F. Supp. 2d 803, 819, 821 (N.D. Ill. 2011) (“If the employer fails to meet either of these requirements, it is not eligible to claim the tip credit, and in such a case, the employer must pay each employee the full minimum wage of \$7.25 an hour”); *Bernal v. Vankar Enterprises, Inc.*, 579 F. Supp. 2d 804, 808 (W.D. Tex. 2008) (“[C]ourts have found violations of section 203(m) (and therefore of federal minimum wage laws) even where the employees were, in fact, paid the minimum wage once their tips were taken into account.”); *Hai Ming Lu v. Jing Fong Rest., Inc.*, 503 F. Supp. 2d 706, 711 (S.D.N.Y. 2007) (“These predicates must be satisfied even if the employee received tips at least equivalent to the minimum wage.”) (internal quotations omitted); *Chung v. New Silver Palace Rest., Inc.*, 246 F. Supp. 2d 220, 229 (S.D.N.Y. 2002) (“[P]rerequisites that the employer must fulfill to be eligible for the tip credit are strictly construed, and must be satisfied even if the employee received tips at least equivalent to the minimum wage.”).

employers under the FLSA.⁶ Defendants Haubauch and Sulley are also employers under the Act and subject to individual liability because of their degree of control over Stinson's employment. *Irizarry v. Catsimatidis*, 722 F.3d 99, 107-14 (2d Cir. 2013); *Boucher v. Shaw*, 572 F.3d 1087, 1091 (9th Cir. 2009); *Chao v. Hotel Oasis, Inc.*, 493 F.3d 26, 34 (1st Cir.2007); *Baystate Alternative Staffing, Inc. v. Herman*, 163 F.3d 668 (1st Cir.1998); *Reich v. Circle C. Investments, Inc.*, 998 F.2d 324, 329, 26 Fed. R. Serv.3d 921 (5th Cir.1993); *Donovan v. Sabine Irrigation Co., Inc.*, 695 F.2d 190, 194-95 (5th Cir. 1983).

III. Damages

The FLSA provides that an employer who violates its minimum wage provisions be liable in the full amount of the minimum wage and an additional equal amount as liquidated damages, plus attorney's fees. *Richard*, 549 F.2d at 305; *Singer v. City of Waco*, 324 F.3d 813, 822 (5th Cir.2003); *Reich v. Chez Robert, Inc.*, 28 F.3d 401, 403 (3d Cir. 1994); *Chisolm*, 2008 WL 838760, at *5; see also 29 U.S.C. § 216(b).

A. Actual Damages

Stinson has suffered actual damages in the amount of \$9,587.25 for nonpayment of minimum wage. Because Defendants did not permit Stinson to retain her tips, pursuant to 29

⁵ Defendants have not contested that they are subject to liability under the FLSA in this action. Nevertheless, for sake of clarity, the Court briefly addresses this matter.

⁶ Employers are subject to the Act if they qualify as an "enterprise engaged in commerce or in the production of goods for commerce." 29 U.S.C. § 207(a)(1); 29 U.S.C. § 203(s)(1). An enterprise engages in interstate commerce when it "has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce" and has gross sales in excess of \$500,000. 29 U.S.C. § 203(s)(1).

There is no dispute that Hans & Franz exceeded \$500,000 in sales during the relevant timeframe. Furthermore, Defendants bought and sold items (namely food and alcohol) in interstate commerce. *Dole v. Odd Fellows Home Endowment Bd.*, 912 F.2d 689, 695 (4th Cir. 1990); *Shomo v. Junior Corp.*, 7:11-CV-508, 2012 WL 2700498 (W.D. Va. July 6, 2012). Moreover, Defendants admit Hans & Franz is enterprise under the Act.

U.S.C. § 203(m), they cannot avail themselves of the tip credit. Therefore, Stinson is entitled to her minimum wage in full for every hour she worked for Defendants. *Richard*, 549 F.2d at 305; *Chisolm*, 2008 WL 838760, at *5. This amounts to \$5.12 per hour (i.e. \$7.25 – 2.13 amount paid = \$5.12) multiplied by 1872.51 hours.

B. Liquidated Damages

In addition to actual damages, the FLSA mandates an award of liquidated damages when the Act is violated. 29 U.S.C. § 216. Liquidated damages are mandatory absent a showing by the employer that it acted, or attempting to act, in good faith compliance with the Act. *Perez v. Mountaire Farms, Inc.*, 650 F.3d 350, 375 (4th Cir. 2011); *Chao v. Barbeque Ventures, LLC*, 547 F.3d 938, 941 (8th Cir. 2008); *Joiner v. City of Macon*, 814 F.2d 1537, 1539 (11th Cir. 1987).

Here, Defendants have not argued such good faith compliance and have provided no evidence to establish it. Defendants are therefore ordered to pay Stinson the total sum of \$19,174.50 for actual and liquidated damages.

C. Costs and Attorney's Fees

Where a plaintiff is successful in bringing a claim under the FLSA, “[t]he court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney’s fee to be paid by the defendant, and costs of the action.” 29 U.S.C. § 216; *see also In re Matthews*, 345 S.C. 638, 644, 550 S.E.2d 311, 313-14 (2001) (noting that “shall” indicates mandatory language); *Rector v. Approved Fed. Sav. Bank*, 265 F.3d 248, 255 (4th Cir. 2001) (same). Plaintiff’s counsel has timely submitted a motion for costs and fees, which the Court will address.

Conclusion

Stinson has established that Defendants violated the minimum wage provisions of the FLSA. Her motion for partial summary judgment is hereby **GRANTED**. Judgment shall be entered for the Plaintiff against all Defendants in the amount of \$19,174.50. A subsequent, amended Order may be entered after this Court addresses Plaintiff's motion for costs and fees.

IT IS SO ORDERED.

D. Garrison Hill

D. Garrison Hill
Circuit Judge

This 16th day of October, 2014

A Certified Copy
Paul B. Wiseman
Clerk of Court C.P. & G.S.
Greenville County, SC
Date 10/17/14

State of South Carolina

County of Greenville

) IN THE COURT OF COMMON PLEAS
)
) 2013-CP-23-03057

Laurin Stinson,

Plaintiff,

v.

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and Jurgen
Haubach,

Defendants.

Order on Plaintiff's Motion for Attorney
Fees and Costs

Amended Judgment

ENTERED COMPUTER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
AUL B. WICKENSIMER
DEC 5 PM 3 04

WLG

Plaintiff commenced this action on May 30, 2013. On June 11, 2014, Stinson moved for partial summary judgment regarding Count I under the Fair Labor Standards Act ("FLSA"). On October 17, 2014, the Honorable D. Garrison Hill granted Plaintiff's Motion and entered Judgment in favor of Plaintiff in the amount of Nineteen Thousand One Hundred Seventy-Four Dollars and Fifty Cents (\$19,174.50). Judge Hill noted that "[a] subsequent, amended Order may be entered after this Court addresses Plaintiff's [pending] Motion for costs and fees." Order of October 17, 2014 at p. 7.

This Court convened a hearing on the pending Motion on December 4, 2014 at which all parties were represented by Counsel.¹

¹ Prior to the hearing on the pending Motion, Defendants filed a Notice of Appeal relative to Judge Hill's Order of October 17, 2014. The pending appeal, however, does not divest this Court of jurisdiction to address the issues raised in the pending Motion. "The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal." Rule 241, SCACR. This includes proceedings to award attorney fees. *Raby Const., L.L.P. v. Orr*, 358 S.C. 10, 23, 594 S.E.2d 478, 485 (2004). This Rule is routinely applied to claims for attorney fees under federal employment statutes, such as the FLSA, because claims for attorney fees are always considered to be collateral to the appealed judgment. *McKissick v. Yuen*, 618 F.3d 1177, 1196 (10th Cir. 2010) (citing *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 202 (1988)); *Carr v. Super 8 Motel Developers, Inc.*, 964 F. Supp. 1046, 1047 n.2 (E.D. Va. 1997).

In the pending Motion, Plaintiff seeks attorney fees in the amount of Twenty Thousand Seven Hundred Dollars (\$20,700). In addition, Plaintiff requests reimbursement of costs and expenses in the amount of One Thousand Five Hundred Twenty-Three Dollars and Sixty-Seven Cents (\$1,523.67). In total, Plaintiff requests that the Judgment entered be increased by Twenty-Two Thousand Two Hundred Twenty-Three Dollars and Sixty-Seven Cents (\$22,223.67).

Costs and attorney's fees are specifically provided for by the FLSA. 29 U.S.C. § 216(b) ("The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action."). The award of fees is mandatory; however, the amount granted is subject to this Court's discretion. *Fegley v. Higgins*, 19 F.3d 1126, 1134 (6th Cir.1994), *cert. denied*, 513 U.S. 875 (1994)). As to costs, "the trial court is not limited to Rule 54(d), but, in addition, has authority to include litigation expenses as part of a reasonable attorney's fee." *Hexion Specialty Chemicals, Inc. v. Oak-Bark Corp.*, 7:09-CV-105-D, 2012 WL 2458638 (E.D.N.C. June 27, 2012) (quoting *Herold v. Hajoca Corp.*, 864 F.2d 317, 323 (4th Cir. 1988)).

Plaintiff's Motion for Summary Judgment sought damages for the failure to pay minimum wages in the amount of Nine Thousand Five Hundred Eighty-Seven Dollars and Twenty-Five Cents (\$9,587.25) and an equal amount for liquidated damages under the FLSA. (Motion at p.1). Judge Hill awarded the entire amount sought, including the liquidated damages. (Order of October 17, 2014 at pp. 4-5).

Defendants do not dispute that Plaintiff stands at this time as the prevailing party, or that she received the full relief she sought. Nor do Defendants challenge the hourly fee sought for the work of attorney Cable, the reasonableness of the hours claimed for the work performed, or the amounts sought as costs. As noted above, see *supra* note 1, Defendants maintain that entry of the Judgment in favor of Plaintiff was error. Defendants also maintain that, even if Plaintiff is entitled to relief, she should be entitled to less than the amount actually awarded, which, if so, may ultimately affect the degree of success and the amount of appropriate fees to be awarded. *Brodziak v. Runyon*, 145 F.3d 194, 196 (4th Cir. 1998). Those issues are not before this Court at this time. Defendants' recognition regarding the appropriateness of Plaintiff's request at this time given the scope of the Order of October 17, 2014 is without prejudice to any position they may appropriately take should circumstances change regarding matters on appeal or on remand.

Because this matter arises under federal law, this Court reviews Plaintiff's claim under the prevailing federal standard,² which is set forth in *Barber v. Kimbrell's Inc.*, 577 F.2d 216 (4th Cir. 1978). Based on a review of the materials submitted and the presentations of counsel, the Court finds as follows:

1. The time and labor expended by attorney Cable is fair and reasonable given the issues in this case and the efforts required to obtain the favorable results awarded by this Court.

² *Stanley v. McDaniel*, 128 Idaho 343, 350, 913 P.2d 76, 83 (Ct. App. 1996); *Tacke v. Energy W., Inc.*, 355 Mont. 243, 251, 227 P.3d 601, 608.

2. As the numerous filings and submissions regarding summary judgment evidence, the legal issues in this case are complex as are many issues arising under the FLSA.
3. As many other courts have noted, considerable skill is required to identify, prosecute, and present FLSA claims in court and Plaintiff's success in pursuing her claims establish that counsel exhibited such skill.
4. The time spent pursuing this claim on a contingency basis precluded counsel for Plaintiff from handling other matters without the promise of receiving any compensation had Plaintiff not prevailed.
5. The hourly fee sought by counsel is well within the market rate for competent employment counsel in South Carolina.
6. Because an award of attorney fees is mandatory under the FLSA, Plaintiff reasonably could expect such an award as part of her recovery.
7. There were no special time limitations imposed in this litigation.
8. Plaintiff received a full recovery regarding the claims sought in Count I.
9. The counsel handling Plaintiff's claims through the entry of judgment is experienced in employment matters, has excellent academic credentials, and, as a supporting affiant notes, enjoys a very favorable reputation in the legal community.
10. As many courts have noted, Plaintiff employment cases are often viewed with disfavor among the Bar, especially FLSA cases where the base amount in controversy can be quite low given the amount of time and resources necessary to prove a case.

11. Counsel and Plaintiff have maintained a relationship for nearly two years.

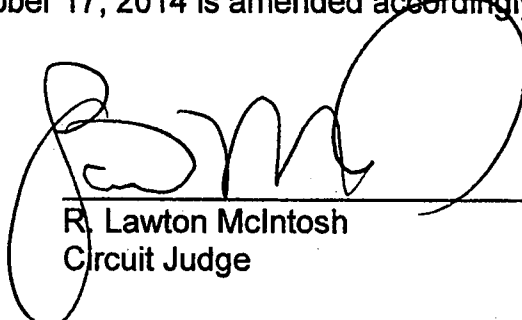
This is the only matter for which counsel has been retained by Plaintiff.

12. The amount sought by Plaintiff for fees and expenses is well within the range of results obtained in other employment cases in South Carolina.

Based on the foregoing, Plaintiff's Motion for attorney fees and costs is **GRANTED**. The Court awards Plaintiff attorney fees in the amount of Twenty Thousand Seven Hundred Dollars (\$20,700) and costs and expenses in the amount of One Thousand Five Hundred Twenty-Three Dollars and Sixty-Seven Cents (\$1,523.67). The Judgment previously entered in the amount of Nineteen Thousand One Hundred Seventy-Four Dollars and Fifty Cents (\$19,174.50) shall therefore be increased by Twenty-Two Thousand Two Hundred Twenty-Three Dollars and Sixty-Seven Cents (\$22,223.67).

Judgment shall be entered for Plaintiff against all Defendants in the amount of **Forty-One Thousand Three Hundred Ninety-Eight Dollars and Seventeen Cents (\$41,398.17)**. The Judgment entered October 17, 2014 is amended accordingly.

IT IS SO ORDERED.



R. Lawton McIntosh
Circuit Judge

This 4th day of December, 2014

State of South Carolina

County of Greenville

) IN THE COURT OF COMMON PLEAS

)

) 2013-CP-23-

03057

Laurin Stinson,

Plaintiff,

v.

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and Jurgen
Haubach,

Defendants.

SUMMONS

2013 MAY 30 P 12:47

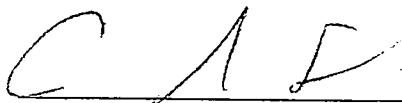
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSHER

To: THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to answer the Complaint in this action, a copy of which is attached hereto and herewith served upon you, and to serve a copy of your answer to same upon the subscribed at 514 Pettigru Street, Greenville, South Carolina, 29601 within thirty (30) days after the service of same, exclusive of the day of such service. If you fail to answer same within the thirty (30) day period, Plaintiff will apply to the Court for the relief demanded therein and judgment will be taken against you by default.

Respectfully submitted this 30th day of May, 2013.

For the Plaintiff:



Brian P. Murphy Bar No. 6770

C. Alex Cable Bar No. 100561

Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601
phone: 864-370-9400
fax: 864-241-1386

State of South Carolina

County of Greenville

) IN THE COURT OF COMMON PLEAS

)

) 2013-CP-23-

63057

Laurin Stinson,

Plaintiff,

v.

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and Jurgen
Haubach,

Defendants.

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Complaint

Jury Trial Demanded

2013 MAY 30 P 12:47

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

Plaintiff, by and through her undersigned attorney, would respectfully show unto the Court as follows:

1. Plaintiff is a resident of Greenville County and, at all relevant times, was employed by Defendants in Greenville County.
2. Defendant Hans & Franz Biergarten ("Hans & Franz") is a South Carolina limited liability company organized under South Carolina law and operating in Greenville County.
3. Defendant Hans and Franz Biergarten is an employer and enterprise under the Fair Labor Standards Act ("FLSA").
4. Defendant Addy's Dutch Café and Restaurant ("Addys") is a company operating in Greenville County.
5. Defendant Addys is an employer and enterprise under the FLSA.
6. Defendants Hans & Franz and Addys are a single enterprise under the FLSA based on their related activities of serving food and beverages, common control by common

ownership, and a common business purpose of serving food and beverages and publicly promoting each other and each business.

7. Defendant Addy Sulley ("Sulley") is, upon information and belief, a resident of Greenville County.
8. Defendant Sulley is an employer under the FLSA based on his ownership of Defendants Hans & Franz and Addys, his ultimate authority over hiring and firing, his authority over supervising the employees and operations of both restaurants, and his authority over employee wages and payroll.
9. Defendant Jurgen Haubach ("Haubach") is, upon information and belief, a resident of Greenville County.
10. Defendant Haubach is an employer under the FLSA based on his supervisory authority over the employees and daily operation of Hans & Franz Biergarten, his ability to make hiring and firing decisions, and his authority over scheduling and directing employees' daily assignments.
11. Plaintiff was employed by defendant as a server from approximately October 24, 2011 until January 20, 2013.
12. Plaintiff's duties as a server required her to regularly sell items bought and sold by her employer in interstate commerce. Accordingly, there is individual coverage for Plaintiff under the FLSA as well.
13. This Court has concurrent jurisdiction to address these claims and venue is appropriate in Greenville County.
14. Defendant relied on a tip credit scheme to pay its employees federally mandated minimum wage.

15. Throughout the duration of Plaintiff's employment, Defendants unlawfully deducted a "breakage" or "turn-in" fee out of her earnings to cover broken dishes and other restaurant expenses, regardless of whether Plaintiff was not responsible for breaking anything, or even without regard to whether there even were such expenses.
16. Throughout the duration of Plaintiff's employment, Defendant improperly paid her overtime based on an incorrect rate calculation.
17. Plaintiff was improperly paid below minimum wage for her training period with Defendant.
18. Plaintiff was on more than one occasion not paid at all for hours worked at the restaurant and at off-site catering events.
19. Defendant's actions were not in good faith or based upon a reasonable belief that they were not violating applicable laws.

Count I
For A First Cause of Action
FLSA—Minimum Wage

20. Plaintiff incorporates by reference the averments in the foregoing paragraphs as if set forth here in full.
21. Defendant impermissibly shifted operating costs to Plaintiff by deducting sums from her wages, thereby reducing her hourly compensation amount below the minimum wage.
22. Defendant did not pay Plaintiff minimum wage during her training period or allow her to participate in the tip pool to receive the tip credit to make up the difference.

WHEREFORE, Plaintiff respectfully requests a trial by jury on her claim for violation of the minimum wage requirements of the FLSA and that she be awarded all available

relief including, but not limited to, a declaratory judgment that the acts and practices of the Defendant complained of herein are in violation of the laws of the United States, an award of lost wages, compensatory and liquidated damages, attorneys fees, expenses, and costs, and all other and further relief as to this Court appears necessary and proper.

Count II
For a Second Cause of Action
FLSA–Overtime

23. Plaintiff incorporates by reference the foregoing averments as if set forth here in full.
24. Defendant impermissibly calculated Plaintiff's overtime rate at 150% of her tip credit wage, rather than the minimum wage.
25. This miscalculation led to a deficiency in Plaintiff's compensation.

WHEREFORE, Plaintiff respectfully requests a trial by jury on her claim for violation of the overtime requirements of the FLSA and that she be awarded all available relief including, but not limited to, a declaratory judgment that the acts and practices of the Defendant complained of herein are in violation of the laws of the United States, an award of lost wages, compensatory and liquidated damages, attorneys fees, expenses, and costs, and all other and further relief as to this Court appears necessary and proper.

Count III
For a Third Cause of Action
Payment of Wages

26. Plaintiff incorporates by reference the foregoing averments as if set forth here in full.
27. The amounts owed to Plaintiff for unpaid hours for which she worked for Defendant constitute "wages" under the South Carolina Payment of Wages Law.
28. Defendant has failed and refused to pay wages when due and/or has declared its intent to not do so.

WHEREFORE, Plaintiff respectfully requests a trial by jury on her claim for wages owed and entry of judgment to include all amounts owed and all other relief to which Plaintiff can show she is entitled including, but not limited to, treble damages, attorney fees, costs, prejudgment and post-judgment interest.

Respectfully submitted this 30th day of May, 2013.

For the Plaintiff:

A handwritten signature in black ink, appearing to read 'C A C', is written over a horizontal line.

Brian P. Murphy, No. 6770
C. Alexander Cable, No. 100561

Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601
(864) 370-9400
(864) 241-1386 (fax)

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
LAURIN STINSON,)
)
Plaintiff,)
)
v.)
)
HANS & FRANZ, LLC d/b/a HANS &)
FRANZ BIERGARTEN, ADDYS DUTCH)
CAFÉ AND RESTAURANT, ADDY)
SULLEY, AND JURGEN HAUBACH,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

**DEFENDANT'S ANSWER
TO COMPLAINT**

C.A. No. 2013-CP-23-03057

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
2013 JUL 26 A 11:33

COMES NOW Defendants Hans and Franz, LLC d/b/a Hans & Franz Biergarten, Addys Dutch Café and Restaurant, Addy Sulley, and Jurgen Haubach (hereinafter "Defendants"), by and through their undersigned attorney, pursuant to Rules 8(c) and 12(a) of the South Carolina Rules of Civil Procedure, and hereby files their Answer to the Complaint in the above-captioned action as follows:

1. Defendant lacks sufficient information as to the Plaintiff's residency but admits that the Plaintiff was an employee of the Defendant.
2. Defendants admit that "Hans & Franz" referred to in paragraph 2 of Plaintiff's complaint is a South Carolina Limited Liability Company organized under South Carolina law and operating in Greenville County.
3. Defendants admit the allegations contained in Paragraph 3 of Plaintiff's Complaint.
4. Defendants admit that "Addys" referred to in paragraph 4 of Plaintiff's complaint is a company operating in Greenville County.

5. Defendants admit that Addys as referred to paragraph 5 of Plaintiff's complaint is an employer under the FLSA but lacks knowledge as to it being an "enterprise" as such is not defined.

6. Defendants lack sufficient information upon which to form a belief as to the truth or falsity of the allegations contained in Paragraph 6 of Plaintiff's Complaint and, therefore, denies the same.

7. Defendants admit the allegations contained in Paragraph 7 of Plaintiff's Complaint.

8. Defendants lack sufficient information upon which to form a belief as to the truth or falsity of the allegations contained in Paragraph 8 of Plaintiff's Complaint.

9. Defendants admit the allegations contained in Paragraph 9 of Plaintiff's Complaint.

10. With respect to the allegations set forth in Paragraph 10 of Plaintiff's Complaint, Defendant admits that he was a manager of said restaurant but lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 10.

11. Defendants admit the allegations set forth in Paragraph 11 of Plaintiff's Complaint.

12. Defendant admits the allegations contained in Paragraphs 12, 13, and 14 of Plaintiff's Complaint.

13. With respect to the allegations set forth in Paragraph 15 of Plaintiff's Complaint, Defendants admit that they had an agreement with all employees that there would be a deduction from each employee's pay for broken dishes. Defendant denies the remaining allegations contained in Paragraph 15 of Plaintiff's Complaint.

14. Defendant denies the allegations contained in Paragraph 16, 17, 18, and 19 of Plaintiff's Complaint. Specifically, as to paragraph 18, the "catering events" referred to were non-profit community service projects sponsored by the Defendants such as "Taste of the Upstate" and "Beach Ball." An employer need not compensate an employee for time spent volunteering for charitable purposes if the work is performed outside of normal working hours, and the employee is truly volunteering without coercion from the employer. Furthermore, Plaintiff was paid "tip" for the catering events.

RESPONSE TO FIRST CAUSE OF ACTION
(FLSA – Minimum Wage)

15. In response to the allegations set forth in Paragraph 21 of Plaintiff's Complaint, Defendants contend that there was a valid agreement between Defendants and all restaurant employees whereby pay would be deducted for damaged property. These types of deductions are allowed under the FLSA so long as the employee's pay does not fall below the national minimum wage.

16. These deductions are also considered "reasonable costs" associated with the furnishing of equipment by the employer. FLSA § 3(m).

17. As to Paragraph 22 of Plaintiff's complaint, Defendant is unsure as to the meaning of the phrase "training period" as it is not a defined term and therefore can neither form a belief as to the truth or falsity of the allegation. Defendant denies the remaining allegations contained in Paragraphs 22 of Plaintiff's Complaint.

RESPONSE TO SECOND CAUSE OF ACTION
(FLSA - Overtime)

18. In response to the allegations set forth in Paragraph 24 and 25 of Plaintiff's Complaint, Defendant agrees in accordance with FLSA § 3(m) that a tipped employee's regular

rate of pay, for overtime purposes, includes the amount of tip credit taken. However, Defendant contends that Plaintiff did not work "overtime" as defined under the FLSA.

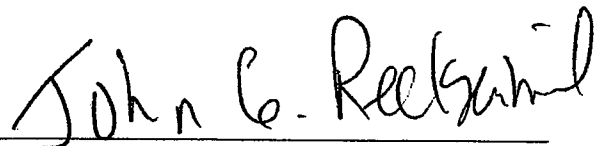
19. Defendant denies the allegations contained in Paragraph 25.

RESPONSE TO SECOND CAUSE OF ACTION
(S.C. Wage Payment Act)

20. For the foregoing reasons listed above, Defendant denies the allegations in paragraphs 26, 27, and 28.

WHEREFORE, for the foregoing reasons, Defendant respectfully prays that the Complaint in this action, being utterly without merit, be dismissed in its entirety, with an award of attorneys' fees and costs assessed against Plaintiff, along with any other relief the Court deems just and proper.

LAW OFFICE OF JOHN G. RECKENBEIL, LLC



John G. Reckenbeil
215 Magnolia Street
P.O. Box 1633
Spartanburg, SC 29304
Phone: (864) 582-5472
Fax: (864) 582-7280
john@johnreckenbeillaw.com

ATTORNEY FOR DEFENDANTS

Date: July 23, 2013
Spartanburg, SC

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Laurin Stinson,

Plaintiff,

vs.

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and Jurgen
Haubach,

Defendants.

IN THE COURT OF COMMON PLEAS

CERTIFICATE OF SERVICE

C.A. NO. 2013-CP-23-03057

2013 JUL 26 A 11:33

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSHER

I, Keri Eadie, the undersigned legal assistant to John G. Reckenbeil, attorney for the Plaintiff, certify that I have mailed a copy of the herein below listed pleading to Counsel in this matter, postage prepaid, on this 23rd day of July 2013, as follows:

PLEADING: Defendant's Answer to Complaint

**COUNSEL SERVED: C. Alexander Cable
Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601**

LAW OFFICE OF JOHN G. RECKENBEIL, LLC



Keri A. Eadie
Legal Assistant to John G. Reckenbeil
215 Magnolia Street
P.O. Box 1633
Spartanburg, SC 29304
Phone: (864) 582-5472
Fax: (864) 582-7280
keri@johnreckenbeillaw.com

Date: July 23, 2013
Spartanburg, SC

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUITFILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
CASE NO. 2013-CP-23-03057

Laurin Stinson,

Plaintiff,

vs.

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addy's Dutch Café and
Restaurant, Addy Sulley, and Jurgen
Haubach,

Defendant.

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

OCT -8 A 10:31

Plaintiff's Attorney:

C. Alexander Cable, Bar No. 100561

Address:

Brian Murphy Law Firm, PC, 514 Pettigru St.,
Greenville, SC 29601

Phone: 864-370-9400 Fax 864-241-1386

E-mail: alex@brianmurphylawfirm.com Other:

Defendant's Attorney:

John G. Reckenbeil, Bar No. _____

Address:

Law Office of John G. Reckenbeil, LLC,
Spartanburg, SC 29304

Phone: 864-582-5472 Fax 864-582-7280

E-mail: john@johnreckenbeillaw.com Other: _____

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Compel

Estimated Time Needed: 20

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

October 7, 2013

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ _____☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED – AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

State of South Carolina

County of Greenville

FILED-CLERK OF COURT
GREENVILLE DISTRICT
PAUL B. WICKENSIMER

IN THE COURT OF COMMON PLEAS

2012-CP-23-03057

2013 OCT -8 A 10:31

Laurin Stinson,

Plaintiff,

v.

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and
Jurgen Haubach,

Defendants.

MOTION TO COMPEL DISCOVERY

Plaintiff now moves this Court for an order compelling full and complete responses to Interrogatories and Requests to Produce. (Exh. 1).

I. Introduction

This action involves claims by Plaintiff, a former waitress working for Defendants (restaurants and individuals) arising out of Defendants' violations of the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) and the South Carolina Payment of Wages law.

On or about July 17, 2013, Plaintiff filed this action and served discovery requests on the Defendants. After an extension was given to Defendants to serve responses by August 21, Plaintiff received responses on September 3, 2013. The responses are replete with incomplete and non-responsive answers that confuse and seemingly downright ignore the requests served on them.

II. Issues

A. Defendants' responses never discuss, or even make mention of, its tip credit scheme.

Defendants' utilize illegal practices which reduce Plaintiff's hourly rate below federally-mandated minimum wage, thereby invalidating the tip credit scheme used to compensate employees. Precise computation of this scheme is necessary to place a proper value on it, one of the central aspects of this case. Not surprisingly then, Plaintiff devoted a considerable portion of its discovery asking about the tip credit scheme: how it is calculated, how it is administered, which employees are subject to it, how it affects overtime wages, and how it affected Plaintiff's pay. (See Interrog. Nos. 14, 15, & 16). However, none of Defendants' responses discuss, refer to, or mention of the tip credit scheme, or even whether it utilizes one at all. For example, Defendants' response to Interrogatory No. 15, asking for detailed descriptions of "the manner in which Defendants' tip pooling and tip credit schemes are calculated, administered, and documented" is answered with "No tip pool." Defendants seem to have made every effort to intentionally avoid answering questions about its tip credit, despite clear interrogatories calling for such information.

B. Defendants do not respond to Plaintiff's interrogatories about overtime.

Interrogatory No. 16 asks Defendants to provide a detailed description of their overtime scheme. Defendants merely respond that employees do not work overtime and that most employees work around 70 hours bi-weekly. Putting aside the fact that Plaintiff has evidence and will testify to working overtime on several occasions and that Defendants' own production shows Plaintiff working overtime (but such hours are inexplicably crossed out (See Exhibit 2, Pages Def. Production, at 1 (Bates Numbers

Added by Plaintiff)), this response does not answer the question of how the scheme is calculated, documented, and administered. The illegality of Defendants' overtime system is another central issue in this case. Defendants have quite simply refused to respond.

C. Defendant does not fully identify witnesses or their knowledge of the case.

Per the standard interrogatories under the South Carolina rules, Plaintiff asked who the witnesses in the case were and what knowledge they had of the facts. (See Interrog. Nos. 1 & 4, Exh. 1). Defendants responded to Interrogatory 1 stating that Addy Sulley and Jergen Haubauch are the only witnesses and do not indicate whether either has given any statements (though none were attached). However, in response to Interrogatory No. 4, Defendants make mention of a waitress named Kathriana Kengi, and attach a statement from her, discussing Ms. Kengi's knowledge of a wedding event that Plaintiff worked. This wedding is relevant to part of Plaintiff's wage payment claim. However, neither this nor any other response provide any mention of the knowledge Messrs. Sulley and Haubauch, the only persons identified as being "witnesses concerning the facts of the case." Furthermore, no response discusses any witnesses' knowledge of the facts of the minimum wage or overtime claims in Plaintiff's Complaint.

D. Defendants do not fully answer what Defendant Ally Sully's duties and responsibilities are.

Plaintiff asked, in regard to both Hans & Franz and Addy's Dutch Café, to "set forth in full detail here a full description of Defendant Sulley's duties, functions, and other expectations." Defendants respond only that Addy is the owner and operator of Hans & Franz and is a "consultant" for Addy's Dutch Café. (See Interrog. No. 6 and

Defendants' responses to Interrog. Nos. 6, 11, 13). What does that mean? This does not provide any detail as what Mr. Sulley actually *does* for either restaurant. Plaintiff is not interested in Mr. Sulley's title so much as his duties and functions.

E. Defendants contradict their own responses regarding outside events worked by Plaintiff.

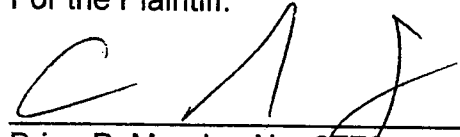
Part of Plaintiff's Wage Payment claim involves outside events for which Plaintiff worked but did not receive compensation. Defendants' responses to Plaintiff's interrogatories discuss a particular event, a wedding Plaintiff "helped cater." (Def. Resp. to Interrog. No. 4). Furthermore, Defendants assert that Plaintiff was to be compensated by the wedding party for this event. (Id.). However, when Plaintiff specifically asks for any and all agreements regarding Plaintiff working events such as catering, Defendants respond "Hans and Franz does not perform catering events" and that "[t]hese were community service charity projects" for which Defendants "did not receive any compensation" and that Plaintiff "donated her time." (Def. Resp. to Interrog. No. 17). Defendants do not say "these events" were or discuss how Plaintiff simultaneously did and did not work a catering function or how she simultaneously donated her time while allegedly being compensated by the wedding party itself.

III. Conclusion

WHEREFORE, Plaintiff requests that this Court issue an order compelling Defendants to provide full and complete responses to Plaintiff's discovery. Furthermore, pursuant to Rule 33(a), SCRCP, Plaintiff requests this Court order that Defendants' responses be verified under oath.

Respectfully submitted this 7th day of October, 2013.

For the Plaintiff:

A handwritten signature in black ink, appearing to be 'C. A. Cable', written over a horizontal line.

Brian P. Murphy, No. 6770
C. Alexander Cable, No. 100561

Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601
(864) 370-9400
(864) 241-1386 (fax)

Attorneys for Plaintiff

State of South Carolina

County of Greenville

) IN THE COURT OF COMMON PLEAS

) 2013-CP-23-03057

Laurin Stinson,

Plaintiff,

v.

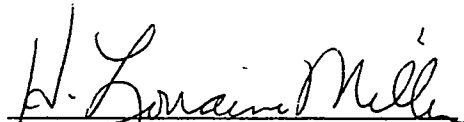
Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and Jurgen
Haubach,

Defendants.

CERTIFICATE OF SERVICE

This is to certify that a copy of Plaintiff's Motion to Compel Discovery was served on counsel for Defendants Hans & Franz, LLC d/b/a Hans & Franz Biergarten, Addys Dutch Café and Restaurant, Addy Sulley, and Jurgen Haubach, via United States mail, first class, with postage prepaid and properly affixed, on October 8, 2013, at the following address :

John G. Reckenbiel, Esquire
Law Office of John G. Reckenbeil, LLC
P.O. Box 1633,
Spartanburg, SC 29304


H. Lorraine (Lorry) Miller, PLS
Legal Assistant to Brian Murphy

Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601
Phone: (864) 370-9400
Fax: (864) 241-1386

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

LAURIN STINSON,

Plaintiff,

v.

HANS & FRANZ, LLC d/b/a HANS &
FRANZ BIERGARTEN, ADDYS DUTCH
CAFÉ AND RESTAURANT, ADDY
SULLEY, AND JURGEN HAUBACH,

Defendants.

IN THE COURT OF COMMON PLEAS

**DEFENDANTS' RESPONSE IN
OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL**

C.A. No. 2013-CP-23-03057

COMES NOW, Defendants in the above-styled case and files this response in opposition to Plaintiff's motion to compel as follows:

I. Introduction

The Defendants first respond to Plaintiff's motion to compel by stating that the Fair Labor Standards Act ("FLSA"), the subject matter of this suit, is without a doubt one of the most comprehensive and complicated areas of employment law. Its application demands a fairly complex legal and factual analysis that cannot be worked through with a broad generalized standard form of discovery requests. Defendants are more than willing to accommodate Plaintiff and her requests; however, there is a lack of specificity in those requests.

In addition, the Plaintiff's complaint alleges two main causes of action: failure to pay minimum wage and failure to pay overtime. The Defendants deny failing to pay the Plaintiff minimum wage. The Defendants deny that any of the servers, including the Plaintiff, worked

overtime; therefore, there was no need to make this type of payment. The Defendants and Plaintiff are in factual disagreement concerning these issues.

Lastly, the Defendants extend the offer to the Plaintiff and her counsel to talk through the issues alleged in the complaint so that both parties have a better understanding of each other's positions. As mentioned, the law concerning the issues involved is complex and any resolution would be better reached by mutual efforts by both parties' counsel.

II. Answers to Interrogatories

Plaintiff's Motion to Compel

A. Defendants' responses never discuss, or even make mention of, its tip credit scheme

Interrogatory 15 asks the Defendants to "set forth in detail the manner in which Defendants' *tip pooling* and *tip credit schemes* are calculated, administered, and documented from January 2011 to present." The Plaintiff did not define a single term in their requests for interrogatories or request for production of documents so Defendant relied upon the FLSA's definitions of terms that were undefined.

In regards to a "tip credit" the black letter law of the FLSA, Section 3(m), permits an employer to take a tip credit toward its minimum wage obligation for tipped employees equal to the difference between the required wage (which must be at least \$2.13) and the federal minimum wage (currently \$7.25).

To answer Plaintiff's question more specifically to Interrogatory 15; Yes, the Defendant did take a tip credit of \$5.12 and paid all the servers \$2.13 per hour. The calculation used was \$7.25 (minimum wage) minus the minimum required wage for tip credit schemes (\$2.13) which equals \$5.12. This fact could have been inferred by Defendants' response to the preceding interrogatory about rate of pay to which he responded, "The rate of pay is \$2.13 an hour, most

servers average \$15 dollars an hour on the credit card tips alone.” There is nothing to “calculate, administer, or document” because it is an affirmative right that the Defendants exercised. There is also nothing unique about this practice as it is the industry standard in the restaurant business.

Employers using the tip credit must be able to show that tipped employees receive at least the minimum wage when direct wages and the tip credit amount are combined which was clearly shown by the documents the Defendant supplied. The documents supplied show that all servers average around \$15.00 an hour on credit card tips alone.

In regards to a “tip pool,” that is a sharing arrangement among employees who customarily and regularly receive tips. Again, there was not a tip pool in place at the Defendants’ restaurant. Tip pooling occurs when multiple employees who have earned tips contribute their tips to a general pool that is then shared by other employees. There are very specific rules that surround tip pools and what constitutes a valid tip pool, but Defendants maintain that no tip pool existed.

Count one of Plaintiff’s complaint alleges that “Defendant impermissibly shifted operating costs to plaintiff by deducting sums from her wages, thereby reducing her hourly compensation amount below the minimum wage.” This assertion has absolutely nothing to do with a tip credit or tip pool as those terms are defined under the FLSA.

By the count one assertion, Defendant is assuming that Plaintiff believes that the deduction for operating costs was an invalid “tip pool” that she referred to in Interrogatory 15. The Defendant admits that a 1% breakage fee was charged to all the servers. Nothing was pooled and then redistributed. It was automatically deducted from the credit card tips.

FLSA section 3(m) allows an employer to deduct the “reasonable cost” to the employer for furnishing an employee with “board, lodging, or other facilities.” See 29 C.F.R. §

531.3(d)(1). This is the same portion of the law that allows employers to deduct a portion of employees' tips for reimbursement for credit card surcharges. An argument can be made that this was not a "reasonable cost," but a tip credit or tip pool scheme has nothing to do this analysis.

B. Defendant does not respond to Plaintiff's interrogatories about overtime.

Interrogatory No. 16 asks Defendants to provide a detailed description of their overtime scheme. Again, this is a disagreement. Defendant maintains that Plaintiff and all others similarly situated do not work overtime. There is nothing Defendant has in his possession that would show how overtime was calculated because no employee works overtime at that restaurant.

It would be the Defendants' testimony that Plaintiff failed to clock out on certain days which would show a false representation of overtime. The point of sale system at the Defendants' restaurant will automatically reset after a specified amount of time and clock the employee out if he or she fails to do so on his/her own.

C. Defendants do not fully identify witnesses or their knowledge of the case.

Interrogatory No. 1 is the South Carolina Rule 33 standard interrogatory which reads:

Give the names and addresses of the persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of those statements.

Defendants responded with the two named Defendants, Addy Sulley and Jurgen Haubach. The Defendant did not refer to any statement made by either; therefore, one would naturally imply that neither made a recorded statement. Defendants supplement their response with Kathriana Kengni. See attached statement.

D. Defendants do not fully answer what Defendant Addy Sully's duties and responsibilities are.

Interrogatories No. 6 and 7 ask for a full description of the two individually named Defendants, Addy Sully and Jurgen Haubach. Keeping in mind that the Hans and Frans bar and restaurant is a small individually owned business; it seems unduly burdensome to list out every single duty that Defendant Addy Sully performs. He is the sole owner and operator for the Hans and Franz Restaurant and carries out all the managerial duties that go along with such title. Addy Sully is more than willing to consent in writing that he is an "employer" as such term is defined under the FLSA. Defendants are also willing to consent to additional discovery about this issue if asked direct questions to avoid creating a day in the life video for Defendant Addy Sulley.

E. Defendants Objection to all questions concerning Addys Dutch Café.

In an attempt to hold both Hans and Franz Biergarten and Addys Dutch Café liable, the Plaintiff has attempted to show that both entities were a common "enterprise." Both Hans and Franz and Addys are incorporated under separate corporate forms. Hans and Franz Biergarten is owned by Hans and Franz, LLC and Addys Dutch Café is owned by Act of Greenville, Inc. Addy Sully is the sole share holder of Hans and Franz, LLC whereas Act of Greenville, Inc. is owned jointly by Addy Sulley and Nina Biagiotti. Addy Sulley's joint ownership is the only commonality between the two entities.

The FLSA defines the term "enterprise" as follows:

the related activities performed (either through **unified operation or common control**) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units.

Hans and Franz, LLC and Act of Greenville, Inc. have not been engaged in related activities for a common business purpose, as shown by following facts:

Both companies do not operate out of the same business location for the common purpose of operating a business under one single trade name. Both restaurants have different locations and separate names, and neither company exerts control over the other.

Both companies are not consolidated for tax purposes. Each file their own separate tax returns, as evidenced by the tax returns submitted to the Plaintiff. The accounting and payroll functions are separate as well.

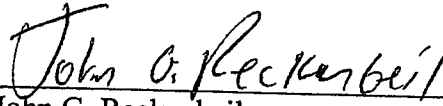
They also do not utilize a combined managerial and general staff to further a common purpose of related activity for promoting and operating a single restaurant. No one from Hans and Franz Biergarten works at Addys Dutch Café and vice versa.

As evidenced by the Defendants' responses to Plaintiff's request, there is no "unified operation" or "common control" between the two restaurants. Addy Sulley has handed over his managerial duties of Addy's Dutch Café to Nina Biagiotti and focused his attention on Hans and Franz because it is much more profitable.

III. Conclusion

The Defendants are willing to fully supply the Plaintiff with all the information requested. However, the Defendants cannot supply the Plaintiff with information that does not exist. The Defendants and Plaintiff are in a basic factual disagreement about some issues that cannot be resolved through discovery. Other discovery requests sought by the Plaintiff could be much better resolved with a brief correspondence between the attorneys of both parties.

LAW OFFICE OF JOHN G. RECKENBEIL, LLC

A handwritten signature in cursive script, reading "John G. Reckenbeil", is written over a horizontal line.

John G. Reckenbeil

Lawrence E. McNair, III

Attorneys for the Defendants

215 Magnolia Street

Post Office Box 1633

Spartanburg, SC 29304

Phone: (864) 582-5472

Fax: (864) 582-7280

Dated: October 2, 2013

Spartanburg, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

COUNTY OF GREENVILLE)

FILED-CLERK OF COURT CASE NO.: 2013-CP-23-03057

GREENVILLE CO. S.C.

PAUL B. WICKENSIMMER

Laurin Stinson,

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

vs.

2013 DEC 23 PM 2 23

Hans & Franz, LLC d/b/a Hans & Franz)
Biergarten, Addy's Dutch Café and
Restaurant, Addy Sulley, and Jurgen
Haubach,

Defendant.)

Plaintiff's Attorney:

C. Alexander Cable, Bar No. 100561

Address:

Brian Murphy Law Firm, PC, 514 Pettigru St.,
Greenville, SC 29601

Phone: 864-370-9400 Fax 864-241-1386

E-mail: alex@brianmurphyllawfirm.com Other:

Defendant's Attorney:

John G. Reckenbeil, Bar No. _____

Address:

Law Office of John G. Reckenbeil, LLC,
Spartanburg, SC 29304

Phone: 864-582-5472 Fax 864-582-7280

E-mail: john@johnreckenbeillaw.com Other: _____

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Plaintiff's Motion for Partial Summary Judgment

Estimated Time Needed: 30 minutes

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

C. A. J.
Signature of Attorney for ☒ Plaintiff / ☐ Defendant

December 23, 2013

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT:** \$ 25.00

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

~~2013 DEC 23 PM 2 23~~

Laurin Stinson,	)	
	)	
Plaintiff,	)	Plaintiff's Motion for Partial
v.	)	Summary Judgment
	)	
Hans & Franz, LLC d/b/a Hans & Franz	)	
Biergarten, Addys Dutch Café and	)	
Restaurant, Addy Sulley, and	)	
Jurgen Haubach,	)	
	)	
Defendants.	)	

Plaintiff, by and through her undersigned counsel, now moves for judgment as a matter of law as to certain claims and claims for damages set forth in Plaintiff's Complaint. Specifically, Plaintiff moves for judgment as follows:

I. Count I: FLSA—Minimum Wage

As to Plaintiff's first cause of action, non-payment of minimum under the Fair Labor Standards Act (FLSA), Plaintiff is entitled to summary judgment on the following:

a. Plaintiff was not paid minimum wage.

There is no genuine issue of material fact that Defendants' practice of deducting illegal fees from Plaintiff's wages reduced her pay below mandated minimum wage.

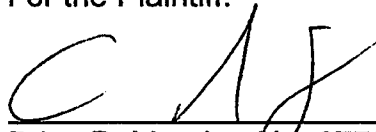
b. Plaintiff is entitled to recover damages, costs, and reasonable attorney fees.

There is no genuine issue of material fact that Plaintiff has suffered actual damages in the amount of \$9,636.87 for non-payment of minimum wage. Under the Act, Plaintiff is also entitled to liquidated damages, prejudgment interest, costs, and reasonable attorney fees.

This motion will be supported by a memorandum of law and other documents and authorities to be provided to the Court.

Respectfully submitted this 20th day of December, 2013.

For the Plaintiff:

A handwritten signature in black ink, appearing to read 'C. Murphy', is written over a horizontal line.

Brian P. Murphy, No. 6770
C. Alexander Cable, No. 100561

Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601
(864) 370-9400
(864) 241-1386 (fax)

Attorneys for Plaintiff

2013 DEC 23 PM 12 23

Laurin Stinson,
Plaintiff,
v.
Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and Jurgen
Haubach,
Defendants.

CERTIFICATE OF SERVICE

This is to certify that a copy of Plaintiff's Motion for Partial Summary Judgment was served on counsel for Defendants Hans & Franz, LLC d/b/a Hans & Franz Biergarten, Addys Dutch Café and Restaurant, Addy Sulley, and Jurgen Haubach, via United States mail, first class, with postage prepaid and properly affixed, on December 23, 2013, at the following address :

John G. Reckenbiel, Esquire
Law Office of John G. Reckenbeil, LLC
P.O. Box 1633,
Spartanburg, SC 29304



Lisa Romaniello
Legal Assistant to Brian Murphy
and C. Alexander Cable

Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601
Phone: (864) 370-9400
Fax: (864) 241-1386

2013 DEC 23 PM 2 23

Laurin Stinson,
 Plaintiff,
 v.
 Hans & Franz, LLC d/b/a Hans & Franz
 Biergarten, Addys Dutch Café and
 Restaurant, Addy Sulley, and
 Jurgen Haubach,
 Defendants.

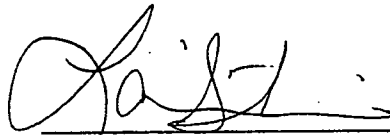
Plaintiff's Affidavit in Support of
 Summary Judgment

Plaintiff is an adult over the age of 18 years and the following are true and correct facts personally known to Plaintiff and are within his personal knowledge:

1. I worked for Defendants at the Hans & Franz restaurant from approximately October 25, 2011 until January 19, 2013.
2. I worked as a server with principal duties including taking orders, serving food, making and serving all mixed alcoholic beverages, taking and running payments (including running credit cards), bussing tables, and seating guests.
3. During the entirety of my employment with Defendants, they utilized a tip credit system. They deducted \$5.12 per hour from my wages, netting me \$2.13 per hour.
4. I have reviewed the documents Bates-numbered Stinson 02-77. They accurately reflect, with certain exceptions that are in dispute in this case but not related to this motion, the number of hours I worked and the amount I was paid by the Defendants.

5. During the entirety of my employment with Defendants, they charged a "breakage" or "turn in" or "tip out" fee from every shift's earnings. This fee amounted to 1% of the shift's net sales and was paid directly to the Defendants.
6. We were told this fee was to cover lost or damaged items, like plates and silverware, and for maintenance items, including brooms and dustpans.
7. This fee was taken out of my pay at the end of each shift regardless of whether I broke anything myself or whether anything was broken at all.
8. I have reviewed the documents Bates-numbered Stinson 87-91. They contain a chart I created containing the amounts withheld from my pay as a result of the "breakage" fees paid to Defendants.
9. As a result of this fee, I never collected the full amount of income that I earned during a shift.

Respectfully submitted this 23rd day of December, 2013.


Laurin Stinson

Sworn to and subscribed before me
this 23rd day of December, 2013



Notary Public - South Carolina
my commission expires 2/2/2019

State of South Carolina)

IN THE COURT OF COMMON PLEAS

County of Greenville)

2013-CP-23-03057

Laurin Stinson,

Plaintiff,
v.

Plaintiff's Memorandum in Support
Of Motion for Partial
Summary Judgment

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and
Jurgen Haubach,

Defendants.

Plaintiff, by and through her undersigned counsel, now submits this memorandum of law in support of her motion for judgment as a matter of law as to certain claims and claims for damages set forth in Plaintiff's Complaint.¹ Specifically, Plaintiff moves for judgment for both liability and for damages as follows:

I. Facts

Defendants Hanz & Frans and Addys Dutch Café and Restaurant are restaurants located in Greenville, South Carolina. (Def. Answer ¶ 2, 4 [Exh. 1]; Def. Sec. Supp. Resp. Ints. 4, 11 [Exh. 2]). Hans & Franz is owned and operated by Addy Sulley and managed by Jurgen Haubach. (Def. Answer ¶ 10 [Exh. 1]; Def. Sec. Supp. Resp. Ints. 4, 6, 7 [Exh. 2]). Both Sulley and Haubach have the power to hire and fire. (Def. Sec. Supp. Resp. Int. 4 [Exh. 2]). Haubach has "complete control" over the restaurant in Sulley's absence and exercises direct supervision over the staff. Sulley owns and operates the company and helps with management as needed, including assuming

¹ Plaintiff brings several claims against Defendants under both the Fair Labor Standards Act (FLSA) and the South Carolina Payment of Wages Act. However, Plaintiff here is only moving on her first Count, nonpayment of minimum wage under the FLSA.

control when present. (Id.). Defendant Sulley is also a part owner of Addy's Dutch Café and acts as the "brains of the operation." (Def. Sec. Supp. Resp. Int. 9 [Exh. 2]).

Plaintiff, Laurin Stinson, worked for Defendants at their Hans & Franz location in Greenville, South Carolina from approximately October 25, 2011 until January 19, 2013. (Pl. Aff. ¶ 1 [Exh. 3]; Def. Answer ¶¶ 1, 11 [Exh. 1]). Plaintiff worked as a server, "taking orders, serving food, making and serving all mixed alcoholic beverages, taking and running payments (including running credit cards), bussing tables, and seating guests." (Pl. Aff. ¶ 2 [Exh. 3]; Def. Answer ¶ 12 [Exh. 1]; see also Def. Sec. Supp. Resp. Int. 5 [Exh. 2]).

Defendants did not pay Plaintiff minimum wage. Because Plaintiff received tips from customers for her services, Defendants utilized a "tip credit" system whereby, they deducted \$5.12 per hour from servers' pay, netting Plaintiff \$2.13 per hour. (Pl. Aff. ¶ 3 [Exh. 3]; Def. Sec. Supp. Resp. Ints. 14, 15 [Exh. 2]).² Furthermore, Defendants deducted an additional 1% of Plaintiff's net sales from each shift as a "breakage" or "turn in" or "tip out" fee. This fee was paid directly to Defendants. (Pl. Aff. ¶ 5 [Exh. 3]; Def. Resp. RTP 9 [Exh. 4]). Defendants purportedly took the fee in order to cover lost or damaged items such as plates and silverware. (Pl. Aff. ¶ 6 [Exh. 3]; see also Def. Resp. RTP 9 [Exh. 4]). However, the fee was deducted from Plaintiff's pay every shift, regardless of whether she broke anything or whether anything was broken at all. (Pl. Aff. ¶ 7 [Exh. 3]). The total amount that Defendants took from Plaintiff's pay amounted to approximately \$994.00 (Pl. Aff. ¶ 8 (referring to her chart produced in this case at Stinson 87-91) [Exh. 3]; Stinson 87-91 [Exh. 5]).³

² Normally, the current minimum wage is \$7.25 per hour. 29 U.S.C. § 206(a).
³ Plaintiff will make the underlying documents available as needed.

II. Argument

A. Plaintiff was not paid minimum wage.

i. Liability

There is no genuine issue of material fact that Defendants' practice of deducting illegal fees from Plaintiff's wages reduced her pay below mandated minimum wage.⁴

⁴ Defendants Hans & Franz and Addys Dutch Café have admitted they are employers under the FLSA. (Def. Answer ¶¶ 1, 3, 5, 11 [Exh. 1]). Defendants Haubauch and Sulley are also employers under the Act because of their degree of control over Plaintiff's employment. Irizarry v. Catsimatidis, 722 F.3d 99, 107-14 (2d Cir. 2013); Boucher v. Shaw, 572 F.3d 1087, 1091 (9th Cir. 2009); Chao v. Hotel Oasis, Inc., 493 F.3d 26, 34 (1st Cir.2007); Baystate Alternative Staffing, Inc. v. Herman, 163 F.3d 668 (1st Cir.1998); Reich v. Circle C. Investments, Inc., 998 F.2d 324, 329, 26 Fed. R. Serv.3d 921 (5th Cir.1993); Donovan v. Sabine Irrigation Co., Inc., 695 F.2d 190, 194-95 (5th Cir. 1983).

Employers are subject to the Act if they qualify as an "enterprise engaged in commerce or in the production of goods for commerce." 29 U.S.C. § 207(a)(1); 29 U.S.C. § 203(s)(1). An enterprise engages in interstate commerce when it "has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce" and has gross sales in excess of \$500,000. 29 U.S.C. § 203(s)(1).

There is no dispute that Hans & Franz exceeded \$500,000 in sales. (DEF 22, 33 (Bates numbers added by Plaintiff) (Tax returns showing "Gross receipts or sales") (Plaintiff will provide these records directly to the Court). Furthermore, Defendants bought and sold items (namely food and alcohol) in interstate commerce. Dole v. Odd Fellows Home Endowment Bd., 912 F.2d 689, 695 (4th Cir. 1990); Shomo v. Junior Corp., 7:11-CV-508, 2012 WL 2700498 (W.D. Va. July 6, 2012). Moreover, Defendants admit Hans & Franz is enterprise. (Def. Answer ¶ 3 [Exh. 1]).

Hans & Franz and Addys are also a single enterprise under the Act. For more than one entity to be a single enterprise, they "must conduct (1) related activities, (2) performed under unified operations or common control, and (3) for a common business purpose." Brock v. Hamad, 867 F.2d 804, 806 (4th Cir. 1989). Both Hans & Franz and Addy's are restaurants in Greenville are both owned and operated by Addy Sulley. 29 CFR §§ 779.213-15; Morgan v. SpeakEasy, LLC, 625 F. Supp. 2d 632, 647 (N.D. Ill. 2007).

As an independent basis for coverage, an employee is individually covered under the Act if she is engaged in commerce or in the production of goods for commerce. Tony & Susan Alamo Found. v. Sec'y of Labor, 471 U.S. 290, 295 n.8 (1985); Geer v. McGregor, CA 8:10-2219-HMH-JDA, 2013 WL 808838 (D.S.C. Mar. 5, 2013) (citing 29 U.S.C. § 206(a)). Defendants have expressly admitted Plaintiff is subject to individual coverage. (Def. Answer ¶ 12 [Exh. 1]). Moreover, Plaintiff's duties constitute a typical example of an employee subject to individual coverage under the Act: a waitperson who utilizes credit card machines to engage in transactions selling items in interstate commerce. Owusu v. Corona Tire Shop, Inc., 09-CV-3744 NGG JO, 2013 WL 1680861, at *3 (E.D.N.Y. Apr. 17, 2013) (employee would fall under individual coverage for using the credit card machine frequently); Russell v. Cont'l Rest., Inc., 430 F. Supp. 2d 521, 526 (D. Md. 2006) (finding Plaintiff was not individually covered because she did not provide evidence she performed credit card transactions).

1. Plaintiff is entitled to minimum wage.

Plaintiff was a "tipped employee." She was therefore entitled to minimum wage of \$7.25 minus any amounts withheld through a valid tip credit scheme. 29 U.S.C. § 206(a); 29 U.S.C. § 203(m); Chisolm v. Gravitas Rest. Ltd., CIV.A. H-07-475, 2008 WL 838760, at *2 (S.D. Tex. Mar. 25, 2008). The tip credit allows some employers to pay as little as \$2.13 per hour to employees. Chisolm, 2008 WL 838760, at *2.

2. Defendants' deductions from Plaintiff's pay resulted in nonpayment of minimum wage.

Employers lose their right to take a tip credit unless it "(1) pays a cash wage of at least \$2.13 per hour; (2) informs its employees of the FLSA's tip credit provisions; (3) permits its employees to retain all their tips; and (4) ensures that the cash wage plus the tip credit equal at least the minimum wage each week." Chisolm, 2008 WL 838760, at *2; Richard v. Marriott Corp., 549 F.2d 303, 305 (4th Cir. 1977); 29 U.S.C. § 203(m).⁵

Here, it is undisputed that Defendants did not permit Plaintiff to retain all her tips. Plaintiff was required to give a portion of her tips, based on sales, to management. Because Plaintiff did not retain all her tips, Defendants have unlawfully instituted a tip credit scheme that violates the FLSA.⁶

ii. Damages

In addition to moving on liability, Plaintiff submits that there is no genuine issue of material fact as to the amount of damages Plaintiff has incurred.

⁵ The FLSA does permit a deduction from tips as part of a valid tip-pooling scheme. However, Defendants have admitted they do not have a tip pool. (Def. Sec. Supp. Resp. Ints. 14, 15 [Exh. 2]).

⁶ While it is undisputed that the "breakage" fee came from Plaintiff's tips, Defendants would be liable even if they attempted to argue the deductions came from Plaintiff's hourly wage. Because they take the maximum tip credit of \$5.12 per hour, any further deductions from Plaintiff's hourly wage would reduce her pay below minimum wage. See Chisolm, 2008 WL 838760, at *3-4. Further, plates and dishes are not valid "board, lodging, or other facilities" that can be deducted from wages because such items are for the benefit of the employer. Id.

"The FLSA provides that an employer who violates its minimum wage provisions be liable in the full amount of the minimum wage and an additional equal amount as liquidated damages, plus attorney's fees." Chisolm, 2008 WL 838760, at *5; Singer v. City of Waco, 324 F.3d 813, 822 (5th Cir.2003); Richard v. Marriott Corp., 549 F.2d 303, 305 (4th Cir. 1977); 29 U.S.C. § 216(b).

1. Actual Damages

Plaintiff has suffered actual damages in the amount of \$9,587.25⁷ for nonpayment of minimum wage. Because Defendants did not permit Plaintiff to retain her tips, pursuant to 29 U.S.C. § 203(m), they cannot avail themselves of the tip credit. Therefore, Plaintiff is entitled her minimum wage in full for every hour Plaintiff worked for Defendants. Chisolm, 2008 WL 838760, at *5; Richard, 549 F.2d at 305. This amounts to \$5.12 per hour (i.e. $\$7.25 - 2.13 = \$5.12$) multiplied by 1872.51 hours.⁸

2. Liquidated Damages

In addition to actual damages, the FLSA provides for liquidated damages when the Act is violated. 29 U.S.C. § 216. Liquidated damages are mandatory. Perez v. Mountaire Farms, Inc., 650 F.3d 350, 375 (4th Cir. 2011); Chao v. Barbeque Ventures, LLC, 547 F.3d 938, 941 (8th Cir. 2008); Joiner v. City of Macon, 814 F.2d 1537, 1539 (11th Cir. 1987).

3. Costs and Attorney's Fees

When Plaintiff is successful in bringing a claim under the FLSA, "[t]he court in such action shall, in addition to any judgment awarded to the plaintiff or

⁷ Plaintiff's Motion miscalculated the amount of damages as \$9,636.87. The Undersigned apologizes for the mathematical error.

⁸ See Exh. 6. Exh. 6 is a chart summarizing Plaintiff's hours worked and pay received that the Undersigned created. The Undersigned will also bring Plaintiff's pay stubs, Stinson 02-77, to the hearing and will make them available as needed. See also Pl. Aff. ¶ 4 [Exh. 3].

plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action." 29 U.S.C. § 216.

III. Conclusion

For the foregoing reasons, this Court should grant Plaintiff's motion for partial summary judgment for both liability and damages.

Respectfully submitted this 14th day of February, 2014.

For the Plaintiff:



Brian P. Murphy, No. 6770
C. Alexander Cable, No. 100561

Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601
(864) 370-9400
(864) 241-1386 (fax)

Attorneys for Plaintiff

State of South Carolina

) IN THE COURT OF COMMON PLEAS

County of Greenville

) 2013-CP-23-03057

Laurin Stinson,

Plaintiff,

v.

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and Jurgen
Haubach,

Defendants.

CERTIFICATE OF SERVICE

2014 FEB 14 PM 10 17

JOHN G. RECKENBIEL
CO. S.C.
WICKENSIMER

This is to certify that a copy of Plaintiff's Memorandum in Support of Motion for Partial Summary Judgment was served on counsel for Defendants Hans & Franz, LLC d/b/a Hans & Franz Biergarten, Addys Dutch Café and Restaurant, Addy Sulley, and Jurgen Haubach, via United States mail, first class, with postage prepaid and properly affixed, on February 14, 2014, at the following address :

John G. Reckenbiel, Esquire
Law Office of John G. Reckenbeil, LLC
P.O. Box 1633,
Spartanburg, SC 29304


Lisa Romaniello
Legal Assistant to Brian Murphy
and C. Alexander Cable

Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601
Phone: (864) 370-9400
Fax: (864) 241-1386

EXHIBIT 1

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

LAURIN STINSON,

Plaintiff,

v.

HANS & FRANZ, LLC d/b/a HANS &
FRANZ BIERGARTEN, ADDYS DUTCH
CAFÉ AND RESTAURANT, ADDY
SULLEY, AND JURGEN HAUBACH,

Defendants.

IN THE COURT OF COMMON PLEAS

**DEFENDANT'S ANSWER
TO COMPLAINT**

C.A. No. 2013-CP-23-03057

COMES NOW Defendants Hans and Franz, LLC d/b/a Hans & Franz Biergarten, Addys Dutch Café and Restaurant, Addy Sulley, and Jurgen Haubach (hereinafter "Defendants"), by and through their undersigned attorney, pursuant to Rules 8(c) and 12(a) of the South Carolina Rules of Civil Procedure, and hereby files their Answer to the Complaint in the above-captioned action as follows:

1. Defendant lacks sufficient information as to the Plaintiff's residency but admits that the Plaintiff was an employee of the Defendant.
2. Defendants admit that "Hans & Franz" referred to in paragraph 2 of Plaintiff's complaint is a South Carolina Limited Liability Company organized under South Carolina law and operating in Greenville County.
3. Defendants admit the allegations contained in Paragraph 3 of Plaintiff's Complaint.
4. Defendants admit that "Addys" referred to in paragraph 4 of Plaintiff's complaint is a company operating in Greenville County.

5. Defendants admit that Addys as referred to paragraph 5 of Plaintiff's complaint is an employer under the FLSA but lacks knowledge as to it being an "enterprise" as such is not defined.

6. Defendants lack sufficient information upon which to form a belief as to the truth or falsity of the allegations contained in Paragraph 6 of Plaintiff's Complaint and, therefore, denies the same.

7. Defendants admit the allegations contained in Paragraph 7 of Plaintiff's Complaint.

8. Defendants lack sufficient information upon which to form a belief as to the truth or falsity of the allegations contained in Paragraph 8 of Plaintiff's Complaint.

9. Defendants admit the allegations contained in Paragraph 9 of Plaintiff's Complaint.

10. With respect to the allegations set forth in Paragraph 10 of Plaintiff's Complaint, Defendant admits that he was a manager of said restaurant but lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 10.

11. Defendants admit the allegations set forth in Paragraph 11 of Plaintiff's Complaint.

12. Defendant admits the allegations contained in Paragraphs 12, 13, and 14 of Plaintiff's Complaint.

13. With respect to the allegations set forth in Paragraph 15 of Plaintiff's Complaint, Defendants admit that they had an agreement with all employees that there would be a deduction from each employee's pay for broken dishes. Defendant denies the remaining allegations contained in Paragraph 15 of Plaintiff's Complaint.

14. Defendant denies the allegations contained in Paragraph 16, 17, 18, and 19 of Plaintiff's Complaint. Specifically, as to paragraph 18, the "catering events" referred to were non-profit community service projects sponsored by the Defendants such as "Taste of the Upstate" and "Beach Ball." An employer need not compensate an employee for time spent volunteering for charitable purposes if the work is performed outside of normal working hours, and the employee is truly volunteering without coercion from the employer. Furthermore, Plaintiff was paid "tip" for the catering events.

RESPONSE TO FIRST CAUSE OF ACTION
(FLSA – Minimum Wage)

15. In response to the allegations set forth in Paragraph 21 of Plaintiff's Complaint, Defendants contend that there was a valid agreement between Defendants and all restaurant employees whereby pay would be deducted for damaged property. These types of deductions are allowed under the FLSA so long as the employee's pay does not fall below the national minimum wage.

16. These deductions are also considered "reasonable costs" associated with the furnishing of equipment by the employer. FLSA § 3(m).

17. As to Paragraph 22 of Plaintiff's complaint, Defendant is unsure as to the meaning of the phrase "training period" as it is not a defined term and therefore can neither form a belief as to the truth or falsity of the allegation. Defendant denies the remaining allegations contained in Paragraphs 22 of Plaintiff's Complaint.

RESPONSE TO SECOND CAUSE OF ACTION
(FLSA - Overtime)

18. In response to the allegations set forth in Paragraph 24 and 25 of Plaintiff's Complaint, Defendant agrees in accordance with FLSA § 3(m) that a tipped employee's regular

rate of pay, for overtime purposes, includes the amount of tip credit taken. However, Defendant contends that Plaintiff did not work "overtime" as defined under the FLSA.

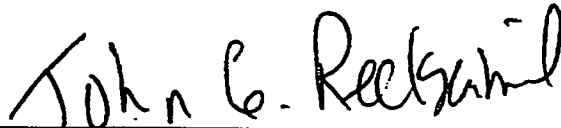
19. Defendant denies the allegations contained in Paragraph 25.

RESPONSE TO SECOND CAUSE OF ACTION
(S.C. Wage Payment Act)

20. For the foregoing reasons listed above, Defendant denies the allegations in paragraphs 26, 27, and 28.

WHEREFORE, for the foregoing reasons, Defendant respectfully prays that the Complaint in this action, being utterly without merit, be dismissed in its entirety, with an award of attorneys' fees and costs assessed against Plaintiff, along with any other relief the Court deems just and proper.

LAW OFFICE OF JOHN G. RECKENBEIL, LLC



John G. Reckenbeil
215 Magnolia Street
P.O. Box 1633
Spartanburg, SC 29304
Phone: (864) 582-5472
Fax: (864) 582-7280
john@johnreckenbeillaw.com

ATTORNEY FOR DEFENDANTS

Date: July 23, 2013
Spartanburg, SC

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Laurin Stinson,

Plaintiff,

vs.

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and Jurgen
Haubach,

Defendants.

IN THE COURT OF COMMON PLEAS

CERTIFICATE OF SERVICE

C.A. NO. 2013-CP-23-03057

I, Keri Eadie, the undersigned legal assistant to John G. Reckenbeil, attorney for the Plaintiff, certify that I have mailed a copy of the herein below listed pleading to Counsel in this matter, postage prepaid, on this 23rd day of July 2013, as follows:

PLEADING: Defendant's Answer to Complaint

COUNSEL SERVED: C. Alexander Cable
Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601

LAW OFFICE OF JOHN G. RECKENBEIL, LLC



Keri A. Eadie
Legal Assistant to John G. Reckenbeil
215 Magnolia Street
P.O. Box 1633
Spartanburg, SC 29304
Phone: (864) 582-5472
Fax: (864) 582-7280
keri@johnreckenbeillaw.com

Date: July 23, 2013
Spartanburg, SC

State of South Carolina

County of Greenville

) IN THE COURT OF COMMON PLEAS

) 2013-CP-23-

03057

Laurin Stinson,

Plaintiff,

v.

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and Jurgen
Haubach,

Defendants.

Complaint

Jury Trial Demanded

2013 MAY 30 P 12:48

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSHER

Plaintiff, by and through her undersigned attorney, would respectfully show unto the Court as follows:

1. Plaintiff is a resident of Greenville County and, at all relevant times, was employed by Defendants in Greenville County.
2. Defendant Hans & Franz Biergarten ("Hans & Franz") is a South Carolina limited liability company organized under South Carolina law and operating in Greenville County.
3. Defendant Hans and Franz Biergarten is an employer and enterprise under the Fair Labor Standards Act ("FLSA").
4. Defendant Addy's Dutch Café and Restaurant ("Addys") is a company operating in Greenville County.
5. Defendant Addys is an employer and enterprise under the FLSA.
6. Defendants Hans & Franz and Addys are a single enterprise under the FLSA based on their related activities of serving food and beverages, common control by common

ownership, and a common business purpose of serving food and beverages and publicly promoting each other and each business.

7. Defendant Addy Sulley ("Sulley") is, upon information and belief, a resident of Greenville County.
8. Defendant Sulley is an employer under the FLSA based on his ownership of Defendants Hans & Franz and Addys, his ultimate authority over hiring and firing, his authority over supervising the employees and operations of both restaurants, and his authority over employee wages and payroll.
9. Defendant Jurgen Haubach ("Haubach") is, upon information and belief, a resident of Greenville County.
10. Defendant Haubach is an employer under the FLSA based on his supervisory authority over the employees and daily operation of Hans & Franz Biergarten, his ability to make hiring and firing decisions, and his authority over scheduling and directing employees' daily assignments.
11. Plaintiff was employed by defendant as a server from approximately October 24, 2011 until January 20, 2013.
12. Plaintiff's duties as a server required her to regularly sell items bought and sold by her employer in interstate commerce. Accordingly, there is individual coverage for Plaintiff under the FLSA as well.
13. This Court has concurrent jurisdiction to address these claims and venue is appropriate in Greenville County.
14. Defendant relied on a tip credit scheme to pay its employees federally mandated minimum wage.

15. Throughout the duration of Plaintiff's employment, Defendants unlawfully deducted a "breakage" or "turn-in" fee out of her earnings to cover broken dishes and other restaurant expenses, regardless of whether Plaintiff was not responsible for breaking anything, or even without regard to whether there even were such expenses.
16. Throughout the duration of Plaintiff's employment, Defendant improperly paid her overtime based on an incorrect rate calculation.
17. Plaintiff was improperly paid below minimum wage for her training period with Defendant.
18. Plaintiff was on more than one occasion not paid at all for hours worked at the restaurant and at off-site catering events.
19. Defendant's actions were not in good faith or based upon a reasonable belief that they were not violating applicable laws.

Count I
For A First Cause of Action
FLSA-Minimum Wage

20. Plaintiff incorporates by reference the averments in the foregoing paragraphs as if set forth here in full.
21. Defendant impermissibly shifted operating costs to Plaintiff by deducting sums from her wages, thereby reducing her hourly compensation amount below the minimum wage.
22. Defendant did not pay Plaintiff minimum wage during her training period or allow her to participate in the tip pool to receive the tip credit to make up the difference.

WHEREFORE, Plaintiff respectfully requests a trial by jury on her claim for violation of the minimum wage requirements of the FLSA and that she be awarded all available

relief including, but not limited to, a declaratory judgment that the acts and practices of the Defendant complained of herein are in violation of the laws of the United States, an award of lost wages, compensatory and liquidated damages, attorneys fees, expenses, and costs, and all other and further relief as to this Court appears necessary and proper.

Count II
For a Second Cause of Action
FLSA—Overtime

23. Plaintiff incorporates by reference the foregoing averments as if set forth here in full.
24. Defendant impermissibly calculated Plaintiff's overtime rate at 150% of her tip credit wage, rather than the minimum wage.
25. This miscalculation led to a deficiency in Plaintiff's compensation.

WHEREFORE, Plaintiff respectfully requests a trial by jury on her claim for violation of the overtime requirements of the FLSA and that she be awarded all available relief including, but not limited to, a declaratory judgment that the acts and practices of the Defendant complained of herein are in violation of the laws of the United States, an award of lost wages, compensatory and liquidated damages, attorneys fees, expenses, and costs, and all other and further relief as to this Court appears necessary and proper.

Count III
For a Third Cause of Action
Payment of Wages

26. Plaintiff incorporates by reference the foregoing averments as if set forth here in full.
27. The amounts owed to Plaintiff for unpaid hours for which she worked for Defendant constitute "wages" under the South Carolina Payment of Wages Law.
28. Defendant has failed and refused to pay wages when due and/or has declared its intent to not do so.

WHEREFORE, Plaintiff respectfully requests a trial by jury on her claim for wages owed and entry of judgment to include all amounts owed and all other relief to which Plaintiff can show she is entitled including, but not limited to, treble damages, attorney fees, costs, prejudgment and post-judgment interest.

Respectfully submitted this 30th day of May, 2013.

For the Plaintiff:

Handwritten signatures of Brian P. Murphy and C. Alexander Cable, written in black ink over a horizontal line.

Brian P. Murphy, No. 6770
C. Alexander Cable, No. 100561

Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601
(864) 370-9400
(864) 241-1386 (fax)

Attorneys for Plaintiff

EXHIBIT 2

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
Laurin Stinson,	)	
	)	
Plaintiff,	)	DEFENDANTS' SUPPLEMENTED
v.	)	RESPONSES TO PLAINTIFF'S
	)	FIRST SET OF INTERROGATORIES
	)	
Hans & Franz, LLC d/b/a Hans & Franz	)	Case No.: 2013-CP-23-03057
Biergarten, Addys Dutch Café and	)	
Restaurant, Addy Sulley, and Jurgen	)	
Haubach,	)	
	)	
Defendants.	)	
	)	

Defendant hereby serves the following Responses to the Request for Interrogatories and Production of Documents to Plaintiff's counsel at 514 Pettigru St., Greenville, South Carolina 29601.

Interrogatories

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

RESPONSE:

**Addy Sulley - 3124 S. Carolina 14
Greenville, SC 29615**

**Juergen Haubach - 7 Bathurst Lane
Simpsonville, SC 29681**

**Kathriana Kengi - 200 Elise Drive
Greer, SC 29650**

**-No written statements have been taken from witnesses
or are in Defendant's possession.**

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

RESPONSE: NONE

3. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

RESPONSE: NONE

4. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE: Addy Sully is the sole owner and operator of Hans and Franz restaurant. He has assumed the responsibility of doing essentially every task needed to help the restaurant function smoothly. If needed he will bus tables, expedite the food, run the food, and help the servers and kitchen staff with essentially any task. In fulfilling such responsibilities, he had a close working relationship with the Plaintiff. In other words, he would have likely been onsite performing some of the same duties along side the Plaintiff.

Jurgen Haubach is the general manager and acting chef of Hans and Franz restaurant. His role is to oversee the kitchen and manage the employees. As general

manager, it is his responsibility to schedule the employees. Both Jurgen and Addy have the authority to hire and fire employees at Hans and Franz. In short, Jurgen more so manages the staff whereas Addy assumes any duty where needed. Jurgen would have been the Plaintiff's direct superior and in charge of her work schedule.

Kathriana Kengi was the other server who worked with Laurin Stinson at the one wedding they helped cater. Wedding was a buffet style at Hans and Franz, and Ms. Kengni and Ms. Stinson only helped serve drinks. Food and set up was done by Chef Juergen Haubach and Addy Sully. Wedding party paid for the services that Kengni and Stinson performed.

5. Identify each document or communication, in paper or electronic form, that describe the duties, functions, and expectations for servers or wait staff employed by Defendants Hans & Franz or Addy's Dutch Café including, but not limited to, job descriptions, position descriptions, documents setting forth goals and objectives and performance evaluations to the extent such documents reflect duties, functions, and expectations for the time period 2011 through the present. To the extent no such documents otherwise exist, set forth in full detail here a full description of server and wait staff duties, functions, and other expectations for the time period 2011 through the present.

RESPONSE: Servers' duties are to bring menu, inform the customer about the menu, and then take their order. The server would also run the food except on the weekends when each server was provided a food runner. Last, the server was required to bring the table back to service to seat other customers.

6. Identify each document or communication, in paper or electronic form, that describe the duties, functions, and expectations for Defendant Addy Sulley with respect to both Addy's Dutch Café and Hans & Franz including, but not limited to, job descriptions, position descriptions, documents setting forth goals and objectives and performance evaluations to the extent such documents reflect duties, functions, and expectations for the time period 2011 through the present. To the extent no such documents otherwise exist, set forth in full detail here a full description of Defendant Sulley's duties, functions, and other expectations for the time period of 2011 through the present.

RESPONSE: No documents exist. Defendant Sully is the sole owner and operator of Hans and Franz. Defendant Sully is a consultant for Addy's Dutch Café.

7. Identify each document or communication, in paper or electronic form, that describe the duties, functions, and expectations for Defendant Jurgen Haubach with respect to both Addy's Dutch Café and Hans & Franz including, but not limited to, job descriptions, position descriptions, documents setting forth goals and objectives and performance evaluations to the extent such documents reflect duties, functions, and expectations for the time period 2011 through the present. To the extent no such documents otherwise

exist, set forth in full detail here a full description of Defendant Haubach's duties, functions, and other expectations for the time period of 2011 through the present.

RESPONSE: Juergen Haubach is the general manager and chef of Hans and Franz. He maintains complete control over the restaurant when owner/operator Addy Sully is not present.

8. Identify by name, address, and phone number each member, shareholder, or other equity holder of Hans & Franz from January 1, 2011 through the present and note the dates of any changes to the person or entity's status as a shareholder or equity holder. To the extent the member or equity holder is a legal entity (LLC, corporation, trust), specify the individual identified as the beneficial holder of the equity or with whom Defendant Hans & Franz maintains contact.

RESPONSE: Addy Sully is the sole member of Hans and Franz, LLC

9. Identify by name, address, and phone number each member, shareholder, or other equity holder of Addy's Dutch Café from January 1, 2011 through the present and note the dates of any changes to the person or entity's status as a shareholder or equity holder. To the extent the member or equity holder is a legal entity (LLC, corporation, trust), specify the individual identified as the beneficial holder of the equity or with whom Defendant Addy's Dutch Café maintains contact.

RESPONSE: Addy's Dutch Café is owned by Act of Greenville, Inc. Nina Biagiotti and Addy Sully are the only two shareholders of Act of Greenville, Inc.

10. Identify by name and position each officer, manager (or assistant manager), and director of Hans & Franz from January 1, 2011 through the present and note the dates of any changes to the person or entity's status as an officer, manger, or director.

RESPONSE: Addy Sulley - owner/operator.

Juergen Haubach - chef and general manager

11. For each person identified in your response to Interrogatory 10, identify each position that such person has held from January 1, 2011 through the present as a director, officer, manger (or assistant manager), or employee of Addy's Dutch Café or any of its subsidiaries or affiliates.

RESPONSE: Addy Sulley is a consultant to Addy's Dutch Café.

Addy is sort of the brains of the operation for Addy's Dutch Café. He acts as a sort of the planner and organizer for some of the restaurants events and items they sell. Addy's Dutch Café is obviously a Dutch themed restaurant. Addy Sulley is Dutch and as such provides insight to the restaurant. More specifically, he plans all the restaurants events and makes all the decisions on food choices. Since much of his time is spent at Hans and Franz, he spends essentially zero time at the Addy's Dutch Café actively managing or running the operation.

12. Identify by name and position each officer, manager (or assistant manager), and director of Hans & Franz from January 1, 2011 through the present and note the dates of any changes to the person or entity's status as an officer, manger, or director.

RESPONSE: **Addy Sulley - owner/ operator**

Juergen Haubach - chef and general manager

13. For each person identified in your response to Interrogatory 12, identify each position that such person has held from January 1, 2011 through the present as a director, officer, manger (or assistant manager), or employee of Addy's Dutch Café or any of its subsidiaries or affiliates.

RESPONSE: **Addy Sulley is a consultant to Addy's Dutch Café.**

14. From October 1, 2011 until present, state with particularity Plaintiff's rate of pay, including an explanation of any adjustments for any tip pooling or tip credit schemes, at all times relevant to this matter and the total amount of compensation received by Plaintiff during the course of her employment with Defendants, providing for each pay period:

- a. pay date,
- b. the actual number of hours shown on time cards/sheets each week,
- c. if the time worked was rounder, the manner in which it was rounded,
- d. the number of hours worked over forty for each week,
- e. the actual number of hours worked each week,
- f. the description of the work performed (e.g., food prep, food runs, cleaning, bussing, service prep, staff meetings, training etc.),
- g. the rate of pay for each type of work described in the preceding section, if different, and
- h. any and all deductions taken from Plaintiff's gross pay (including employee benefits, food, fee, etc.).

RESPONSE: **The Tip Credit taken by Defendants was \$5.12 an hour.**

The rate of pay is \$2.13 an hour (\$ 2.13 + \$ 5.12 = \$7.25

minimum wage), most servers average \$15 dollars an hour on the credit card tips. The Plaintiff also averaged at least \$15 dollars and likely more but she never declared any cash tips so Defendant is unsure to determine how much she exactly made per hour. There was no "tip pool" in place at Defendant's restaurant.

SEE ATTACHED.

15. Set forth in full detail the manner in which Defendants' tip pooling and tip credit schemes are calculated , administered, and documented from January 2011 to the present,

including:

- a. which positions (servers, hosts, bar tenders, managers, etc.) take part in the tip pool and/or tip crediting scheme,
- b. whether Plaintiff was a part of the tip pool and/or tip credit scheme,
- c. the standard rate or method, if any, at which the tip pool is assessed to participating employees,
- d. the standard rate or method, if any, at which the tip credit is assessed to participating employees, and
- e. identify any and all documents or records reflecting and accounting of these schemes.

RESPONSE: There was no tip pool. Tip credit taken was \$5.12. See response to number 14 for calculation.

16. Set forth in full detail the manner in which Defendants calculate, administer, and document payment of overtime wages to employees from January 1, 2011 to the present and how, if at all, such wages are affected by Defendants' tip pooling and/or tip credit

schemes.

RESPONSE: **None of the employees work overtime at Hans & Franz.**
Most employees work no more than seventy (70) hours
bi-weekly.

17. Set forth in full detail any and all agreements with Plaintiff to work for Defendants at events (catering, etc.) outside of Defendants' restaurants, including all agreements regarding compensation for such events, and identify any documentation or records reflecting any such agreements.

RESPONSE: **See Attached for wedding information in which the**
reception was held at Hans and Franz.

18. Identify by date, participant, and mode, all oral, electronic, and written communications, including email and text messages, between Defendants or employees or agents of Defendants regarding Plaintiff.

RESPONSE: **SEE ATTACHED.**

LAW OFFICE OF JOHN G. RECKENBEIL, LLC

John G. Reckenbeil
Attorney for Defendants
215 Magnolia Street
P.O. Box 1633
Spartanburg, SC 29304
Phone: (864) 582-5472
Fax: (864) 582-7280
john@johnreckenbeillaw.com

Dated: December 2, 2013

EXHIBIT 3

State of South Carolina

County of Greenville

FILED-CLERK OF COURT
GREENVILLE, S.C.
PAUL B. WICKENS, JR.
IN THE COURT OF COMMON PLEAS
2013-CP-23-03057
2013 DEC 23 PM 2 23

Laurin Stinson,

Plaintiff,

v.

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and
Jurgen Haubach,

Defendants.

Plaintiff's Affidavit in Support of
Summary Judgment

Plaintiff is an adult over the age of 18 years and the following are true and correct facts personally known to Plaintiff and are within his personal knowledge:

1. I worked for Defendants at the Hans & Franz restaurant from approximately October 25, 2011 until January 19, 2013.
2. I worked as a server with principal duties including taking orders, serving food, making and serving all mixed alcoholic beverages, taking and running payments (including running credit cards), bussing tables, and seating guests.
3. During the entirety of my employment with Defendants, they utilized a tip credit system. They deducted \$5.12 per hour from my wages, netting me \$2.13 per hour.
4. I have reviewed the documents Bates-numbered Stinson 02-77. They accurately reflect, with certain exceptions that are in dispute in this case but not related to this motion, the number of hours I worked and the amount I was paid by the Defendants.

5. During the entirety of my employment with Defendants, they charged a "breakage" or "turn in" or "tip out" fee from every shift's earnings. This fee amounted to 1% of the shift's net sales and was paid directly to the Defendants.
6. We were told this fee was to cover lost or damaged items, like plates and silverware, and for maintenance items, including brooms and dustpans.
7. This fee was taken out of my pay at the end of each shift regardless of whether I broke anything myself or whether anything was broken at all.
8. I have reviewed the documents Bates-numbered Stinson 87-91. They contain a chart I created containing the amounts withheld from my pay as a result of the "breakage" fees paid to Defendants.
9. As a result of this fee, I never collected the full amount of income that I earned during a shift.

Respectfully submitted this 23rd day of December, 2013.


Laurin Stinson

Sworn to and subscribed before me
this 23rd day of December, 2013


Notary Public - South Carolina
my commission expires 2/2/2019

EXHIBIT 4

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Laurin Stinson,

Plaintiff,

v.

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and Jurgen
Haubach,

Defendants.

IN THE COURT OF COMMON PLEAS

**DEFENDANT'S RESPONSES TO
PLAINTIFF'S FIRST DISCOVERY
TO DEFENDANTS**

Case No.: 2013-CP-23-03057

Defendant hereby serves the following Responses to the Request for Interrogatories and Production of Documents to Plaintiff's counsel at 514 Pettigru St., Greenville, South Carolina 29601.

Interrogatories

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

RESPONSE: Addy Sulley

Jurgen Haubach

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

RESPONSE: NONE

3. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

RESPONSE: NONE

4. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE: Kathriana Kengni was the other server that worked with Laurin Stinson at the one wedding they helped cater. Wedding was a buffet style at Hans and Frans and Ms. Kengni and Ms. Stinson only helped serve drinks. Food and set up was done by Chef Juergen Haubach and Addy Sully. Wedding party paid for the services that Kengni and Stinson performed.

5. Identify each document or communication, in paper or electronic form, that describe the duties, functions, and expectations for servers or wait staff employed by Defendants Hans & Franz or Addy's Dutch Café including, but not limited to, job descriptions, position descriptions, documents setting forth goals and objectives and performance evaluations to the extent such documents reflect duties, functions, and expectations for the time period 2011 through the present. To the extent no such documents otherwise exist, set forth in full detail here a full description of server and wait staff duties, functions, and other expectations for the time period 2011 through the present.

RESPONSE: Servers' duties are to bring menu, inform the customer about the menu, and then take their order. The server would also

run the food except on the weekends when each server was provided a food runner. Last, the server was required to bring the table back to service to seat other customers.

6. Identify each document or communication, in paper or electronic form, that describe the duties, functions, and expectations for Defendant Addy Sulley with respect to both Addy's Dutch Café and Hans & Franz including, but not limited to, job descriptions, position descriptions, documents setting forth goals and objectives and performance evaluations to the extent such documents reflect duties, functions, and expectations for the time period 2011 through the present. To the extent no such documents otherwise exist, set forth in full detail here a full description of Defendant Sulley's duties, functions, and other expectations for the time period of 2011 through the present.

RESPONSE: No documents exist. Defendant Sully is the sole owner and operator of Hans and Franz. Defendant Sully is a consultant for Addy's Dutch Café.

7. Identify each document or communication, in paper or electronic form, that describe the duties, functions, and expectations for Defendant Jurgen Haubach with respect to both Addy's Dutch Café and Hans & Franz including, but not limited to, job descriptions, position descriptions, documents setting forth goals and objectives and performance evaluations to the extent such documents reflect duties, functions, and expectations for the time period 2011 through the present. To the extent no such documents otherwise exist, set forth in full detail here a full description of Defendant Haubach's duties, functions, and other expectations for the time period of 2011 through the present.

RESPONSE: **Jurgen Haubach is the general manager and chef of Hans and Franz. He maintains complete control over the restaurant when owner/operator Addy Sully is not present.**

8. Identify by name, address, and phone number each member, shareholder, or other equity holder of Hans & Franz from January 1, 2011 through the present and note the dates of any changes to the person or entity's status as a shareholder or equity holder. To the extent the member or equity holder is a legal entity (LLC, corporation, trust), specify the individual identified as the beneficial holder of the equity or with whom Defendant Hans & Franz maintains contact.

RESPONSE: **Addy Sully is the sole member of Hans and Franz, LLC**

9. Identify by name, address, and phone number each member, shareholder, or other equity holder of Addy's Dutch Café from January 1, 2011 through the present and note the dates of any changes to the person or entity's status as a shareholder or equity holder. To the extent the member or equity holder is a legal entity (LLC, corporation, trust), specify the individual identified as the beneficial holder of the equity or with whom Defendant Addy's Dutch Café maintains contact.

RESPONSE: **Addy's Dutch Café is owned by Act of Greenville, Inc.
Nina Biagiotti and Addy Sully are the only two
shareholders of Act of Greenville, Inc.**

10. Identify by name and position each officer, manager (or assistant manager), and director of Hans & Franz from January 1, 2011 through the present and note the dates of any

changes to the person or entity's status as an officer, manger, or director.

RESPONSE: **Addy Sulley - owner/operator.**

Jurgen Haubach - chef and general manager

11. For each person identified in your response to Interrogatory 10, identify each position that such person has held from January 1, 2011 through the present as a director, officer, manger (or assistant manager), or employee of Addy's Dutch Café or any of its subsidiaries or affiliates.

RESPONSE: **Addy Sulley is a consultant to Addy's Dutch Café.**

12. Identify by name and position each officer, manager (or assistant manager), and director of Hans & Franz from January 1, 2011 through the present and note the dates of any changes to the person or entity's status as an officer, manger, or director.

RESPONSE: **Addy Sulley - owner operater**

Jurgen Haubach - chef and general manager

13. For each person identified in your response to Interrogatory 12, identify each position that such person has held from January 1, 2011 through the present as a director, officer, manger (or assistant manager), or employee of Addy's Dutch Café or any of its subsidiaries or affiliates.

RESPONSE: **Addy Sulley is a consultant to Addy's Dutch Café.**

14. From October 1, 2011 until present, state with particularity Plaintiff's rate of pay, including an explanation of any adjustments for any tip pooling or tip credit schemes, at all times relevant to this matter and the total amount of compensation received by

Plaintiff during the course of her employment with Defendants, providing for each pay period:

- a. pay date,
- b. the actual number of hours shown on time cards/sheets each week,
- c. if the time worked was rounder, the manner in which it was rounded,
- d. the number of hours worked over forty for each week,
- e. the actual number of hours worked each week,
- f. the description of the work performed (e.g., food prep, food runs, cleaning, bussing, service prep, staff meetings, training etc.),
- g. the rate of pay for each type of work described in the preceding section, if different, and
- h. any and all deductions taken from Plaintiff's gross pay (including employee benefits, food, fee, etc.).

RESPONSE: **The rate of pay is \$2.13 an hour, most servers average \$15 dollars an hour on the credit card tips. The Plaintiff also averaged at least \$15 dollars and likely more but she never declared any cash tips so Defendant is unsure to determine how much she exactly made per hour.**

SEE ATTACHED.

15. Set forth in full detail the manner in which Defendants' tip pooling and tip credit schemes are calculated , administered, and documented from January 2011 to the present,

including:

- a. which positions (servers, hosts, bar tenders, managers, etc.) take part in the tip pool and/or tip crediting scheme,
- b. whether Plaintiff was a part of the tip pool and/or tip credit scheme,
- c. the standard rate or method, if any, at which the tip pool is assessed to participating employees,
- d. the standard rate or method, if any, at which the tip credit is assessed to participating employees, and
- e. identify any and all documents or records reflecting and accounting of these schemes.

RESPONSE: **No tip pool.**

16. Set forth in full detail the manner in which Defendants calculate, administer, and document payment of overtime wages to employees from January 1, 2011 to the present and how, if at all, such wages are affected by Defendants' tip pooling and/or tip credit schemes.

RESPONSE: **None of the employees work overtime at Hans & Franz.**
Most employees work no more than seventy (70) hours
bi-weekly.

17. Set forth in full detail any and all agreements with Plaintiff to work for Defendants at events (catering, etc.) outside of Defendants' restaurants, including all agreements regarding compensation for such events, and identify any documentation or records reflecting any such agreements.

RESPONSE: **Hans and Franz does not perform any catering**
functions. These were community service charity
projects. There were no agreements. Hans and Franz
and any employees thereof donated their time to work
these events. Hans and Franz did not receive any
compensation from these events. All food and drink
was donated.

18. Identify by date, participant, and mode, all oral, electronic, and written communications, including email and text messages, between Defendants or employees or agents of Defendants regarding Plaintiff.

RESPONSE: SEE ATTACHED.

Requests to Produce

1. All documents, data, or other things identified in your response to the foregoing Interrogatories.

RESPONSE: SEE ATTACHED.

2. A complete copy of Plaintiff's personnel file.

RESPONSE: NONE.

3. All documents upon which you rely in denying any allegation raised by Plaintiff.

RESPONSE: NONE.

4. All documents upon which you rely in asserting any defense to the claims raised by Plaintiff.

RESPONSE: SEE ATTACHED.

5. All documents or records reflecting hours worked by Plaintiff for any Defendant from January 1, 2011 through the present, including, but not limited to, time working physically at either Defendant restaurant and time sent working at other venues (catering, etc.) for Defendant.

RESPONSE: SEE ATTACHED.

6. All documents or records reflecting the gross receipts from sale of food, drink, or other items or services by Plaintiff.

RESPONSE: SEE ATTACHED.

7. Any written communications (including electronic) between Defendants and/or any other person or entity regarding Plaintiff.

RESPONSE: SEE ATTACHED.

8. Any other documents maintained by any Defendant regarding Plaintiff.

RESPONSE: NONE.

9. All documents or records containing an accounting or otherwise reflecting the use of the funds collected from the "breakage" or "turn in" fee discussed in ¶ 15 of Plaintiff's Complaint.

RESPONSE: There are no documents. The breakage fee was 1% of the net sale. This is less than the 2.5% fee that Hans and Franz incurs for each credit card transaction which they could have charged but did not. This is also a lot less than any tip pool would have subtracted.

10. All employee handbooks or similar publications for employees terms and conditions of employment applicable to Plaintiff's employment, including, but not limited to, any publications regarding the tip credit, tip pool, or "breakage" or "turn in" fees discussed in ¶ 15 of Plaintiff's Complaint.

RESPONSE: There are no documents. The breakage fee policy was voted on by the employees, including the Plaintiff.

11. A copy of any insurance policy under which the defense of this action is provided (with or without a reservation of rights).

RESPONSE: NONE.

12. A copy of any reservation of rights letter from any insurer related to this action.

RESPONSE: NONE.

13. All policies, manuals, memoranda, or other directives or other documents that refer or relate to Defendant Hans & Franz's personnel management policies and/or practices applicable to Plaintiff's employment.

RESPONSE: NONE.

14. All documents upon which Defendant Hans & Franz relies in asserting any affirmative defenses to the Complaint.

RESPONSE: NONE.

15. Any statements taken from any witness in this case.

RESPONSE: SEE ATTACHED.

16. Any job descriptions covering positions held by Plaintiff during her employment with Defendant Hans & Franz.

RESPONSE: NONE .

17. A complete set of financial reports (including balance sheets, profit and loss statements, income/revenue and expense statements, cash flow statements, statements of assets and liabilities, and general ledger statements) for Defendant Hans & Franz, whether in paper or electronic form, to the extent such documents or files relate to the years FY2011 to present or any partial period (e.g. quarterly statements) of any completed portion of the current fiscal year.

RESPONSE: SEE ATTACHED.

18. A complete set of financial reports (including balance sheets, profit and loss statements, income/revenue and expense statements, cash flow statements, statements of assets and liabilities, and general ledger statements) for Defendant Addy's Dutch Café, whether in paper or electronic form, to the extent such documents or files relate to the years FY2011 to present or any partial period (e.g. quarterly statements) of any completed portion of the current fiscal year.

RESPONSE: NONE.

19. A copy of all quarterly or annual U.S. or state tax returns for all Defendants to the extent such documents or files relate to the time period of January 1, 2011 through the present.

RESPONSE: SEE ATTACHED.

Respectfully submitted this 30th day of August 2013,

LAW OFFICE OF JOHN G. RECKENBEIL, LLC


John G. Reckenbeil
Attorney for Defendants
215 Magnolia Street
P.O. Box 1633
Spartanburg, SC 29304
Phone: (864) 582-5472
Fax: (864) 582-7280
john@johnreckenbeillaw.com

Dated: August 30, 2013
Spartanburg, SC

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Laurin Stinson,

Plaintiff,

vs.

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and Jurgen
Haubach,

Defendants.

IN THE COURT OF COMMON PLEAS

CERTIFICATE OF SERVICE

C.A. NO.: 2013-CP-23-03057

I, Keri Eadie, the undersigned legal assistant to John G. Reckenbeil, attorney for the Defendant, certify that I have mailed a copy of the herein below listed pleading to Counsel in this matter, postage prepaid, on this 30th day of August 2013, as follows:

PLEADING: Defendant's Responses to Plaintiff's First Discovery to Defendants

COUNSEL SERVED: C. Alexander Cable
Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601

LAW OFFICE OF JOHN G. RECKENBEIL, LLC



Keri A. Eadie
Legal Assistant to John G. Reckenbeil
215 Magnolia Street
P.O. Box 1633
Spartanburg, SC 29304
Phone: (864) 582-5472
Fax: (864) 582-7280
keri@johnreckenbeillaw.com

Date: August 30, 2013
Spartanburg, SC

EXHIBIT 5

Tip Out to Addy Sulley

Servers were required to tip out the owner of Hans & Franz Biergarten (Addy Sulley) 1% of net sales daily. If the change was below \$.50 we would round down to the nearest dollar. If the change was above \$.50 we would round up to the nearest dollar. This is a chart of the total tip out daily which I personally gave to the owner Addy Sulley for what he called "breakage/expenses." Tip outs were based off of our net sales, the better sales you have the higher your tip out to owner.

January 2012:

\$3.00
 \$1.00
 \$4.00
 \$3.00
 \$5.00
 \$2.00
 \$4.00
 \$8.00
 \$12.00
 \$4.00
 \$4.00
 \$8.00
\$6.00
 \$64.00

February 2012:

\$7.00
 \$10.00
 \$8.00
 \$6.00
 \$8.00
 \$6.00
 \$2.00
 \$9.00
 \$8.00
\$4.00
 \$68.00

March 2012:

\$6.00
 \$10.00
 \$7.00
 \$6.00
\$7.00
 \$36.00

April 2012:

\$2.00
\$6.00
\$6.00
\$7.00
\$12.00
\$3.00
\$7.00
\$8.00
\$3.00
\$2.00
\$6.00
\$6.00
\$4.00
\$72.00

May 2012:

\$4.00
\$3.00
\$9.00
\$12.00
\$6.00
\$4.00
\$7.00
\$7.00
\$4.00
\$0.00
\$8.00
\$3.00
\$4.00
\$5.00
\$6.00
\$9.00
\$6.00
\$5.00
\$102.00

June 2012:

\$3.00
\$4.00
\$2.00
\$7.00
\$6.00
\$10.00
\$3.00
\$8.00
\$7.00
\$3.00
\$12.00
\$3.00
\$2.00
\$3.00
\$8.00
\$8.00
\$10.00
\$6.00
\$6.00
\$111.00

July 2012:

\$2.00
\$7.00
\$4.00
\$3.00
\$5.00
\$4.00
\$7.00
\$4.00
\$7.00
\$4.00
\$12.00
\$4.00
\$4.00
\$7.00
\$7.00
\$7.00
\$2.00
\$90.00

August 2012:

\$5.00
\$3.00
\$6.00
\$4.00
\$5.00
\$4.00
\$4.00
\$5.00
\$9.00
\$6.00
\$5.00
\$8.00
\$1.00
\$4.00
\$1.00
\$4.00
\$8.00
\$5.00
\$6.00
\$7.00
\$5.00
\$105.00

September 2012:

\$8.00
\$5.00
\$1.00
\$6.00
\$3.00
\$5.00
\$1.00
\$4.00
\$5.00
\$12.00
\$6.00
\$2.00
\$3.00
\$6.00
\$6.00
\$4.00
\$3.00
\$3.00
\$4.00
\$6.00
\$7.00
\$13.00
\$113.00

October 2012:

\$1.00
\$6.00
\$6.00
\$5.00
\$7.00
\$7.00
\$6.00
\$1.00
\$2.00
\$3.00
\$5.00
\$7.00
\$2.00
\$1.00
\$1.00
\$8.00
\$9.00
\$6.00
\$10.00
\$8.00
\$13.00
\$114.00

November 2012:

\$6.00
\$1.00
\$3.00
\$2.00
\$3.00
\$3.00
\$3.00
\$6.00
\$4.00
\$4.00
\$2.00
\$3.00
\$4.00
\$4.00
\$48.00

December 2012:

\$5.00
\$7.00
\$5.00
\$5.00
\$6.00
\$5.00
\$3.00
\$6.00
\$5.00
\$4.00
\$6.00
\$2.00
\$3.00
\$5.00
\$4.00
\$71.00

Total Year 2012:

\$64.00

\$68.00

\$36.00

\$72.00

\$102.00

\$111.00

\$90.00

\$105.00

\$113.00

\$114.00

\$48.00

\$71.00

\$994.00

EXHIBIT 6

Check Date	Check Number	Dates Number	Number of Hours Paid for	Hourly Rate
11/11/2011	5772	2	16.53	2.13
11/23/2011	5791	4	62.47	2.13
12/9/2011	5823	5	64.48	2.13
12/23/2011	5840	6	50.62	2.13
1/5/2012	5854	7	77.02	2.13
1/20/2012	5866	9	48.56	2.13
2/3/2012	5878	10	60.35	2.13
2/17/2012	5891	11	46.12	2.13
3/2/2012	5909	12	58.13	2.13
3/16/2012	5918	14	54.52	2.13
3/30/2012	5932	16	63.64	2.13
4/13/2012	5945	18	80	2.13
4/27/2012	5957	22	78.39	2.13
5/11/2012	5970	26	65.45	2.13
5/25/2012	5983	30	58.86	2.13
6/8/2012	5999	32	63.21	2.13
6/22/2012	6018	34	62.25	2.13
7/6/2012	6037	36	57.22	2.13
7/20/2012	6055	38	45	2.13
8/3/2012	6070	40	60.16	2.13
8/17/2012	6086	42	63.82	2.13
8/31/2012	6102	46	63.55	2.13
9/14/2012	6117	48	57.85	2.13
9/28/2012	6133	50	73.63	2.13
10/12/2012	6146	52	80	2.13
10/26/2012	6166	54	75.14	2.13
11/9/2012	6183	56	50.34	2.13
11/23/2012	6201	58	44.67	2.13
11/27/2012	6217	59	24.03	2.13
12/21/2012	6235	61	46.94	2.13
1/4/2013	6253	63	50.59	2.13
1/18/2013	111	65	32.03	2.13
2/1/2013	126	66	36.94	2.13

TOTALS

1872.51

State of South Carolina

County of Greenville

IN THE COURT OF COMMON PLEAS

2013-CP-23-03057

Laurin Stinson,

Plaintiff,

v.

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and
Jurgen Haubach,

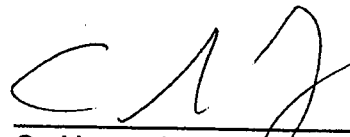
Defendants.

Affidavit of Counsel,
Charles Alexander Cable

Charles Alexander Cable states that he is counsel for Plaintiff in the above matter, that the facts stated herein are within his personal knowledge, and that he is at least 18 years of age:

1. I personally created the foregoing document, Stinson 131, upon reviewing Plaintiff's pay stubs, previously produced in this litigation as Stinson 02-77.
2. Plaintiff has testified via affidavit that Stinson 02-77 "accurately reflect . . . the number of hours I worked and the amount I was paid by the Defendants." (Pl. Affidavit in Support of Summary Judgment ¶ 4 [Attachment A]).
3. The document, Stinson 131, is a summary of Plaintiff's pays stubs created because the underlying documents are voluminous and cannot conveniently be examined in court.
4. The chart accurately summarizes the contents of Plaintiff's pay stubs and accurately reflects in the information contained therein.

Respectfully submitted this 14th day of February, 2014.


C. Alexander Cable

Sworn to and subscribed before me
this 14th day of February, 2014


Notary Public - South Carolina
my commission expires 9/11/15

ATTACHMENT A

State of South Carolina

County of Greenville

FILED-CLERK OF COURT
GREENVILLE, S.C.
PAUL B. WICKENS, CLERK
IN THE COURT OF COMMON PLEAS
2013-CP-23-03057

2013 DEC 23 PM 2 23

Laurin Stinson,

Plaintiff,

v.

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and
Jurgen Haubach,

Defendants.

Plaintiff's Affidavit in Support of
Summary Judgment

Plaintiff is an adult over the age of 18 years and the following are true and correct facts personally known to Plaintiff and are within his personal knowledge:

1. I worked for Defendants at the Hans & Franz restaurant from approximately October 25, 2011 until January 19, 2013.
2. I worked as a server with principal duties including taking orders, serving food, making and serving all mixed alcoholic beverages, taking and running payments (including running credit cards), bussing tables, and seating guests.
3. During the entirety of my employment with Defendants, they utilized a tip credit system. They deducted \$5.12 per hour from my wages, netting me \$2.13 per hour.
4. I have reviewed the documents Bates-numbered Stinson 02-77. They accurately reflect, with certain exceptions that are in dispute in this case but not related to this motion, the number of hours I worked and the amount I was paid by the Defendants.

5. During the entirety of my employment with Defendants, they charged a "breakage" or "turn in" or "tip out" fee from every shift's earnings. This fee amounted to 1% of the shift's net sales and was paid directly to the Defendants.
6. We were told this fee was to cover lost or damaged items, like plates and silverware, and for maintenance items, including brooms and dustpans.
7. This fee was taken out of my pay at the end of each shift regardless of whether I broke anything myself or whether anything was broken at all.
8. I have reviewed the documents Bates-numbered Stinson 87-91. They contain a chart I created containing the amounts withheld from my pay as a result of the "breakage" fees paid to Defendants.
9. As a result of this fee, I never collected the full amount of income that I earned during a shift.

Respectfully submitted this 23rd day of December, 2013.


Laurin Stinson

Sworn to and subscribed before me
this 23rd day of December, 2013


Notary Public - South Carolina
my commission expires 2/2/2019

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
LAURIN STINSON,)
Plaintiff,)
v.)
HANS & FRANZ, LLC d/b/a HANS &
FRANZ BIERGARTEN, ADDYS DUTCH)
CAFÉ AND RESTAURANT, ADDY)
SULLEY, AND JURGEN HAUBACH,)
Defendants.)

IN THE COURT OF COMMON PLEAS

**DEFENDANTS' RESPONSE IN
OPPOSITION TO PLAINTIFF'S
MOTION TO FOR SUMMARY
JUDGMENT**

C.A. No. 2013-CP-23-03057

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 FEB 18 AM 9 10

COMES NOW, Defendants in the above-styled case and files this response in opposition to Plaintiff's motion for partial Summary Judgment as to the first cause of action on "minimum wage", as follows:

I. Introduction

The Defendants first respond to Plaintiff's motion by stating that the Fair Labor Standards Act ("FLSA"), the subject matter of this suit, is without a doubt one of the most comprehensive and complicated areas of employment law. Its application demands a fairly complex legal and factual analysis that cannot be worked through with a broad generalized standard form. Defendants should not be punished for a "misclassification", or misspoken term such as "turn in" that could be construed an illegal deduction by Defendant under the FLSA when all the evidence shows this Plaintiff was paid far in excess of minimum wage.

The Plaintiff's complaint alleges two main causes of action: failure to pay minimum wage and failure to pay overtime. The Defendants and Plaintiff are in factual disagreement concerning these issues.

The evidence set forth in discovery responses, Interrogatory 15.... Defendants to “set forth in detail the manner in which Defendants’ *tip pooling* and *tip credit schemes* are calculated, administered, and documented from January 2011 to present.” In regards to a “tip credit” the black letter law of the FLSA, Section 3(m), permits an employer to take a tip credit toward its minimum wage obligation for tipped employees equal to the difference between the required wage (which must be at least \$2.13) and the federal minimum wage (currently \$7.25).

The Defendant did take a tip credit of \$5.12 and paid all the servers \$2.13 per hour. The calculation used was \$7.25 (minimum wage) minus the minimum required wage for tip credit schemes (\$2.13) which equals \$5.12. “The rate of pay is \$2.13 an hour, whereby most servers employed by Defendants average \$15 dollars an hour on the credit card tips alone.” (See Exhibit #1) There is nothing to “calculate, administer, or document” because it is an affirmative right that the Defendants exercised. There is also nothing unique about this practice as it is the industry standard in the restaurant business.

Employers using the tip credit must be able to show that tipped employees receive at least the minimum wage when direct wages and the tip credit amount are combined which was clearly shown by the documents the Defendant supplied. The documents supplied show that Plaintiff average \$16.28 an hour on credit card tips alone. (See Exhibit #2 a computation of Plaintiff’s monthly average) It should be noted Exhibit #2 does not reflect cash tips which Plaintiff received and further Plaintiff was not required to report to Defendant through any “tip pool” (Exhibit #2)

In regards to a “tip pool,” that is a sharing arrangement among employees who customarily and regularly receive tips. There was not a tip pool in place at the Defendants’ restaurant. Tip pooling occurs when multiple employees who have earned tips contribute their

tips to a general pool that is then shared by other employees. There are very specific rules that surround tip pools and what constitutes a valid tip pool, but Defendants maintain that no tip pool existed.

Count one of Plaintiff's complaint alleges that "Defendant impermissibly shifted operating costs to plaintiff by deducting sums from her wages, thereby reducing her hourly compensation amount below the minimum wage." This assertion has absolutely nothing to do with a tip credit or tip pool as those terms are defined under the FLSA.

By the count one assertion, Defendant is assuming that Plaintiff believes that the deduction for operating costs was an invalid "tip pool" that she referred to in Interrogatory 15. The Defendant admits that a 1% "turn in" fee was charged to all the servers just taken from the credit card tips that were based upon net amount after each shift for each server. (See Exhibit # 3 Plaintiff's production of documents (Text from Defendant Sulley to Plaintiff) The weekly pay to Plaintiff from service charge payout, credit card tips and \$2.13 an hour, "regular rate". nothing was pooled and then redistributed. (See Exhibit 5) The 1% was tallied and turned in at the end of each shift.

FLSA section 3(m) allows an employer to deduct the "reasonable cost" to the employer for furnishing an employee with "board, lodging, or other facilities." See 29 C.F.R. § 531.3(d)(1). This is the same portion of the law that allows employers to deduct a portion of employees' tips for reimbursement for credit card surcharges. This charge on tips may not reduce the employee's wage below the required minimum wage. Further the employee must be paid no later than the regular pay day and may not be held while the employer is awaiting reimbursement from the credit card companies. A compulsory charge for service, ("Svc Charges", See Exhibit #5 Plaintiff's pay stub for the week of 9/24/2012 to 10/7/2012) the

evidence presented by this defendant clearly shows that the Svc charges are paid to Plaintiff. (\$5,948.70 paid to Plaintiff over course of employment) Such charges are part of the employer gross receipts. **"Sums distributed to employees from service charges cannot be counted as tips received, and may be used to satisfy the employer's minimum wage... obligation under the FLSA. If an employee receives tips in addition to compulsory service charges, that can be considered in determining the application of the tip credit"** (See Exhibit #6, US. Dept. of Labor Fact sheet #15) Plaintiff is clearly compensated with the weekly service charge which is not deemed "tips" more than the amount of \$994 (Plaintiff's alleged shortage as demonstrated from Exhibit 5 of Stinson Memorandum). Furthermore, the Defendants have every right under the FLSA to take 2.5% from all credit card tips for the credit card surcharge, which ultimately was never taken. The employees at a staff meeting voted to instead "turn in" 1% of the net sales after each shift. (See Exhibit #7 Defendants Response to Productions)

A question of fact exists as to whether Defendants 1% daily "turn in" falls into an exception that an employer is allowed to take, or whether this Plaintiff was paid in excess of the minimum wage required by FLSA. With all the evidence presented by the Defendant it shows Plaintiff was paid far in excess of minimum wage (\$16.28 an hour just on credit card tips and service charges) as required by the FLSA. This is a question of fact left for a Jury to decide.

Respectfully submitted,

LAW OFFICE OF JOHN G. RECKENBEIL, LLC

John G. Reckenbeil

John G. Reckenbeil
Lawrence E. McNair, III
Attorneys for the Defendants
215 Magnolia Street
Post Office Box 1633
Spartanburg, SC 29304
Phone: (864) 582-5472
Fax: (864) 582-7280

Dated: February 18, 2014
Spartanburg, South Carolina

Plaintiff during the course of her employment with Defendants, providing for each pay period:

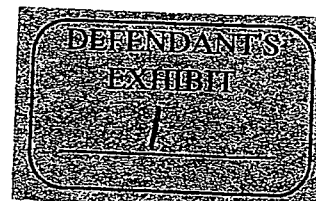
- a. pay date,
- b. the actual number of hours shown on time cards/sheets each week,
- c. if the time worked was rounder, the manner in which it was rounded,
- d. the number of hours worked over forty for each week,
- e. the actual number of hours worked each week,
- f. the description of the work performed (e.g., food prep, food runs, cleaning, bussing, service prep, staff meetings, training etc.),
- g. the rate of pay for each type of work described in the preceding section, if different, and
- h. any and all deductions taken from Plaintiff's gross pay (including employee benefits, food, fee, etc.).

RESPONSE: **The rate of pay is \$2.13 an hour, most servers average \$15 dollars an hour on the credit card tips. The Plaintiff also averaged at least \$15 dollars and likely more but she never declared any cash tips so Defendant is unsure to determine how much she exactly made per hour.**

SEE ATTACHED.

15. Set forth in full detail the manner in which Defendants' tip pooling and tip credit schemes are calculated, administered, and documented from January 2011 to the present, including:

- a. which positions (servers, hosts, bar tenders, managers, etc.) take part in the tip pool and/or tip crediting scheme,
- b. whether Plaintiff was a part of the tip pool and/or tip credit scheme,
- c. the standard rate or method, if any, at which the tip pool is assessed to participating employees,
- d. the standard rate or method, if any, at which the tip credit is assessed to participating employees, and
- e. identify any and all documents or records reflecting and accounting of these schemes.



RESPONSE: No tip pool.

16. Set forth in full detail the manner in which Defendants calculate, administer, and document payment of overtime wages to employees from January 1, 2011 to the present and how, if at all, such wages are affected by Defendants' tip pooling and/or tip credit schemes.

RESPONSE: None of the employees work overtime at Hans & Franz.
Most employees work no more than seventy (70) hours
bi-weekly.

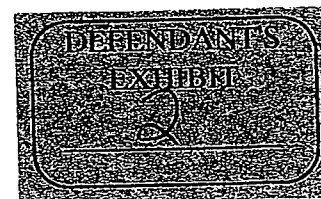
17. Set forth in full detail any and all agreements with Plaintiff to work for Defendants at events (catering, etc.) outside of Defendants' restaurants, including all agreements regarding compensation for such events, and identify any documentation or records reflecting any such agreements.

RESPONSE: Hans and Franz does not perform any catering
functions. These were community service charity
projects. There were no agreements. Hans and Franz
and any employees thereof donated their time to work
these events. Hans and Franz did not receive any
compensation from these events. All food and drink
was donated.

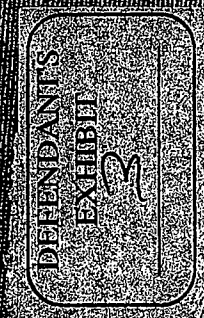
18. Identify by date, participant, and mode, all oral, electronic, and written communications, including email and text messages, between Defendants or employees or agents of Defendants regarding Plaintiff.

	total wages	total hours	avg. hourly rate
February-12	\$2,041.49	112.65	\$18.12
March-12	\$2,443.66	143.65	\$17.01
April-12	\$2,790.49	143.84	\$19.40
May-12	\$1,878.92	122.07	\$15.39
June-12	\$2,163.69	124.75	\$17.34
July-12	\$1,835.78	105.16	\$17.46
August-12	\$2,188.48	129.39	\$16.91
September-12	\$2,758.64	153.63	\$17.96
October-12	\$2,127.16	125.48	\$16.95
November-12	\$853.53	68.7	\$12.42
December-12	\$1,415.02	97.53	\$14.51
January-13	\$815.59	68.96	\$11.83

\$16.28 Total average hourly wage



Lately we are missing a lot of silverware and side dishes.
We found several in the trash bags and I'm not in the
mood to go daily through the trash bags to find our
silverware and side dishes. It's a waste of time and
energy. We will miss the room and we are one of the only
with it can clock out and leave this house. I know that
is one thing we can not teach you are in a house and
silverware in the trash bag is a waste of time and
stupidity.



Lauren M Stinson**Hans & Franz LLC**3124 South Highway 14
Greenville, SC 29615

Company A1377-01	Period Begin 9/24/2012	Division
Number	Period End 10/7/2012	Branch
Social Security #	Check Number 6146	Department 400
Hire Date 10/25/2011	Check Date 10/12/2012	Team

Earnings

Description	Location / Job	Rate	Hours	Current	Year To Date
Regular (Hourly)		2.13	80.00	170.40	2806.77
Rate 2		0.00	0.00	1395.56	19696.14
Charge Tips (Other)					34.30
Tips (Taxable Memo)					

Deductions

Description	Current	Year To Date
Fed (S/2) (1584.48)	164.69	1867.69
OASDI (1584.48)	66.55	948.45
Medicare (1584.48)	22.97	327.44
SC (1/2) (1584.48)	79.99	941.51

Total Earnings	85.80	1584.48	22582.14	Total Deductions	334.20	4085.09
NET PAY	1250.28	Total Direct Deposits	0.00	Check Amount	1250.28	18462.75

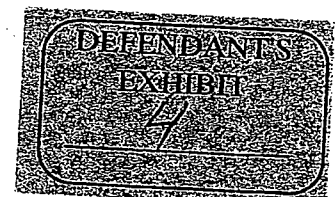
- Stinson, Laurin

09/24/12 - 10/07/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	80.00	5.80	170.40	18.53	188.93
Job Totals:	80.00	5.80	170.40	18.53	188.93

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Du
Tip Totals:	6,851.87	242.05	1,153.50	0.00	0.00	20.37%	1,395.56	1,395.55	0.00

1,584.48



000122

961.92

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay
101 - Server	58.13		123.82	0.00
Job Totals:	58.13	0.00	123.82	0.00

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid
Tip Totals:	4,840.88	180.63	657.47	0.00	0.00	17.31%	838.10	838.10

2025 - Stinson, Lauren
2,025

02/26/12 - 03/10/12

1,079.57

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay
101 - Server	54.52		116.13	0.00
Job Totals:	54.52	0.00	116.13	0.00

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid
Tip Totals:	4,440.69	237.28	726.16	0.00	0.00	21.70%	963.44	963.44

2025 - Stinson, Lauren
2,025

03/11/12 - 03/24/12

1,167.07

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay
101 - Server	63.64		135.55	0.00
Job Totals:	63.64	0.00	135.55	0.00

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid
Tip Totals:	4,802.03	326.24	705.28	0.00	0.00	21.48%	1,031.52	1,031.52

2025 - Stinson, Lauren

03/25/12 - 04/07/12

1,276.59

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay
101 - Server	80.00	8.92	170.40	28.50
Job Totals:	80.00	8.92	170.40	28.50

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid
Tip Totals:	6,238.41	335.15	771.04	0.00	0.00	17.73%	1,106.19	1,106.19

2025 - Stinson, Lauren
2,025

04/08/12 - 04/21/12

1,578.66

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay
101 - Server	78.39	6.23	166.97	19.90
Job Totals:	78.39	6.23	166.97	19.90

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid
Tip Totals:	6,497.44	552.48	859.21	0.00	0.00	21.73%	1,411.69	1,411.69

2025 - Stinson, Lauren
2,025

04/22/12 - 05/05/12

1,211.83

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay
101 - Server	65.45		139.41	0.00
Job Totals:	65.45	0.00	139.41	0.00

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid
Tip Totals:	6,497.44	552.48	859.21	0.00	0.00	21.73%	1,411.69	1,411.69

000123



2,025

05/06/12 - 05/19/12

865.69

To And From (RPT)

Bi-Weekly Employee Time Card Summary

Hans and Franz - Greenville, SC

Period From : 05/06/2012 To : 05/19/2012

Employee Number and Name: Payroll ID:

Printed on Wednesday, May 23, 2012 - 10:15 AM

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	58.86		125.37	0.00	125.37
Job Totals:	58.86	0.00	125.37	0.00	125.37

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	4,451.94	164.39	575.93	0.00	0.00	16.63%	740.32	740.32	0.00

2025 - Stinson, Lauren
2,025

05/20/12 - 06/03/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	63.21		134.64	0.00	134.64
Job Totals:	63.21	0.00	134.64	0.00	134.64

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	4,969.45	222.00	656.59	0.00	0.00	17.68%	878.59	878.59	0.00

1,013.23

000124

2025 - Stinson, Lauren
2,025

06/04/12 - 06/17/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	62.25		132.59	0.00	132.59
Job Totals:	62.25	0.00	132.59	0.00	132.59

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	6,020.97	280.29	812.41	0.00	0.00	18.15%	1,092.70	1,092.70	0.00

1,225.29

2025 - Stinson, Lauren
2,025

06/18/12 - 07/01/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	57.22		121.88	0.00	121.88
102 - Bartender	5.28		26.40	0.00	26.40
Job Totals:	62.50	0.00	148.28	0.00	148.28

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	4,881.30	245.03	545.09	0.00	0.00	16.19%	790.12	790.12	0.00

938.40

2025 - Stinson, Lauren
2,025

07/02/12 - 07/15/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	45.00		95.85	0.00	95.85
102 - Server			0.00	0.00	0.00

626.28

Bi-Weekly Employee Time Card Summary

Hans and Franz - Greenville, SC

Period From: 07/02/2012 To: 07/15/2012

Employee Number and Name: Payroll ID:

Printed on Wednesday, July 18, 2012 - 4:29 PM

Job Totals:	45.00	0.00	95.85	0.00	95.85

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	3,009.01	96.50	433.93	0.00	0.00	17.63%	530.43	530.43	0.00

2025 - Stinson, Lauren
2,025

07/16/12 - 07/29/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	60.16		128.14	0.00	128.14
Job Totals:	60.16	0.00	128.14	0.00	128.14

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	5,403.29	349.09	732.27	0.00	0.00	20.01%	1,081.36	1,081.36	0.00

1,209.50

2025 - Stinson, Lauren
2,025

07/30/12 - 08/12/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	63.82		135.94	0.00	135.94
Job Totals:	63.82	0.00	135.94	0.00	135.94

845.62

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	3,961.62	116.44	593.24	0.00	0.00	17.91%	709.68	709.68	0.00

2025 - Stinson, Lauren
2,025

08/13/12 - 08/26/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	71.54		152.38	0.00	152.38
Job Totals:	71.54	0.00	152.38	0.00	152.38

1,218.43

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	5,892.56	488.49	577.56	0.00	0.00	18.09%	1,068.05	1,066.05	0.00

2025 - Stinson, Lauren
2,025

08/27/12 - 09/09/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	57.85		123.22	0.00	123.22
Job Totals:	57.85	0.00	123.22	0.00	123.22

970.05

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	4,784.43	341.41	508.42	0.00	0.00	17.70%	848.83	846.83	0.00

2025 - Stinson, Laurin
2,025

09/10/12 - 09/23/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	73.63		156.83	0.00	156.83
Job Totals:	73.63	0.00	156.83	0.00	156.83

1,174.16

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	5,978.99	374.29	643.04	0.00	0.00	17.02%	1,017.33	1,017.33	0.00

000126

2025 - Stinson, Laurin
2,025

09/24/12 - 10/07/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	80.00	5.80	170.40	18.53	188.93
Job Totals:	80.00	5.80	170.40	18.53	188.93

1,584.48

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	6,851.67	242.05	1,153.50	0.00	0.00	20.37%	1,395.55	1,395.55	0.00

2025 - Stinson, Laurin
2,025

10/08/12 - 10/21/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	75.14		160.05	0.00	160.05
Job Totals:	75.14	0.00	160.05	0.00	160.05

1,039.69

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	4,863.79	334.86	544.78	0.00	0.00	18.09%	879.64	879.64	0.00

2025 - Stinson, Laurin
2,025

✓ 10/22/12 - 11/04/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	50.34		107.22	0.00	107.22
Job Totals:	50.34	0.00	107.22	0.00	107.22

1,087.47

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	3,973.61	397.18	583.07	0.00	0.00	24.67%	980.25	980.25	0.00

2025 - Stinson, Laurin
2,025

11/05/12 - 11/18/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	44.67		95.15	0.00	95.15
Job Totals:	44.67	0.00	95.15	0.00	95.15

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	2,768.98	124.85	361.43	0.00	0.00	17.56%	486.28	486.28	0.00

000127

Bi-Weekly Employee Time Card Summary

Hans and Franz - Greenville, SC

Period From : 11/19/2012 To : 12/02/2012

Printed on Monday, December 03, 2012 - 11:31 AM

Employee Number and Name: Payroll ID:

2025 - Stinson, Laurin
2,025

11/19/12 - 12/02/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	24.03		51.18	0.00	51.18
Job Totals:	24.03	0.00	51.18	0.00	51.18

272.10

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	1,247.27	29.10	191.82	0.00	0.00	17.71%	220.92	220.92	0.00

Bi-Weekly Employee Time Card Summary

Hans and Franz - Greenville, SC

Period From : 12/03/2012 To : 12/16/2012

Printed on Tuesday, December 18, 2012 - 10:54 AM

Employee Number and Name: Payroll ID:

2025 - Stinson, Laurin
2,025

12/03/12 - 12/16/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	46.94		99.98	0.00	99.98
Job Totals:	46.94	0.00	99.98	0.00	99.98

688.18

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	3,632.95	215.93	372.27	0.00	0.00	16.19%	588.20	588.20	0.00

Bi-Weekly Employee Time Card Summary

Hans and Franz - Greenville, SC

Period From : 12/17/2012 To : 12/30/2012

Printed on Monday, December 31, 2012 - 9:27 AM

Employee Number and Name: Payroll ID:

2025 - Stinson, Laurin
2,025

12/17/12 - 12/30/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	50.59		107.76	0.00	107.76
Job Totals:	50.59	0.00	107.76	0.00	107.76

726.84

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due

000128

2025 - Stinson, Laurin
2,025

12/31/12 - 01/13/13

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	32.03		68.22	0.00	68.22
Job Totals:	32.03	0.00	68.22	0.00	68.22

304.88

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	1,704.19	15.22	221.44	0.00	0.00	13.89%	236.66	236.66	0.00

Period From : 01/14/2013 To : 01/27/2013

Hans and Franz - Greenville, SC

Printed on Monday, January 28, 2013 - 9:58 AM

Employee Number and Name: Payroll ID:

2025 - Stinson, Laurin
2,025

01/14/13 - 01/27/13

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	36.94		78.68	0.00	78.68
Job Totals:	36.94	0.00	78.68	0.00	78.68

510.71 390.00

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	2,920.94	120.71	311.32	0.00	0.00	14.79%	432.03	432.03	0.00

000129

Fact Sheet #15: Tipped Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the FLSA to employees who receive tips.

Characteristics

Tipped employees are those who customarily and regularly receive more than \$30 per month in tips. Tips are the property of the employee. The employer is prohibited from using an employee's tips for any reason other than as a credit against its minimum wage obligation to the employee ("tip credit") or in furtherance of a valid tip pool. Only tips actually received by the employee may be counted in determining whether the employee is a tipped employee and in applying the tip credit.

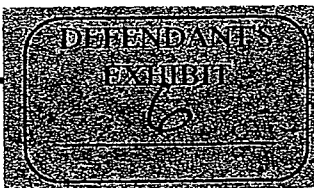
Tip Credit: Section 3(m) of the FLSA permits an employer to take a tip credit toward its minimum wage obligation for tipped employees equal to the difference between the required cash wage (which must be at least \$2.13) and the federal minimum wage. Thus, the maximum tip credit that an employer can currently claim under the FLSA is \$5.12 per hour (the minimum wage of \$7.25 minus the minimum required cash wage of \$2.13).

Tip Pool: The requirement that an employee must retain all tips does not preclude a valid tip pooling or sharing arrangement among employees who customarily and regularly receive tips, such as waiters, waitresses, bellhops, counter personnel (who serve customers), bussers, and service bartenders. A valid tip pool may not include employees who do not customarily and regularly received tips, such as dishwashers, cooks, chefs, and janitors.

Requirements

The employer must provide the following information to a tipped employee before the employer may use the tip credit:

- 1) the amount of cash wage the employer is paying a tipped employee, which must be at least \$2.13 per hour;
- 2) the additional amount claimed by the employer as a tip credit, which cannot exceed \$5.12 (the difference between the minimum required cash wage of \$2.13 and the current minimum wage of \$7.25);
- 3) that the tip credit claimed by the employer cannot exceed the amount of tips actually received by the tipped employee;
- 4) that all tips received by the tipped employee are to be retained by the employee except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and
- 5) that the tip credit will not apply to any tipped employee unless the employee has been informed of these tip credit provisions.



The employer may provide oral or written notice to its tipped employees informing them of items 1-5 above. An employer who fails to provide the required information cannot use the tip credit provisions and therefore must pay the tipped employee at least \$7.25 per hour in wages and allow the tipped employee to keep all tips received.

Employers electing to use the tip credit provision must be able to show that tipped employees receive at least the minimum wage when direct (or cash) wages and the tip credit amount are combined. If an employee's tips combined with the employer's direct (or cash) wages of at least \$2.13 per hour do not equal the minimum hourly wage of \$7.25 per hour, the employer must make up the difference.

Retention of Tips: A tip is the sole property of the tipped employee regardless of whether the employer takes a tip credit. The FLSA prohibits any arrangement between the employer and the tipped employee whereby any part of the tip received becomes the property of the employer. For example, even where a tipped employee receives at least \$7.25 per hour in wages directly from the employer, the employee may not be required to turn over his or her tips to the employer.

Tip Pooling: As noted above, the requirement that an employee must retain all tips does not preclude a valid tip pooling or sharing arrangement among employees who customarily and regularly receive tips. The FLSA does not impose a maximum contribution amount or percentage on valid mandatory tip pools. The employer, however, must notify tipped employees of any required tip pool contribution amount, may only take a tip credit for the amount of tips each tipped employee ultimately receives, and may not retain any of the employees' tips for any other purpose.

Dual Jobs: When an employee is employed by one employer in both a tipped and a non-tipped occupation, such as an employee employed both as a maintenance person and a waitperson, the tip credit is available only for the hours spent by the employee in the tipped occupation. The FLSA permits an employer to take the tip credit for some time that the tipped employee spends in duties related to the tipped occupation, even though such duties are not by themselves directed toward producing tips. For example, a waitperson who spends some time cleaning and setting tables, making coffee, and occasionally washing dishes or glasses is considered to be engaged in a tipped occupation even though these duties are not tip producing. However, where a tipped employee spends a substantial amount of time (in excess of 20 percent in the workweek) performing related duties, no tip credit may be taken for the time spent in such duties.

Service Charges: A compulsory charge for service, for example, 15 percent of the bill, is not a tip. Such charges are part of the employer's gross receipts. Sums distributed to employees from service charges cannot be counted as tips received, but may be used to satisfy the employer's minimum wage and overtime obligations under the FLSA. If an employee receives tips in addition to the compulsory service charge, those tips may be considered in determining whether the employee is a tipped employee and in the application of the tip credit.

Credit Cards: Where tips are charged on a credit card and the employer must pay the credit card company a percentage on each sale, the employer may pay the employee the tip, less that percentage. For example, where a credit card company charges an employer 3 percent on all sales charged to its credit service, the employer may pay the tipped employee 97 percent of the tips without violating the FLSA. However, this charge on the tip may not reduce the employee's wage below the required minimum wage. The amount due the employee must be paid no later than the regular pay day and may not be held while the employer is awaiting reimbursement from the credit card company.

Youth Minimum Wage: The 1996 Amendments to the FLSA allow employers to pay a youth minimum wage of not less than \$4.25 per hour to employees who are under 20 years of age during the first 90 consecutive

calendar days after initial employment by their employer. The law contains certain protections for employees that prohibit employers from displacing any employee in order to hire someone at the youth minimum wage.

Typical Problems

Minimum Wage Problems:

- Where an employee does not receive sufficient tips to make up the difference between the direct (or cash) wage payment (which must be at least \$2.13 per hour) and the minimum wage, the employer must make up the difference.
- Where an employee receives tips only and is paid no cash wage, the full minimum wage is owed.
- Where deductions for walk-outs, breakage, or cash register shortages reduce the employee's wages below the minimum wage, such deductions are illegal. Where a tipped employee is paid \$2.13 per hour in direct (or cash) wages and the employer claims the maximum tip credit of \$5.12 per hour, no such deductions can be made without reducing the employee below the minimum wage (even where the employee receives more than \$5.12 per hour in tips).
- Where a tipped employee is required to contribute to a tip pool that includes employees who do not customarily and regularly receive tips, the employee is owed all tips he or she contributed to the pool and the full \$7.25 minimum wage.

Overtime Problems:

- Where the employer takes the tip credit, overtime is calculated on the full minimum wage, **not** the lower direct (or cash) wage payment. The employer may not take a larger tip credit for an overtime hour than for a straight time hour (*i.e.*, \$4.00 tip credit per hour for the nonovertime hours and \$5.12 tip credit per hour for overtime hours).
- Where overtime is not paid based on the regular rate including all service charges, commissions, bonuses, and other remuneration.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
Contact Us

RESPONSE: NONE .

9. All documents or records containing an accounting or otherwise reflecting the use of the funds collected from the "breakage" or "turn in" fee discussed in ¶ 15 of Plaintiff's Complaint.

RESPONSE: There are no documents. The breakage fee was 1% of the net sale. This is less than the 2.5% fee that Hans and Franz incurs for each credit card transaction which they could have charged but did not. This is also a lot less than any tip pool would have subtracted.

10. All employee handbooks or similar publications for employees terms and conditions of employment applicable to Plaintiff's employment, including, but not limited to, any publications regarding the tip credit, tip pool, or "breakage" or "turn in" fees discussed in ¶ 15 of Plaintiff's Complaint.

RESPONSE: There are no documents. The breakage fee policy was voted on by the employees, including the Plaintiff.

11. A copy of any insurance policy under which the defense of this action is provided (with or without a reservation of rights).

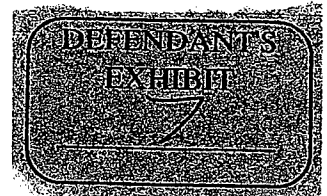
RESPONSE: NONE.

12. A copy of any reservation of rights letter from any insurer related to this action.

RESPONSE: NONE.

13. All policies, manuals, memoranda, or other directives or other documents that refer or relate to Defendant Hans & Franz's personnel management policies and/or practices applicable to Plaintiff's employment.

RESPONSE: NONE.



STATE OF SOUTH CAROLINA FILED-CLERK OF COURT IN THE COURT OF COMMON PLEAS
GREENVILLE CO. S.C. THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE PAUL B. WICKENSIMR

CASE NO.: 2013-CP-23-03057

2014 JUN 11 PM 4 32

Laurin Stinson.

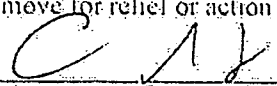
Plaintiff,

vs.

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addy's Dutch Cafe and
Restaurant, Addy Sulley, and Jurgen
Haubach.

Defendant.

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: C. Alexander Cable, Bar No. 100561 Address: Brian Murphy Law Firm, PC, 514 Pettigru St., Greenville, SC 29601 Phone: 864-370-9400 Fax 864-241-1386 E-mail: alex@brianmurphyfirm.com Other:	Defendant's Attorney: John G. Reckenbeil, Bar No. _____ Address: Law Office of John G. Reckenbeil, LLC, Spartanburg, SC 29304 Phone: 864-582-5472 Fax 864-582-7280 E-mail: john@johnreckenbeillaw.com Other: _____
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Plaintiff's Motion for Partial Summary Judgment Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES/ ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff/ ☐ Defendant June 11, 2014 Date submitted:	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court, or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	
JUDGE CODE _____ Date: _____	

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
State of South Carolina PAUL B. WICKENSIMER IN THE COURT OF COMMON PLEAS
County of Greenville 2014 JUN 11 PM 4 32 2013-CP-23-03057

Laurin Stinson,	)	
	)	
Plaintiff,	)	Plaintiff's Motion for Partial
v.	)	Summary Judgment
	)	
Hans & Franz, LLC d/b/a Hans & Franz	)	
Biërgarten, Addys Dutch Café and	)	
Restaurant, Addy Sulley, and	)	
Jurgen Haubach,	)	
	)	
Defendants.	)	

01850

Plaintiff, by and through her undersigned counsel, now moves for judgment as a matter of law as to certain claims and claims for damages set forth in Plaintiff's Complaint. Specifically, Plaintiff moves for judgment as follows:

I. Count I: FLSA—Minimum Wage

As to Plaintiff's first cause of action, non-payment of minimum under the Fair Labor Standards Act (FLSA), Plaintiff is entitled to summary judgment on the following:

a. Plaintiff was not paid minimum wage.

There is no genuine issue of material fact that Defendants' practice of deducting illegal fees from Plaintiff's wages reduced her pay below mandated minimum wage.

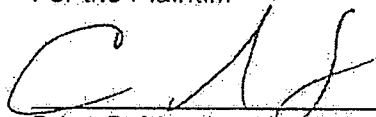
b. Plaintiff is entitled to recover damages, costs, and reasonable attorney fees.

There is no genuine issue of material fact that Plaintiff has suffered actual damages in the amount of \$9,587.25 for non-payment of minimum wage. Under the Act, Plaintiff is also entitled to liquidated damages, prejudgment interest, costs, and reasonable attorney fees.

This motion will be supported by a memorandum of law and other documents and authorities to be provided to the Court.

Respectfully submitted this 12th day of June, 2014.

For the Plaintiff:

A handwritten signature in black ink, appearing to read 'B. Murphy', is written over a horizontal line.

Brian P. Murphy, No. 6770
C. Alexander Cable, No. 100561

Brian Murphy Law Firm, PC
207 Whitsett Street
Greenville, SC 29601
(864) 370-9400
(864) 241-1386 (fax)

Attorneys for Plaintiff

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS, CLERK
State of South Carolina) IN THE COURT OF COMMON PLEAS
County of Greenville 2014 JUN 11 PM 4:32 2014-CP-23-03057

Laurin Stinson,

Plaintiff,

v.

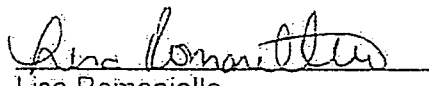
Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and Jurgen
Haubach,

Defendants.

CERTIFICATE OF SERVICE

This is to certify that a copy of Plaintiff's Motion for Partial Summary Judgment was served on counsel for Defendants Hans & Franz, LLC d/b/a Hans & Franz Biergarten, Addys Dutch Café and Restaurant, Addy Sulley, and Jurgen Haubach, via United States mail, first class, with postage prepaid and properly affixed, on June 11, 2014 at the following address:

John G. Reckenbiel, Esquire
Law Office of John G. Reckenbiel, LLC
P.O. Box 1633,
Spartanburg, SC 29304



Lisa Romaniello
Legal Assistant to Brian Murphy
and C. Alexander Cable

Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601
Phone: (864) 370-9400
Fax: (864) 241-1386

Laurin Stinson,

Plaintiff,
v.

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and
Jurgen Haubach,

Defendants.

Plaintiff's Memorandum in Support
Of Motion for Partial
Summary Judgment

Plaintiff, by and through her undersigned counsel, now submits this memorandum of law in support of her motion for judgment as a matter of law as to certain claims and claims for damages set forth in Plaintiff's Complaint.¹ Specifically, Plaintiff moves for judgment for both liability and for damages as follows:

I. Facts²

Defendants Hanz & Frans and Addys Dutch Café and Restaurant are restaurants located in Greenville, South Carolina. Hans & Franz is owned and operated by Addy Sulley and managed by Jurgen Haubach.

Plaintiff, Laurin Stinson, worked for Defendants at their Hans & Franz location in Greenville, South Carolina from approximately October 25, 2011 until January 19, 2013. Plaintiff worked as a server, "taking orders, serving food, making and serving all mixed

¹ Plaintiff brings several claims against Defendants under both the Fair Labor Standards Act (FLSA) and the South Carolina Payment of Wages Act. However, Plaintiff here is only moving on her first Count, nonpayment of minimum wage under the FLSA.

² A fuller statement of the facts may be found from Plaintiff's First Memorandum in Support of Partial Summary Judgment [Exh. A, pp. 1-2].

alcoholic beverages, taking and running payments (including running credit cards), bussing tables, and seating guests.”

Defendants did not pay Plaintiff minimum wage. Because Plaintiff received tips from customers for her services, Defendants utilized a “tip credit” system whereby, they deducted \$5.12 per hour from servers’ pay, netting Plaintiff \$2.13 per hour.³ Furthermore, Defendants deducted an additional 1% of Plaintiff’s net sales from each shift as a “breakage” or “turn in” or “tip out” fee. This fee was paid directly to Defendants. (Def. Response to Requests to Admit Nos. 9, 10, 12 [Exh. B]).

II. Posture

This Court heard Plaintiff’s First Motion for Summary Judgment on February 18, 2014. By Order of March 11, 2014, this Court denied Plaintiff’s motion, citing issues of fact regarding “the treatment of deductions, wages, and tips as well as the credit card service charge and ‘breakage’ issue and their interplay with § 203(m).” (Order, [Exh. C]). Further, the Court held that “further development of the facts is necessary to clarify application of the law.” Plaintiff has therefore engaged in further discovery and, for the reasons that follow, is entitled to summary judgment for both damages and liability for her minimum wage claim.

III. Argument

A. Plaintiff was not paid minimum wage.

There is no genuine issue of material fact that Defendants’ practice of requiring her to remit sums of her tips to them directly violates the FLSA minimum wage mandate.

³ The current minimum wage is \$7.25 per hour. 29 U.S.C. § 206(a).

1. Plaintiff is entitled to minimum wage.

Plaintiff was a "tipped employee." She was therefore entitled to minimum wage of \$7.25 minus any amounts withheld through a valid tip credit scheme. 29 U.S.C. § 206(a); 29 U.S.C. § 203(m); Chisolm v. Gravitas Rest. Ltd., CIV.A. H-07-475, 2008 WL 838760, at *2 (S.D. Tex. Mar. 25, 2008). The tip credit allows some employers to pay as little as \$2.13 per hour to employees. Chisolm, 2008 WL 838760, at *2.

2. Defendants' deductions from Plaintiff's pay resulted in nonpayment of minimum wage.

Employers lose their right to take a tip credit unless it

- (1) pays a cash wage of at least \$2.13 per hour;
- (2) informs its employees of the FLSA's tip credit provisions;
- (3) permits its employees to retain all their tips; and
- (4) ensures that the cash wage plus the tip credit equal at least the minimum wage each week.

Chisolm, 2008 WL 838760, at *2; Richard v. Marriott Corp., 549 F.2d 303, 305 (4th Cir. 1977); 29 U.S.C. § 203(m); see also U.S. Department of Labor Fact Sheet "Requirements" [Exh. D].

i. Deductions and Wages

There is no dispute that Defendants did not unlawfully deduct any sums from the wages it directly paid Plaintiff. She at all times received \$2.13 per hour from Defendants as required by the Act. Such issues would be relevant to Chisolm factor #1. Here, the illegal fees instituted by Defendants came from Plaintiff's tips. (Def. Response to Request to Admit No. 9 [Exh. B]).

Furthermore, while it is undisputed that the “breakage” fee came from Plaintiff’s tips, Defendants would be liable as a matter of law even if they attempted to argue the deductions had come from Plaintiff’s hourly wage. Because Defendants take the maximum tip credit of \$5.12 per hour, any further deductions from Plaintiff’s hourly wage would reduce her pay below minimum wage. See Chisolm, 2008 WL 838760, at *3-4. Further, plates and dishes are not valid “board, lodging, or other facilities” that can be deducted from wages because such items are solely for the benefit of the employer. Id.

ii. Tips

In order to claim a tip credit, the employer must permit employees to retain all tips. Chisolm factor #3. In fact, “[a] tip is the sole property of the tipped employee regardless of whether the employer takes a tip credit.” (U.S Department of Labor Fact Sheet “Retention of Tips” [Exh. D]); 29 CFR § 531.52. The requirement to allow employees to retain all their tips is “‘strictly construed,’ and ‘must be satisfied even if the employee received tips at least equivalent to the minimum wage.’” Dorsey v. TGT Consulting, LLC, 888 F. Supp. 2d 670, 681 (D. Md. 2012).⁴ Furthermore, an employer cannot claim a tip credit “if the employer exercises control over a portion of the employee’s tips.” Id.

Here, it is undisputed that Defendants did not permit Plaintiff to retain all her tips. Plaintiff was required to give a portion of her tips, based on net sales, directly to management. (Def. Response to Requests to Admit Nos. 9-12 [Exh. B]). Because Plaintiff did not retain all her tips, Defendants have unlawfully instituted a tip credit scheme that violates the FLSA.

⁴ The *only* exception to this provision is where a valid tip pool scheme has been instituted. Defendants did not utilize a tip pool. (Def. Sec. Supp. Resp. Ints. 14, 15 [Exh. A, pp. 26-27]).

iii. Credit Card Fees

a. Inapplicable and Irrelevant

The fact that Defendants, for whatever reason, chose not to deduct fees from tips paid to Plaintiff via credit card has absolutely no bearing on whether she is entitled to summary judgment on her minimum wage claim.

There is simply no support for Defendants' apparent position that their decision not to apply one provision of the FLSA against its employees somehow permits them to break other portions of the law. Furthermore, any attempts to do so would be invalid because employees simply cannot bargain away or waive their rights under the FLSA. Barrentine v. Arkansas-Best Freight Sys., Inc., 450 U.S. 728, 740 (1981).

b. Defendants' Cannot Carry Their Burden

Even if this Court were to adopt Defendants' reasoning that their duties and obligations to follow 203(m) are offset by their decision not to take credit card fees, **which it should not**, Plaintiff nevertheless prevails.

Because the burden is on the employer to show its entitlement to take the tip credit, Fast v. Applebee's Int'l, Inc., 638 F.3d 872, 882 (8th Cir.2011); Barcellona v. Tiffany English Pub, Inc., 597 F.2d 464, 467 (5th Cir.1979), Defendants here must show that the amount they *could have deducted* for credit card fees was greater than the amount *they actually took* from Plaintiff.

This is true for two reasons: Defendants cannot be "enriched" by the process of deducting credit card fees and must only take what is necessary to pay the third party companies. Myers v. Copper Cellar Corp., 192 F.3d 546, 554-55 (6th Cir. 1999); Widjaja v. Kang Yue USA Corp., 09-CV-2089 RRM CLP, 2011 WL 4460642 (E.D.N.Y. Sept. 26, 2011); Ash v. Sambodromo, LLC, 676 F. Supp. 2d 1360, 1372 (S.D. Fla.

2009); Ventura v. Bebo Foods, Inc., 738 F. Supp. 2d 8, 17 (D.D.C. 2010); see also Solis v. Lorraine Enterprises, 907 F. Supp. 2d 186, 203 & n.7 (D.P.R. 2012).

Similarly, if the amount Defendants *actually took* from Plaintiff is greater than the amount they *could have taken* for credit card fees, then they still have not allowed Plaintiff to retain all of her tips and therefore violate Section 203(m).

Defendants have acknowledged that they are unable to satisfy their burden of demonstrating that their so-called "breakage" or "turn in" fees were less than potential credit card fees:

27. If you contend the 2.5% that could have been withheld from Plaintiff's credit card tips for a workweek was higher than the amount of "turn in" fee Plaintiff was required to pay for a workweek; identify

- a. which workweek(s) you contend the surcharge amount was higher; and
- b. any and all documents or records you rely on for making such contention.

RESPONSE: Defendant lacks sufficient records to make such comparison. The records in Defendant's possession do not itemize each transaction Plaintiff made to determine what she would have been charged under a 2.5% credit card deduction scheme.

28. If you contend the 2.5% that could have been withheld from Plaintiff's credit card tips for a shift was higher than the amount of "turn in" fee Plaintiff was required to pay for a shift, identify:

- a. which shift(s) you contend the surcharge amount was higher, and
- b. any and all documentation or records you rely on for making such contention.

RESPONSE: SEE ABOVE.

(Exh. B). Thus, even if this Court, solely for sake of argument, considers Defendants' position that credit card fees offset its obligation to Plaintiff, they cannot carry their burden and Plaintiff is entitled to summary judgment.

3. Plaintiff is Entitled to receive the Minimum Wage she is owed.

In addition to moving on liability, Plaintiff submits that there is no genuine issue of material fact as to the amount of damages Plaintiff has incurred.

"The FLSA provides that an employer who violates its minimum wage provisions be liable in the full amount of the minimum wage and an additional equal amount as liquidated damages, plus attorney's fees." Chisolm, 2008 WL 838760, at *5; Singer v. City of Waco, 324 F.3d 813, 822 (5th Cir.2003); Richard v. Marriott Corp., 549 F.2d 303, 305 (4th Cir. 1977); 29 U.S.C. § 216(b). Indeed, "[A]n employer is not eligible to take the tip credit, and will be liable for reimbursing an employee the full minimum wage that employee would have earned, if the employer exercises control over a portion of the employee's tips. As a result, to the extent Plaintiffs were not permitted to retain their tips to pay for shortages and unpaid tabs, Defendants disqualify themselves from taking advantage of the FLSA tip credit provisions." Dorsey v. TGT Consulting, LLC, 888 F. Supp. 2d 670, 681 (D. Md. 2012) (quotations and internal citations omitted).

i. Actual Damages

Plaintiff has suffered actual damages in the amount of \$9,587.25 for nonpayment of minimum wage. Because Defendants did not permit Plaintiff to retain her tips, pursuant to 29 U.S.C. § 203(m), they cannot avail themselves of the tip credit. Therefore, Plaintiff is entitled her minimum wage in full for every hour Plaintiff worked for

Defendants. Chisolm, 2008 WL 838760, at *5; Richard, 549 F.2d at 305. This amounts to \$5.12 per hour (i.e. $\$7.25 - 2.13 = \$5.12$) multiplied by 1872.51 hours.⁵

ii. Liquidated Damages

In addition to actual damages, the FLSA provides for liquidated damages when the Act is violated. 29 U.S.C. § 216. Liquidated damages are mandatory. Perez v. Mountaire Farms, Inc., 650 F.3d 350, 375 (4th Cir. 2011); Chao v. Barbeque Ventures, LLC, 547 F.3d 938, 941 (8th Cir. 2008); Joiner v. City of Macon, 814 F.2d 1537, 1539 (11th Cir. 1987).

iii. Costs and Attorney's Fees

When Plaintiff is successful in bringing a claim under the FLSA, "[t]he court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action." 29 U.S.C. § 216.

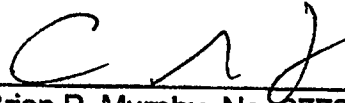
IV. Conclusion

For the foregoing reasons, this Court should grant Plaintiff's motion for partial summary judgment for both liability and damages.

⁵ See Exh. 6 to Plaintiff's Memorandum [Exh. A p. 53]. It is a chart summarizing Plaintiff's hours worked and pay received that the Undersigned created. Defendants have admitted its accuracy. (Defendants Resp. to Request to Admit No. 1 [Exh. E]).

Respectfully submitted this 6th day of August, 2014.

For the Plaintiff:

A handwritten signature in black ink, appearing to read 'C. Murphy', written over a horizontal line.

Brian P. Murphy, No. 6770
C. Alexander Cable, No. 100561

Stephenson & Murphy, LLC
207 Whitsett Street
Greenville, SC 29601
(864) 370-9400
(864) 240-9292 (fax)

Attorneys for Plaintiff

EXHIBIT A

State of South Carolina

County of Greenville

IN THE COURT OF COMMON PLEAS

2013-CP-23-03057

Laurin Stinson,

Plaintiff,
v.

Plaintiff's Memorandum in Support
Of Motion for Partial
Summary Judgment

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and
Jurgen Haubach,

Defendants.

Plaintiff, by and through her undersigned counsel, now submits this memorandum of law in support of her motion for judgment as a matter of law as to certain claims and claims for damages set forth in Plaintiff's Complaint.¹ Specifically, Plaintiff moves for judgment for both liability and for damages as follows:

I. Facts

Defendants Hanz & Frans and Addys Dutch Café and Restaurant are restaurants located in Greenville, South Carolina. (Def. Answer ¶ 2, 4 [Exh. 1]; Def. Sec. Supp. Resp. Ints. 4, 11 [Exh. 2]). Hans & Franz is owned and operated by Addy Sulley and managed by Jurgen Haubach. (Def. Answer ¶ 10 [Exh. 1]; Def. Sec. Supp. Resp. Ints. 4, 6, 7 [Exh. 2]). Both Sulley and Haubach have the power to hire and fire. (Def. Sec. Supp. Resp. Int. 4 [Exh. 2]). Haubach has "complete control" over the restaurant in Sulley's absence and exercises direct supervision over the staff. Sulley owns and operates the company and helps with management as needed, including assuming

¹ Plaintiff brings several claims against Defendants under both the Fair Labor Standards Act (FLSA) and the South Carolina Payment of Wages Act. However, Plaintiff here is only moving on her first Count, nonpayment of minimum wage under the FLSA.

control when present. (Id.). Defendant Sulley is also a part owner of Addy's Dutch Café and acts as the "brains of the operation." (Def. Sec. Supp. Resp. Int. 9 [Exh. 2]).

Plaintiff, Laurin Stinson, worked for Defendants at their Hans & Franz location in Greenville, South Carolina from approximately October 25, 2011 until January 19, 2013. (Pl. Aff. ¶ 1 [Exh. 3]; Def. Answer ¶¶ 1, 11 [Exh. 1]). Plaintiff worked as a server, "taking orders, serving food, making and serving all mixed alcoholic beverages, taking and running payments (including running credit cards), bussing tables, and seating guests." (Pl. Aff. ¶ 2 [Exh. 3]; Def. Answer ¶ 12 [Exh. 1]; see also Def. Sec. Supp. Resp. Int. 5 [Exh. 2]).

Defendants did not pay Plaintiff minimum wage. Because Plaintiff received tips from customers for her services, Defendants utilized a "tip credit" system whereby, they deducted \$5.12 per hour from servers' pay, netting Plaintiff \$2.13 per hour. (Pl. Aff. ¶ 3 [Exh. 3]; Def. Sec. Supp. Resp. Ints. 14, 15 [Exh. 2]).² Furthermore, Defendants deducted an additional 1% of Plaintiff's net sales from each shift as a "breakage" or "turn in" or "tip out" fee. This fee was paid directly to Defendants. (Pl. Aff. ¶ 5 [Exh. 3]; Def. Resp. RTP 9 [Exh. 4]). Defendants purportedly took the fee in order to cover lost or damaged items such as plates and silverware. (Pl. Aff. ¶ 6 [Exh. 3]; see also Def. Resp. RTP 9 [Exh. 4]). However, the fee was deducted from Plaintiff's pay every shift, regardless of whether she broke anything or whether anything was broken at all. (Pl. Aff. ¶ 7 [Exh. 3]). The total amount that Defendants took from Plaintiff's pay amounted to approximately \$994.00 (Pl. Aff. ¶ 8 (referring to her chart produced in this case at Stinson 87-91) [Exh. 3]; Stinson 87-91 [Exh. 5]).³

² Normally, the current minimum wage is \$7.25 per hour. 29 U.S.C. § 206(a).
³ Plaintiff will make the underlying documents available as needed.

II. Argument

A. Plaintiff was not paid minimum wage.

I. Liability

There is no genuine issue of material fact that Defendants' practice of deducting illegal fees from Plaintiff's wages reduced her pay below mandated minimum wage.⁴

⁴ Defendants Hans & Franz and Addys Dutch Café have admitted they are employers under the FLSA. (Def. Answer ¶¶ 1, 3, 5, 11 [Exh. 1]). Defendants Haubach and Sulley are also employers under the Act because of their degree of control over Plaintiff's employment. Irizarry v. Catsimatidis, 722 F.3d 99, 107-14 (2d Cir. 2013); Boucher v. Shaw, 572 F.3d 1087, 1091 (9th Cir. 2009); Chao v. Hotel Oasis, Inc., 493 F.3d 26, 34 (1st Cir.2007); Baystate Alternative Staffing, Inc. v. Herman, 183 F.3d 668 (1st Cir.1998); Reich v. Circle C. Investments, Inc., 998 F.2d 324, 329, 26 Fed. R. Serv.3d 921 (5th Cir.1993); Donovan v. Sabine Irrigation Co., Inc., 695 F.2d 190, 194-95 (5th Cir. 1983).

Employers are subject to the Act if they qualify as an "enterprise engaged in commerce or in the production of goods for commerce." 29 U.S.C. § 207(a)(1); 29 U.S.C. § 203(s)(1). An enterprise engages in interstate commerce when it "has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce" and has gross sales in excess of \$500,000. 29 U.S.C. § 203(s)(1).

There is no dispute that Hans & Franz exceeded \$500,000 in sales. (DEF 22, 33 (Bates numbers added by Plaintiff) (Tax returns showing "Gross receipts or sales") (Plaintiff will provide these records directly to the Court). Furthermore, Defendants bought and sold items (namely food and alcohol) in interstate commerce. Dole v. Odd Fellows Home Endowment Bd., 912 F.2d 689, 695 (4th Cir. 1990); Shomo v. Junior Corp., 7:11-CV-508, 2012 WL 2700488 (W.D. Va. July 6, 2012). Moreover, Defendants admit Hans & Franz is enterprise. (Def. Answer ¶ 3 [Exh. 1]).

Hans & Franz and Addys are also a single enterprise under the Act. For more than one entity to be a single enterprise, they "must conduct (1) related activities, (2) performed under unified operations or common control, and (3) for a common business purpose." Brock v. Hamad, 867 F.2d 804, 806 (4th Cir. 1989). Both Hans & Franz and Addy's are restaurants in Greenville are both owned and operated by Addy Sulley. 29 CFR §§ 779.213-15; Morgan v. SpeakEasy, LLC, 625 F. Supp. 2d 632, 647 (N.D. Ill. 2007).

As an independent basis for coverage, an employee is individually covered under the Act if she is engaged in commerce or in the production of goods for commerce. Tony & Susan Alamo Found. v. Sec'y of Labor, 471 U.S. 290, 295 n.8 (1985); Geer v. McGregor, CA 8:10-2219-HMH-JDA, 2013 WL 808838 (D.S.C. Mar. 5, 2013) (citing 29 U.S.C. § 206(a)). Defendants have expressly admitted Plaintiff is subject to individual coverage. (Def. Answer ¶ 12 [Exh. 1]). Moreover, Plaintiff's duties constitute a typical example of an employee subject to individual coverage under the Act: a waitperson who utilizes credit card machines to engage in transactions selling items in interstate commerce. Owusu v. Corona Tire Shop, Inc., 09-CV-3744 NGG JO, 2013 WL 1680861, at *3 (E.D.N.Y. Apr. 17, 2013) (employee would fall under individual coverage for using the credit card machine frequently); Russell v. Cont'l Rest., Inc., 430 F. Supp. 2d 521, 526 (D. Md. 2006) (finding Plaintiff was not individually covered because she did not provide evidence she performed credit card transactions).

1. Plaintiff is entitled to minimum wage.

Plaintiff was a "tipped employee." She was therefore entitled to minimum wage of \$7.25 minus any amounts withheld through a valid tip credit scheme. 29 U.S.C. § 206(a); 29 U.S.C. § 203(m); Chisolm v. Gravitas Rest. Ltd., CIV.A. H-07-475, 2008 WL 838760, at *2 (S.D. Tex. Mar. 25, 2008). The tip credit allows some employers to pay as little as \$2.13 per hour to employees. Chisolm, 2008 WL 838760, at *2.

2. Defendants' deductions from Plaintiff's pay resulted in nonpayment of minimum wage.

Employers lose their right to take a tip credit unless it "(1) pays a cash wage of at least \$2.13 per hour; (2) informs its employees of the FLSA's tip credit provisions; (3) permits its employees to retain all their tips; and (4) ensures that the cash wage plus the tip credit equal at least the minimum wage each week." Chisolm, 2008 WL 838760, at *2; Richard v. Marriott Corp., 549 F.2d 303, 305 (4th Cir. 1977); 29 U.S.C. § 203(m).⁵

Here, it is undisputed that Defendants did not permit Plaintiff to retain all her tips. Plaintiff was required to give a portion of her tips, based on sales, to management. Because Plaintiff did not retain all her tips, Defendants have unlawfully instituted a tip credit scheme that violates the FLSA.⁶

ii. Damages

In addition to moving on liability, Plaintiff submits that there is no genuine issue of material fact as to the amount of damages Plaintiff has incurred.

⁵ The FLSA does permit a deduction from tips as part of a valid tip-pooling scheme. However, Defendants have admitted they do not have a tip pool. (Def. Sec. Supp. Resp. Ints. 14, 15 [Exh. 2]).

⁶ While it is undisputed that the "breakage" fee came from Plaintiff's tips, Defendants would be liable even if they attempted to argue the deductions came from Plaintiff's hourly wage. Because they take the maximum tip credit of \$5.12 per hour, any further deductions from Plaintiff's hourly wage would reduce her pay below minimum wage. See Chisolm, 2008 WL 838760, at *3-4. Further, plates and dishes are not valid "board, lodging, or other facilities" that can be deducted from wages because such items are for the benefit of the employer. Id.

"The FLSA provides that an employer who violates its minimum wage provisions be liable in the full amount of the minimum wage and an additional equal amount as liquidated damages, plus attorney's fees." Chisolm, 2008 WL 838760, at *5; Singer v. City of Waco, 324 F.3d 813, 822 (5th Cir.2003); Richard v. Marriott Corp., 549 F.2d 303, 305 (4th Cir. 1977); 29 U.S.C. § 216(b).

1. Actual Damages

Plaintiff has suffered actual damages in the amount of \$9,587.25⁷ for nonpayment of minimum wage. Because Defendants did not permit Plaintiff to retain her tips, pursuant to 29 U.S.C. § 203(m), they cannot avail themselves of the tip credit. Therefore, Plaintiff is entitled her minimum wage in full for every hour Plaintiff worked for Defendants. Chisolm, 2008 WL 838760, at *5; Richard, 549 F.2d at 305. This amounts to \$5.12 per hour (i.e. $\$7.25 - 2.13 = \$5.12$) multiplied by 1872.51 hours.⁸

2. Liquidated Damages

In addition to actual damages, the FLSA provides for liquidated damages when the Act is violated. 29 U.S.C. § 216. Liquidated damages are mandatory. Perez v. Mountaire Farms, Inc., 650 F.3d 350, 375 (4th Cir. 2011); Chao v. Barbeque Ventures, LLC, 547 F.3d 938, 941 (8th Cir. 2008); Joiner v. City of Macon, 814 F.2d 1537, 1539 (11th Cir. 1987).

3. Costs and Attorney's Fees

When Plaintiff is successful in bringing a claim under the FLSA, "[t]he court in such action shall, in addition to any judgment awarded to the plaintiff or

⁷ Plaintiff's Motion miscalculated the amount of damages as \$9,636.87. The Undersigned apologizes for the mathematical error.

⁸ See Exh. 6. Exh. 6 is a chart summarizing Plaintiff's hours worked and pay received that the Undersigned created. The Undersigned will also bring Plaintiff's pay stubs, Stinson 02-77, to the hearing and will make them available as needed. See also Pl. Aff. ¶ 4 [Exh. 3].

plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action." 29 U.S.C. § 216.

III. Conclusion

For the foregoing reasons, this Court should grant Plaintiff's motion for partial summary judgment for both liability and damages.

Respectfully submitted this 14th day of February, 2014.

For the Plaintiff:



Brian P. Murphy, No. 6770
C. Alexander Cable, No. 100561

Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601
(864) 370-9400
(864) 241-1386 (fax)

Attorneys for Plaintiff

State of South Carolina

County of Greenville

) IN THE COURT OF COMMON PLEAS
)
) 2013-CP-23-03057

Laurin Stinson,

Plaintiff,

v.

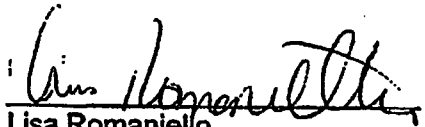
Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and Jurgen
Haubach,

Defendants.

CERTIFICATE OF SERVICE

This is to certify that a copy of Plaintiff's Memorandum in Support of Motion for Partial Summary Judgment was served on counsel for Defendants Hans & Franz, LLC d/b/a Hans & Franz Biergarten, Addys Dutch Café and Restaurant, Addy Sulley, and Jurgen Haubach, via United States mail, first class, with postage prepaid and properly affixed, on February 14, 2014, at the following address :

John G. Reckenbiel, Esquire
Law Office of John G. Reckenbiel, LLC
P.O. Box 1633,
Spartanburg, SC 29304


Lisa Romaniello
Legal Assistant to Brian Murphy
and C. Alexander Cable

Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601
Phone: (864) 370-9400
Fax: (864) 241-1386

EXHIBIT 1

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

LAURIN STINSON,

Plaintiff,

v.

HANS & FRANZ, LLC d/b/a HANS &
FRANZ BIERGARTEN, ADDYS DUTCH
CAFÉ AND RESTAURANT, ADDY
SULLEY, AND JURGEN HAUBACH,

Defendants.

IN THE COURT OF COMMON PLEAS

DEFENDANT'S ANSWER
TO COMPLAINT

C.A. No. 2013-CP-23-03057

COMES NOW Defendants Hans and Franz, LLC d/b/a Hans & Franz Biergarten, Addys Dutch Café and Restaurant, Addy Sulley, and Jurgen Haubach (hereinafter "Defendants"), by and through their undersigned attorney, pursuant to Rules 8(c) and 12(a) of the South Carolina Rules of Civil Procedure, and hereby files their Answer to the Complaint in the above-captioned action as follows:

1. Defendant lacks sufficient information as to the Plaintiff's residency but admits that the Plaintiff was an employee of the Defendant.

2. Defendants admit that "Hans & Franz" referred to in paragraph 2 of Plaintiff's complaint is a South Carolina Limited Liability Company organized under South Carolina law and operating in Greenville County.

3. Defendants admit the allegations contained in Paragraph 3 of Plaintiff's Complaint.

4. Defendants admit that "Addys" referred to in paragraph 4 of Plaintiff's complaint is a company operating in Greenville County.

5. Defendants admit that Addys as referred to paragraph 5 of Plaintiff's complaint is an employer under the FLSA but lacks knowledge as to it being an "enterprise" as such is not defined.

6. Defendants lack sufficient information upon which to form a belief as to the truth or falsity of the allegations contained in Paragraph 6 of Plaintiff's Complaint and, therefore, denies the same.

7. Defendants admit the allegations contained in Paragraph 7 of Plaintiff's Complaint.

8. Defendants lack sufficient information upon which to form a belief as to the truth or falsity of the allegations contained in Paragraph 8 of Plaintiff's Complaint.

9. Defendants admit the allegations contained in Paragraph 9 of Plaintiff's Complaint.

10. With respect to the allegations set forth in Paragraph 10 of Plaintiff's Complaint, Defendant admits that he was a manager of said restaurant but lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 10.

11. Defendants admit the allegations set forth in Paragraph 11 of Plaintiff's Complaint.

12. Defendant admits the allegations contained in Paragraphs 12, 13, and 14 of Plaintiff's Complaint.

13. With respect to the allegations set forth in Paragraph 15 of Plaintiff's Complaint, Defendants admit that they had an agreement with all employees that there would be a deduction from each employee's pay for broken dishes. Defendant denies the remaining allegations contained in Paragraph 15 of Plaintiff's Complaint.

14. Defendant denies the allegations contained in Paragraph 16, 17, 18, and 19 of Plaintiff's Complaint. Specifically, as to paragraph 18, the "catering events" referred to were non-profit community service projects sponsored by the Defendants such as "Taste of the Upstate" and "Beach Ball." An employer need not compensate an employee for time spent volunteering for charitable purposes if the work is performed outside of normal working hours, and the employee is truly volunteering without coercion from the employer. Furthermore, Plaintiff was paid "tip" for the catering events.

RESPONSE TO FIRST CAUSE OF ACTION
(FLSA - Minimum Wage)

15. In response to the allegations set forth in Paragraph 21 of Plaintiff's Complaint, Defendants contend that there was a valid agreement between Defendants and all restaurant employees whereby pay would be deducted for damaged property. These types of deductions are allowed under the FLSA so long as the employee's pay does not fall below the national minimum wage.

16. These deductions are also considered "reasonable costs" associated with the furnishing of equipment by the employer. FLSA § 3(m).

17. As to Paragraph 22 of Plaintiff's complaint, Defendant is unsure as to the meaning of the phrase "training period" as it is not a defined term and therefore can neither form a belief as to the truth or falsity of the allegation. Defendant denies the remaining allegations contained in Paragraphs 22 of Plaintiff's Complaint.

RESPONSE TO SECOND CAUSE OF ACTION
(FLSA - Overtime)

18. In response to the allegations set forth in Paragraph 24 and 25 of Plaintiff's Complaint, Defendant agrees in accordance with FLSA § 3(m) that a tipped employee's regular

rate of pay, for overtime purposes, includes the amount of tip credit taken. However, Defendant contends that Plaintiff did not work "overtime" as defined under the FLSA.

19. Defendant denies the allegations contained in Paragraph 25.

RESPONSE TO SECOND CAUSE OF ACTION
(S.C. Wage Payment Act)

20. For the foregoing reasons listed above, Defendant denies the allegations in paragraphs 26, 27, and 28.

WHEREFORE, for the foregoing reasons, Defendant respectfully prays that the Complaint in this action, being utterly without merit, be dismissed in its entirety, with an award of attorneys' fees and costs assessed against Plaintiff, along with any other relief the Court deems just and proper.

LAW OFFICE OF JOHN G. RECKENBEIL, LLC



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Spartanburg, SC 29304
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Fax: (864) 582-7280
john@johnreckenbeillaw.com

ATTORNEY FOR DEFENDANTS

Date: July 23, 2013
Spartanburg, SC

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Laurin Stinson,

Plaintiff,

vs.

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and Jurgen
Haubach,

Defendants.

IN THE COURT OF COMMON PLEAS

CERTIFICATE OF SERVICE

C.A. NO. 2013-CP-23-03057

I, Keri Eadie, the undersigned legal assistant to John G. Reckenbeil, attorney for the Plaintiff, certify that I have mailed a copy of the herein below listed pleading to Counsel in this matter, postage prepaid, on this 23rd day of July 2013, as follows:

PLEADING: Defendant's Answer to Complaint

COUNSEL SERVED: C. Alexander Cable
Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601

LAW OFFICE OF JOHN G. RECKENBEIL, LLC



Keri A. Eadie
Legal Assistant to John G. Reckenbeil
215 Magnolia Street
P.O. Box 1633
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Phone: (864) 582-5472
Fax: (864) 582-7280
keri@johnreckenbeillaw.com

Date: July 23, 2013
Spartanburg, SC

State of South Carolina

County of Greenville

) IN THE COURT OF COMMON PLEAS

) 2013-CP-23- 03057

Laurin Stinson,

Plaintiff,

v.

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and Jurgen
Haubach,

Defendants.

Complaint

Jury Trial Demanded

2013 MAY 30 P 12:48

FILED CLERK OF COURT
GREENVILLE CO S.C.
PAUL B. WICKENS/MSR

Plaintiff, by and through her undersigned attorney, would respectfully show unto the Court as follows:

1. Plaintiff is a resident of Greenville County and, at all relevant times, was employed by Defendants in Greenville County.
2. Defendant Hans & Franz Biergarten ("Hans & Franz") is a South Carolina limited liability company organized under South Carolina law and operating in Greenville County.
3. Defendant Hans and Franz Biergarten is an employer and enterprise under the Fair Labor Standards Act ("FLSA").
4. Defendant Addy's Dutch Café and Restaurant ("Addys") is a company operating in Greenville County.
5. Defendant Addys is an employer and enterprise under the FLSA.
6. Defendants Hans & Franz and Addys are a single enterprise under the FLSA based on their related activities of serving food and beverages, common control by common

- ownership, and a common business purpose of serving food and beverages and publicly promoting each other and each business.
7. Defendant Addy Sulley ("Sulley") is, upon information and belief, a resident of Greenville County.
 8. Defendant Sulley is an employer under the FLSA based on his ownership of Defendants Hans & Franz and Addys, his ultimate authority over hiring and firing, his authority over supervising the employees and operations of both restaurants, and his authority over employee wages and payroll.
 9. Defendant Jurgen Haubach ("Haubach") is, upon information and belief, a resident of Greenville County.
 10. Defendant Haubach is an employer under the FLSA based on his supervisory authority over the employees and daily operation of Hans & Franz Biergarten, his ability to make hiring and firing decisions, and his authority over scheduling and directing employees' daily assignments.
 11. Plaintiff was employed by defendant as a server from approximately October 24, 2011 until January 20, 2013.
 12. Plaintiff's duties as a server required her to regularly sell items bought and sold by her employer in interstate commerce. Accordingly, there is individual coverage for Plaintiff under the FLSA as well.
 13. This Court has concurrent jurisdiction to address these claims and venue in appropriate in Greenville County.
 14. Defendant relied on a tip credit scheme to pay its employees federally mandated minimum wage.

15. Throughout the duration of Plaintiff's employment, Defendants unlawfully deducted a "breakage" or "turn-in" fee out of her earnings to cover broken dishes and other restaurant expenses, regardless of whether Plaintiff was not responsible for breaking anything, or even without regard to whether there even were such expenses.
16. Throughout the duration of Plaintiff's employment, Defendant improperly paid her overtime based on an incorrect rate calculation.
17. Plaintiff was improperly paid below minimum wage for her training period with Defendant.
18. Plaintiff was on more than one occasion not paid at all for hours worked at the restaurant and at off-site catering events.
19. Defendant's actions were not in good faith or based upon a reasonable belief that they were not violating applicable laws.

**Count I
For A First Cause of Action
FLSA-Minimum Wage**

20. Plaintiff incorporates by reference the averments in the foregoing paragraphs as if set forth here in full.
21. Defendant impermissibly shifted operating costs to Plaintiff by deducting sums from her wages, thereby reducing her hourly compensation amount below the minimum wage.
22. Defendant did not pay Plaintiff minimum wage during her training period or allow her to participate in the tip pool to receive the tip credit to make up the difference.

WHEREFORE, Plaintiff respectfully requests a trial by jury on her claim for violation of the minimum wage requirements of the FLSA and that she be awarded all available

relief including, but not limited to, a declaratory judgment that the acts and practices of the Defendant complained of herein are in violation of the laws of the United States, an award of lost wages, compensatory and liquidated damages, attorneys fees, expenses, and costs, and all other and further relief as to this Court appears necessary and proper.

**Count II
For a Second Cause of Action
FLSA-Overtime**

23. Plaintiff incorporates by reference the foregoing averments as if set forth here in full.
24. Defendant impermissibly calculated Plaintiff's overtime rate at 150% of her tip credit wage, rather than the minimum wage.
25. This miscalculation led to a deficiency in Plaintiff's compensation.

WHEREFORE, Plaintiff respectfully requests a trial by jury on her claim for violation of the overtime requirements of the FLSA and that she be awarded all available relief including, but not limited to, a declaratory judgment that the acts and practices of the Defendant complained of herein are in violation of the laws of the United States, an award of lost wages, compensatory and liquidated damages, attorneys fees, expenses, and costs, and all other and further relief as to this Court appears necessary and proper.

**Count III
For a Third Cause of Action
Payment of Wages**

26. Plaintiff incorporates by reference the foregoing averments as if set forth here in full.
27. The amounts owed to Plaintiff for unpaid hours for which she worked for Defendant constitute "wages" under the South Carolina Payment of Wages Law.
28. Defendant has failed and refused to pay wages when due and/or has declared its intent to not do so.

WHEREFORE, Plaintiff respectfully requests a trial by jury on her claim for wages owed and entry of judgment to include all amounts owed and all other relief to which Plaintiff can show she is entitled including, but not limited to, treble damages, attorney fees, costs, prejudgment and post-judgment interest.

Respectfully submitted this 2nd day of May, 2013.

For the Plaintiff:

A handwritten signature in black ink, appearing to read 'C. A. C.', is written over a horizontal line.

Brian P. Murphy, No. 6770
C. Alexander Cable, No. 100561

Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601
(864) 370-9400
(864) 241-1388 (fax)

Attorneys for Plaintiff

EXHIBIT 2

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Laurin Stinson,

Plaintiff,

v.

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and Jurgen
Haubach,

Defendants.

IN THE COURT OF COMMON PLEAS

DEFENDANTS' SUPPLEMENTED
RESPONSES TO PLAINTIFF'S
FIRST SET OF INTERROGATORIES

Case No.: 2013-CP-23-03057

Defendant hereby serves the following Responses to the Request for Interrogatories and Production of Documents to Plaintiff's counsel at 514 Pettigru St., Greenville, South Carolina 29601.

Interrogatories

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

RESPONSE:

Addy Sulley - 3124 S. Carolina 14
Greenville, SC 29615

Juergen Haubach - 7 Bathurst Lane
Simpsonville, SC 29681

Kathriana Kengi - 200 Elise Drive
Greer, SC 29650

-No written statements have been taken from witnesses
or are in Defendant's possession.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

RESPONSE: NONE

3. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

RESPONSE: NONE

4. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE: Addy Sully is the sole owner and operator of Hans and Franz restaurant. He has assumed the responsibility of doing essentially every task needed to help the restaurant function smoothly. If needed he will bus tables, expedite the food, run the food, and help the servers and kitchen staff with essentially any task. In fulfilling such responsibilities, he had a close working relationship with the Plaintiff. In other words, he would have likely been onsite performing some of the same duties along side the Plaintiff.

Jurgen Haubach is the general manager and acting chef of Hans and Franz restaurant. His role is to oversee the kitchen and manage the employees. As general

manager, it is his responsibility to schedule the employees. Both Jurgen and Addy have the authority to hire and fire employees at Hans and Franz. In short, Jurgen more so manages the staff whereas Addy assumes any duty where needed. Jurgen would have been the Plaintiff's direct superior and in charge of her work schedule.

Kathriana Kengi was the other server who worked with Laurin Stinson at the one wedding they helped cater. Wedding was a buffet style at Hans and Franz, and Ms. Kengni and Ms. Stinson only helped serve drinks. Food and set up was done by Chef Juergen Haubach and Addy Sully. Wedding party paid for the services that Kengni and Stinson performed.

5. Identify each document or communication, in paper or electronic form, that describe the duties, functions, and expectations for servers or wait staff employed by Defendants Hans & Franz or Addy's Dutch Café including, but not limited to, job descriptions, position descriptions, documents setting forth goals and objectives and performance evaluations to the extent such documents reflect duties, functions, and expectations for the time period 2011 through the present. To the extent no such documents otherwise exist, set forth in full detail here a full description of server and wait staff duties, functions, and other expectations for the time period 2011 through the present.

RESPONSE: Servers' duties are to bring menu, inform the customer about the menu, and then take their order. The server would also run the food except on the weekends when each server was provided a food runner. Last, the server was required to bring the table back to service to seat other customers.

6. Identify each document or communication, in paper or electronic form, that describe the duties, functions, and expectations for Defendant Addy Sulley with respect to both Addy's Dutch Café and Hans & Franz including, but not limited to, job descriptions, position descriptions, documents setting forth goals and objectives and performance evaluations to the extent such documents reflect duties, functions, and expectations for the time period 2011 through the present. To the extent no such documents otherwise exist, set forth in full detail here a full description of Defendant Sulley's duties, functions, and other expectations for the time period of 2011 through the present.

RESPONSE: No documents exist. Defendant Sully is the sole owner and operator of Hans and Franz. Defendant Sully is a consultant for Addy's Dutch Café.

7. Identify each document or communication, in paper or electronic form, that describe the duties, functions, and expectations for Defendant Jurgen Haubach with respect to both Addy's Dutch Café and Hans & Franz including, but not limited to, job descriptions, position descriptions, documents setting forth goals and objectives and performance evaluations to the extent such documents reflect duties, functions, and expectations for the time period 2011 through the present. To the extent no such documents otherwise

exist, set forth in full detail here a full description of Defendant Haubach's duties, functions, and other expectations for the time period of 2011 through the present. .

RESPONSE: Juergen Haubach is the general manager and chef of Hans and Franz. He maintains complete control over the restaurant when owner/operator Addy Sully is not present.

8. Identify by name, address, and phone number each member, shareholder, or other equity holder of Hans & Franz from January 1, 2011 through the present and note the dates of any changes to the person or entity's status as a shareholder or equity holder. To the extent the member or equity holder is a legal entity (LLC, corporation, trust), specify the individual identified as the beneficial holder of the equity or with whom Defendant Hans & Franz maintains contact.

RESPONSE: Addy Sully is the sole member of Hans and Franz, LLC

9. Identify by name, address, and phone number each member, shareholder, or other equity holder of Addy's Dutch Café from January 1, 2011 through the present and note the dates of any changes to the person or entity's status as a shareholder or equity holder. To the extent the member or equity holder is a legal entity (LLC, corporation, trust), specify the individual identified as the beneficial holder of the equity or with whom Defendant Addy's Dutch Café maintains contact.

RESPONSE: Addy's Dutch Café is owned by Act of Greenville, Inc. Nina Biagiotti and Addy Sully are the only two shareholders of Act of Greenville, Inc.

10. Identify by name and position each officer, manager (or assistant manager), and director of Hans & Franz from January 1, 2011 through the present and note the dates of any changes to the person or entity's status as an officer, manger, or director.

RESPONSE: Addy Sulley - owner/operator.

Juergen Haubach - chef and general manager

11. For each person identified in your response to Interrogatory 10, identify each position that such person has held from January 1, 2011 through the present as a director, officer, manger (or assistant manager), or employee of Addy's Dutch Café or any of its subsidiaries or affiliates.

RESPONSE: Addy Sulley is a consultant to Addy's Dutch Café.
Addy is sort of the brains of the operation for Addy's Dutch Café. He acts as a sort of the planner and organizer for some of the restaurants events and items they sell, Addy's Dutch Café is obviously a Dutch themed restaurant. Addy Sulley is Dutch and as such provides insight to the restaurant. More specifically, he plans all the restaurants events and makes all the decisions on food choices. Since much of his time is spent at Hans and Franz, he spends essentially zero time at the Addy's Dutch Café actively managing or running the operation.

12. Identify by name and position each officer, manager (or assistant manager), and director of Hans & Franz from January 1, 2011 through the present and note the dates of any changes to the person or entity's status as an officer, manger, or director.

RESPONSE: Addy Sulley - owner/ operator

Juergen Haubach - chef and general manager

13. For each person identified in your response to Interrogatory 12, identify each position that such person has held from January 1, 2011 through the present as a director, officer, manger (or assistant manager), or employee of Addy's Dutch Café or any of its subsidiaries or affiliates.

RESPONSE: Addy Sulley is a consultant to Addy's Dutch Café.

14. From October 1, 2011 until present, state with particularity Plaintiff's rate of pay, including an explanation of any adjustments for any tip pooling or tip credit schemes, at all times relevant to this matter and the total amount of compensation received by Plaintiff during the course of her employment with Defendants, providing for each pay period:

- a. pay date,
- b. the actual number of hours shown on time cards/sheets each week,
- c. if the time worked was rounder, the manner in which it was rounded,
- d. the number of hours worked over forty for each week,
- e. the actual number of hours worked each week,
- f. the description of the work performed (e.g., food prep, food runs, cleaning, bussing, service prep, staff meetings, training etc.),
- g. the rate of pay for each type of work described in the preceding section, if different, and
- h. any and all deductions taken from Plaintiff's gross pay (including employee benefits, food, fee, etc.).

RESPONSE: The Tip Credit taken by Defendants was \$5.12 an hour.

The rate of pay is \$2.13 an hour ($\$ 2.13 + \$ 5.12 = \$7.25$)

minimum wage), most servers average \$15 dollars an hour on the credit card tips. The Plaintiff also averaged at least \$15 dollars and likely more but she never declared any cash tips so Defendant is unsure to determine how much she exactly made per hour. There was no "tip pool" in place at Defendant's restaurant.

SEE ATTACHED.

15. Set forth in full detail the manner in which Defendants' tip pooling and tip credit schemes are calculated, administered, and documented from January 2011 to the present, including:
- a. which positions (servers, hosts, bar tenders, managers, etc.) take part in the tip pool and/or tip crediting scheme,
 - b. whether Plaintiff was a part of the tip pool and/or tip credit scheme,
 - c. the standard rate or method, if any, at which the tip pool is assessed to participating employees,
 - d. the standard rate or method, if any, at which the tip credit is assessed to participating employees, and
 - e. identify any and all documents or records reflecting and accounting of these schemes.

RESPONSE: There was no tip pool. Tip credit taken was \$5.12. See response to number 14 for calculation.

16. Set forth in full detail the manner in which Defendants calculate, administer, and document payment of overtime wages to employees from January 1, 2011 to the present and how, if at all, such wages are affected by Defendants' tip pooling and/or tip credit

schemes.

RESPONSE: None of the employees work overtime at Hans & Franz.
Most employees work no more than seventy (70) hours
bi-weekly.

17. Set forth in full detail any and all agreements with Plaintiff to work for Defendants at events (catering, etc.) outside of Defendants' restaurants, including all agreements regarding compensation for such events, and identify any documentation or records reflecting any such agreements.

RESPONSE: See Attached for wedding information in which the
reception was held at Hans and Franz.

18. Identify by date, participant, and mode, all oral, electronic, and written communications, including email and text messages, between Defendants or employees or agents of Defendants regarding Plaintiff.

RESPONSE: SEE ATTACHED.

LAW OFFICE OF JOHN G. RECKENBEIL, LLC

John G. Reckenbeil
Attorney for Defendants
215 Magnolia Street
P.O. Box 1633
Spartanburg, SC 29304
Phone: (864) 582-5472
Fax: (864) 582-7280
john@johnreckenbeillaw.com

Dated: December 2, 2013

EXHIBIT 3

State of South Carolina

County of Greenville

FILED-75 X OF COURT
GREENVILLE, S.C.
PAUL D. HICKS, CLERK

2013-GP-23-03057

2013 DEC 23 PM 2 23

Laurin Stinson,

Plaintiff,

v.

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and
Jurgen Haubach,

Defendants.

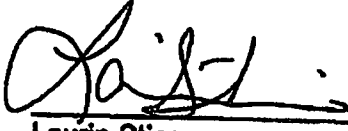
Plaintiff's Affidavit in Support of
Summary Judgment

Plaintiff is an adult over the age of 18 years and the following are true and correct facts personally known to Plaintiff and are within his personal knowledge:

1. I worked for Defendants at the Hans & Franz restaurant from approximately October 25, 2011 until January 19, 2013.
2. I worked as a server with principal duties including taking orders, serving food, making and serving all mixed alcoholic beverages, taking and running payments (including running credit cards), bussing tables, and seating guests.
3. During the entirety of my employment with Defendants, they utilized a tip credit system. They deducted \$5.12 per hour from my wages, netting me \$2.13 per hour.
4. I have reviewed the documents Bates-numbered Stinson 02-77. They accurately reflect, with certain exceptions that are in dispute in this case but not related to this motion, the number of hours I worked and the amount I was paid by the Defendants.

5. During the entirety of my employment with Defendants, they charged a "breakage" or "turn in" or "tip out" fee from every shift's earnings. This fee amounted to 1% of the shift's net sales and was paid directly to the Defendants.
6. We were told this fee was to cover lost or damaged items, like plates and silverware, and for maintenance items, including brooms and dustpans.
7. This fee was taken out of my pay at the end of each shift regardless of whether I broke anything myself or whether anything was broken at all.
8. I have reviewed the documents Bates-numbered Stinson 87-91. They contain a chart I created containing the amounts withheld from my pay as a result of the "breakage" fees paid to Defendants.
9. As a result of this fee, I never collected the full amount of income that I earned during a shift.

Respectfully submitted this 23rd day of December, 2013.


Laurin Stinson

Sworn to and subscribed before me
this 23rd day of December, 2013

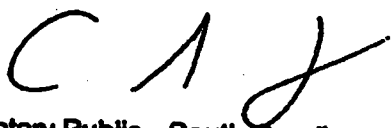

Notary Public - South Carolina
my commission expires 2/2/2019

EXHIBIT 4

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Laurin Stinson,

Plaintiff,

v.

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and Jorgen
Haubach,

Defendants.

IN THE COURT OF COMMON PLEAS

DEFENDANT'S RESPONSES TO
PLAINTIFF'S FIRST DISCOVERY
TO DEFENDANTS

Case No.: 2013-CP-23-03057

Defendant hereby serves the following Responses to the Request for Interrogatories and Production of Documents to Plaintiff's counsel at 514 Pettigru St., Greenville, South Carolina 29601.

Interrogatories

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

RESPONSE: Addy Sulley

Jorgen Haubach

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

RESPONSE: NONE

3. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

RESPONSE: NONE

4. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE: Kathriana Kengni was the other server that worked with Laurin Stinson at the one wedding they helped cater. Wedding was a buffet style at Hans and Frans and Ms. Kengni and Ms. Stinson only helped serve drinks. Food and set up was done by Chef Juergen Haubach and Addy Sully. Wedding party paid for the services that Kengni and Stinson performed.

5. Identify each document or communication, in paper or electronic form, that describe the duties, functions, and expectations for servers or wait staff employed by Defendants Hans & Franz or Addy's Dutch Café including, but not limited to, job descriptions, position descriptions, documents setting forth goals and objectives and performance evaluations to the extent such documents reflect duties, functions, and expectations for the time period 2011 through the present. To the extent no such documents otherwise exist, set forth in full detail here a full description of server and wait staff duties, functions, and other expectations for the time period 2011 through the present.

RESPONSE: Servers' duties are to bring menu, inform the customer about the menu, and then take their order. The server would also

run the food except on the weekends when each server was provided a food runner. Last, the server was required to bring the table back to service to seat other customers.

- 6. Identify each document or communication, in paper or electronic form, that describe the duties, functions, and expectations for Defendant Addy Sulley with respect to both Addy's Dutch Café and Hans & Franz including, but not limited to, job descriptions, position descriptions, documents setting forth goals and objectives and performance evaluations to the extent such documents reflect duties, functions, and expectations for the time period 2011 through the present. To the extent no such documents otherwise exist, set forth in full detail here a full description of Defendant Sulley's duties, functions, and other expectations for the time period of 2011 through the present.**

RESPONSE: No documents exist. Defendant Sully is the sole owner and operator of Hans and Franz. Defendant Sully is a consultant for Addy's Dutch Café.

- 7. Identify each document or communication, in paper or electronic form, that describe the duties, functions, and expectations for Defendant Jurgen Haubach with respect to both Addy's Dutch Café and Hans & Franz including, but not limited to, job descriptions, position descriptions, documents setting forth goals and objectives and performance evaluations to the extent such documents reflect duties, functions, and expectations for the time period 2011 through the present. To the extent no such documents otherwise exist, set forth in full detail here a full description of Defendant Haubach's duties, functions, and other expectations for the time period of 2011 through the present.**

RESPONSE:

Jurgen Haubach is the general manager and chef of Haas and Franz. He maintains complete control over the restaurant when owner/operator Addy Sully is not present.

8. Identify by name, address, and phone number each member, shareholder, or other equity holder of Hans & Franz from January 1, 2011 through the present and note the dates of any changes to the person or entity's status as a shareholder or equity holder. To the extent the member or equity holder is a legal entity (LLC, corporation, trust), specify the individual identified as the beneficial holder of the equity or with whom Defendant Hans & Franz maintains contact.

RESPONSE:

Addy Sully is the sole member of Hans and Franz, LLC

9. Identify by name, address, and phone number each member, shareholder, or other equity holder of Addy's Dutch Café from January 1, 2011 through the present and note the dates of any changes to the person or entity's status as a shareholder or equity holder. To the extent the member or equity holder is a legal entity (LLC, corporation, trust), specify the individual identified as the beneficial holder of the equity or with whom Defendant Addy's Dutch Café maintains contact.

RESPONSE:

Addy's Dutch Café is owned by Act of Greenville, Inc.

Nina Biagiotti and Addy Sully are the only two

shareholders of Act of Greenville, Inc.

10. Identify by name and position each officer, manager (or assistant manager), and director of Hans & Franz from January 1, 2011 through the present and note the dates of any

changes to the person or entity's status as an officer, manger, or director.

RESPONSE: Addy Sulley - owner/operator.

Jurgen Haubach - chef and general manager

11. For each person identified in your response to Interrogatory 10, identify each position that such person has held from January 1, 2011 through the present as a director, officer, manger (or assistant manager), or employee of Addy's Dutch Café or any of its subsidiaries or affiliates.

RESPONSE: Addy Sulley is a consultant to Addy's Dutch Café.

12. Identify by name and position each officer, manager (or assistant manager), and director of Hans & Franz from January 1, 2011 through the present and note the dates of any changes to the person or entity's status as an officer, manger, or director.

RESPONSE: Addy Sulley - owner operator

Jurgen Haubach - chef and general manager

13. For each person identified in your response to Interrogatory 12, identify each position that such person has held from January 1, 2011 through the present as a director, officer, manger (or assistant manager), or employee of Addy's Dutch Café or any of its subsidiaries or affiliates.

RESPONSE: Addy Sulley is a consultant to Addy's Dutch Café.

14. From October 1, 2011 until present, state with particularity Plaintiff's rate of pay, including an explanation of any adjustments for any tip pooling or tip credit schemes, at all times relevant to this matter and the total amount of compensation received by

Plaintiff during the course of her employment with Defendants, providing for each pay period:

- a. pay date,
- b. the actual number of hours shown on time cards/sheets each week,
- c. if the time worked was rounder, the manner in which it was rounded,
- d. the number of hours worked over forty for each week,
- e. the actual number of hours worked each week,
- f. the description of the work performed (e.g., food prep, food runs, cleaning, bussing, service prep, staff meetings, training etc.),
- g. the rate of pay for each type of work described in the preceding section, if different, and
- h. any and all deductions taken from Plaintiff's gross pay (including employee benefits, food, fee, etc.).

RESPONSE: The rate of pay is \$2.13 an hour, most servers average \$15 dollars an hour on the credit card tips. The Plaintiff also averaged at least \$15 dollars and likely more but she never declared any cash tips so Defendant is unsure to determine how much she exactly made per hour.

SEE ATTACHED.

15. Set forth in full detail the manner in which Defendants' tip pooling and tip credit schemes are calculated , administered, and documented from January 2011 to the present,

including:

- a. which positions (servers, hosts, bar tenders, managers, etc.) take part in the tip pool and/or tip crediting scheme,
- b. whether Plaintiff was a part of the tip pool and/or tip credit scheme,
- c. the standard rate or method, if any, at which the tip pool is assessed to participating employees,
- d. the standard rate or method, if any, at which the tip credit is assessed to participating employees, and
- e. identify any and all documents or records reflecting and accounting of these schemes.

RESPONSE: **No tip pool.**

16. Set forth in full detail the manner in which Defendants calculate, administer, and document payment of overtime wages to employees from January 1, 2011 to the present and how, if at all, such wages are affected by Defendants' tip pooling and/or tip credit schemes.

RESPONSE: **None of the employees work overtime at Hans & Franz.**
Most employees work no more than seventy (70) hours
bi-weekly.

17. Set forth in full detail any and all agreements with Plaintiff to work for Defendants at events (catering, etc.) outside of Defendants' restaurants, including all agreements regarding compensation for such events, and identify any documentation or records reflecting any such agreements.

RESPONSE: **Hans and Franz does not perform any catering**
functions. These were community service charity
projects. There were no agreements. Hans and Franz
and any employees thereof donated their time to work
these events. Hans and Franz did not receive any
compensation from these events. All food and drink
was donated.

18. Identify by date, participant, and mode, all oral, electronic, and written communications, including email and text messages, between Defendants or employees or agents of Defendants regarding Plaintiff.

RESPONSE: SEE ATTACHED.

Requests to Produce

1. All documents, data, or other things identified in your response to the foregoing Interrogatories.

RESPONSE: SEE ATTACHED.

2. A complete copy of Plaintiff's personnel file.

RESPONSE: NONE.

3. All documents upon which you rely in denying any allegation raised by Plaintiff.

RESPONSE: NONE.

4. All documents upon which you rely in asserting any defense to the claims raised by Plaintiff.

RESPONSE: SEE ATTACHED.

5. All documents or records reflecting hours worked by Plaintiff for any Defendant from January 1, 2011 through the present, including, but not limited to, time working physically at either Defendant restaurant and time spent working at other venues (catering, etc.) for Defendant.

RESPONSE: SEE ATTACHED.

6. All documents or records reflecting the gross receipts from sale of food, drink, or other items or services by Plaintiff.

RESPONSE: SEE ATTACHED.

7. Any written communications (including electronic) between Defendants and/or any other person or entity regarding Plaintiff.

RESPONSE: SEE ATTACHED.

8. Any other documents maintained by any Defendant regarding Plaintiff.

RESPONSE: NONE .

9. All documents or records containing an accounting or otherwise reflecting the use of the funds collected from the "breakage" or "turn in" fee discussed in ¶ 15 of Plaintiff's Complaint.

RESPONSE: There are no documents. The breakage fee was 1% of the net sale. This is less than the 2.5% fee that Hans and Franz incurs for each credit card transaction which they could have charged but did not. This is also a lot less than any tip pool would have subtracted.

10. All employee handbooks or similar publications for employees terms and conditions of employment applicable to Plaintiff's employment, including, but not limited to, any publications regarding the tip credit, tip pool, or "breakage" or "turn in" fees discussed in ¶ 15 of Plaintiff's Complaint.

RESPONSE: There are no documents. The breakage fee policy was voted on by the employees, including the Plaintiff.

11. A copy of any insurance policy under which the defense of this action is provided (with or without a reservation of rights).

RESPONSE: NONE.

12. A copy of any reservation of rights letter from any insurer related to this action.

RESPONSE: NONE.

13. All policies, manuals, memoranda, or other directives or other documents that refer or relate to Defendant Hans & Franz's personnel management policies and/or practices applicable to Plaintiff's employment.

RESPONSE: NONE.

14. All documents upon which Defendant Hans & Franz relies in asserting any affirmative defenses to the Complaint.

RESPONSE: NONE.

15. Any statements taken from any witness in this case.

RESPONSE: SEE ATTACHED.

16. Any job descriptions covering positions held by Plaintiff during her employment with Defendant Hans & Franz.

RESPONSE: NONE .

17. A complete set of financial reports (including balance sheets, profit and loss statements, income/revenue and expense statements, cash flow statements, statements of assets and liabilities, and general ledger statements) for Defendant Hans & Franz, whether in paper or electronic form, to the extent such documents or files relate to the years FY2011 to present or any partial period (e.g. quarterly statements) of any completed portion of the current fiscal year.

RESPONSE: SEE ATTACHED.

18. A complete set of financial reports (including balance sheets, profit and loss statements, income/revenue and expense statements, cash flow statements, statements of assets and liabilities, and general ledger statements) for Defendant Addy's Dutch Café, whether in paper or electronic form, to the extent such documents or files relate to the years FY2011 to present or any partial period (e.g. quarterly statements) of any completed portion of the current fiscal year.

RESPONSE: NONE.

19. A copy of all quarterly or annual U.S. or state tax returns for all Defendants to the extent such documents or files relate to the time period of January 1, 2011 through the present.

RESPONSE: SEE ATTACHED.

Respectfully submitted this 30th day of August 2013,

LAW OFFICE OF JOHN G. RECKENBEIL, LLC



John G. Reckenbeil
Attorney for Defendants
215 Magnolia Street
P.O. Box 1633
Spartanburg, SC 29304
Phone: (864) 582-5472
Fax: (864) 582-7280
john@johnreckenbeillaw.com

Dated: August 30, 2013
Spartanburg, SC

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Laurin Stinson,

Plaintiff,

vs.

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and Jurgen
Haubach,

Defendants.

IN THE COURT OF COMMON PLEAS

CERTIFICATE OF SERVICE

C.A. NO.: 2013-CP-23-03057

I, Keri Eadie, the undersigned legal assistant to John G. Reckenbeil, attorney for the Defendant, certify that I have mailed a copy of the herein below listed pleading to Counsel in this matter, postage prepaid, on this 30th day of August 2013, as follows:

PLEADING: Defendant's Responses to Plaintiff's First Discovery to Defendants

COUNSEL SERVED: C. Alexander Cable
Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601

LAW OFFICE OF JOHN G. RECKENBEIL, LLC



Keri A. Eadie
Legal Assistant to John G. Reckenbeil
215 Magnolia Street
P.O. Box 1633
Spartanburg, SC 29304
Phone: (864) 582-5472
Fax: (864) 582-7280
keri@johnreckenbeillaw.com

Date: August 30, 2013
Spartanburg, SC

EXHIBIT 5

Tip Out to Addy Sulley

Servers were required to tip out the owner of Hans & Franz Biergarten (Addy Sulley) 1% of net sales daily. If the change was below \$.50 we would round down to the nearest dollar. If the change was above \$.50 we would round up to the nearest dollar. This is a chart of the total tip out daily which I personally gave to the owner Addy Sulley for what he called "breakage/expenses." Tip outs were based off of our net sales, the better sales you have the higher your tip out to owner.

January 2012:	February 2012:	March 2012:
\$3.00	\$7.00	\$6.00
\$1.00	\$10.00	\$10.00
\$4.00	\$8.00	\$7.00
\$3.00	\$6.00	\$6.00
\$5.00	\$8.00	<u>\$7.00</u>
\$2.00	\$6.00	\$36.00
\$4.00	\$2.00	
\$8.00	\$9.00	
\$12.00	\$8.00	
\$4.00	<u>\$4.00</u>	
\$4.00	\$68.00	
\$8.00		
<u>\$6.00</u>		
\$64.00		

April 2012:

\$2.00
\$6.00
\$6.00
\$7.00
\$12.00
\$3.00
\$7.00
\$8.00
\$3.00
\$2.00
\$6.00
\$6.00
\$4.00
\$72.00

May 2012:

\$4.00
\$3.00
\$9.00
\$12.00
\$6.00
\$4.00
\$7.00
\$7.00
\$4.00
\$0.00
\$8.00
\$3.00
\$4.00
\$5.00
\$6.00
\$9.00
\$6.00
\$5.00
\$102.00

June 2012:

\$3.00
\$4.00
\$2.00
\$7.00
\$6.00
\$10.00
\$3.00
\$8.00
\$7.00
\$3.00
\$12.00
\$3.00
\$2.00
\$3.00
\$8.00
\$8.00
\$10.00
\$6.00
\$6.00
\$111.00

July 2012:

\$2.00
\$7.00
\$4.00
\$3.00
\$5.00
\$4.00
\$7.00
\$4.00
\$7.00
\$4.00
\$12.00
\$4.00
\$4.00
\$7.00
\$7.00
\$7.00
\$2.00
\$90.00

August 2012:

\$5.00
\$3.00
\$6.00
\$4.00
\$5.00
\$4.00
\$4.00
\$5.00
\$9.00
\$6.00
\$5.00
\$8.00
\$1.00
\$4.00
\$1.00
\$4.00
\$8.00
\$5.00
\$6.00
\$7.00
\$5.00
\$105.00

September 2012:

\$8.00
\$5.00
\$1.00
\$6.00
\$3.00
\$5.00
\$1.00
\$4.00
\$5.00
\$12.00
\$6.00
\$2.00
\$3.00
\$6.00
\$6.00
\$4.00
\$3.00
\$3.00
\$4.00
\$6.00
\$7.00
\$13.00
\$113.00

October 2012:

\$1.00
\$6.00
\$6.00
\$3.00
\$7.00
\$7.00
\$6.00
\$1.00
\$2.00
\$3.00
\$5.00
\$7.00
\$2.00
\$1.00
\$1.00
\$8.00
\$9.00
\$6.00
\$10.00
\$8.00
\$13.00
\$114.00

November 2012:

\$6.00
\$1.00
\$3.00
\$2.00
\$3.00
\$3.00
\$3.00
\$6.00
\$4.00
\$4.00
\$2.00
\$3.00
\$4.00
~~\$4.00~~
\$48.00

December 2012:

\$5.00
\$7.00
\$5.00
\$5.00
\$6.00
\$5.00
\$3.00
\$6.00
\$5.00
\$4.00
\$4.00
\$6.00
\$2.00
\$3.00
\$5.00
\$4.00
\$71.00

Total Year 2012:

\$54.00

\$58.00

\$36.00

\$72.00

\$102.00

\$111.00

\$90.00

\$105.00

\$113.00

\$114.00

\$48.00

\$71.00

\$994.00

EXHIBIT 6

Check Date	Check Number	Dates Number	Number of Hours Paid For	Hourly Rate
11/11/2011	5772	2	16.53	2.13
11/23/2011	5791	4	62.47	2.13
12/9/2011	5823	5	64.48	2.13
12/23/2011	5840	6	50.62	2.13
1/6/2012	5854	7	77.02	2.13
1/20/2012	5866	9	48.56	2.13
2/3/2012	5878	10	60.35	2.13
2/17/2012	5891	11	46.12	2.13
3/2/2012	5909	12	58.13	2.13
3/16/2012	5918	14	54.52	2.13
3/30/2012	5932	16	63.64	2.13
4/13/2012	5945	18	80	2.13
4/27/2012	5957	22	78.39	2.13
5/11/2012	5970	26	65.45	2.13
5/25/2012	5983	30	58.86	2.13
6/8/2012	5999	32	63.21	2.13
6/22/2012	6018	34	62.25	2.13
7/6/2012	6037	36	57.22	2.13
7/20/2012	6055	38	45	2.13
8/3/2012	6070	40	60.16	2.13
8/17/2012	6086	42	63.82	2.13
8/31/2012	6102	46	63.55	2.13
9/14/2012	6117	48	57.85	2.13
9/28/2012	6133	50	73.63	2.13
10/12/2012	6146	52	80	2.13
10/26/2012	6166	54	75.14	2.13
11/9/2012	6183	56	50.34	2.13
11/23/2012	6201	58	44.67	2.13
11/27/2012	6217	59	24.03	2.13
12/11/2012	6235	61	46.94	2.13
1/4/2013	6253	63	50.59	2.13
1/18/2013	111	65	32.03	2.13
2/1/2013	126	66	36.94	2.13

TOTALS

1872.51

Stinson 000131

000201

State of South Carolina

County of Greenville

IN THE COURT OF COMMON PLEAS

2013-CP-23-03057

Laurin Stinson,

Plaintiff,

v.

**Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and
Jurgen Haubach,**

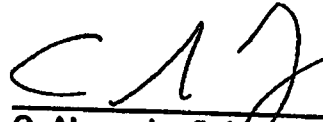
Defendants.

**Affidavit of Counsel,
Charles Alexander Cable**

Charles Alexander Cable states that he is counsel for Plaintiff in the above matter, that the facts stated herein are within his personal knowledge, and that he is at least 18 years of age:

1. I personally created the foregoing document, Stinson 131, upon reviewing Plaintiff's pay stubs, previously produced in this litigation as Stinson 02-77.
2. Plaintiff has testified via affidavit that Stinson 02-77 "accurately reflect . . . the number of hours I worked and the amount I was paid by the Defendants." (Pl. Affidavit in Support of Summary Judgment ¶ 4 [Attachment A]).
3. The document, Stinson 131, is a summary of Plaintiff's pays stubs created because the underlying documents are voluminous and cannot conveniently be examined in court.
4. The chart accurately summarizes the contents of Plaintiff's pay stubs and accurately reflects in the information contained therein.

Respectfully submitted this 14th day of February, 2014.


C. Alexander Cable

Sworn to and subscribed before me
this 14th day of February, 2014


Notary Public - South Carolina
my commission expires 9/16/15

ATTACHMENT A

State of South Carolina

County of Greenville

FILED IN THE COURT OF COMMON PLEAS
GREENVILLE COUNTY, S.C.
PAUL F. JOKE, CLERK
2013-CP-23-03057

2013 DEC 23 PM 2 23

Laurin Stinson,

Plaintiff,

v.

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and
Jurgen Haubach,

Defendants.

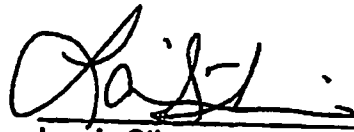
Plaintiff's Affidavit in Support of
Summary Judgment

Plaintiff is an adult over the age of 18 years and the following are true and correct facts personally known to Plaintiff and are within his personal knowledge:

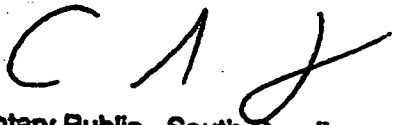
1. I worked for Defendants at the Hans & Franz restaurant from approximately October 25, 2011 until January 19, 2013.
2. I worked as a server with principal duties including taking orders, serving food, making and serving all mixed alcoholic beverages, taking and running payments (including running credit cards), bussing tables, and seating guests.
3. During the entirety of my employment with Defendants, they utilized a tip credit system. They deducted \$5.12 per hour from my wages, netting me \$2.13 per hour.
4. I have reviewed the documents Bates-numbered Stinson 02-77. They accurately reflect, with certain exceptions that are in dispute in this case but not related to this motion, the number of hours I worked and the amount I was paid by the Defendants.

5. During the entirety of my employment with Defendants, they charged a "breakage" or "turn in" or "tip out" fee from every shift's earnings. This fee amounted to 1% of the shift's net sales and was paid directly to the Defendants.
6. We were told this fee was to cover lost or damaged items, like plates and silverware, and for maintenance items, including brooms and dustpans.
7. This fee was taken out of my pay at the end of each shift regardless of whether I broke anything myself or whether anything was broken at all.
8. I have reviewed the documents Bates-numbered Stinson 87-91. They contain a chart I created containing the amounts withheld from my pay as a result of the "breakage" fees paid to Defendants.
9. As a result of this fee, I never collected the full amount of income that I earned during a shift.

Respectfully submitted this 23rd day of December, 2013.


Laurin Stinson

Sworn to and subscribed before me
this 23rd day of December, 2013



Notary Public - South Carolina
my commission expires 2/2/2019

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Laurin Stinson,

Plaintiff,

v.

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and Jurgen
Haubach,

Defendants.

IN THE COURT OF COMMON PLEAS

**DEFENDANTS' RESPONSES TO
PLAINTIFF'S FOURTH DISCOVERY
REQUESTS**

Case No.: 2013-CP-23-03057

Defendant hereby responds to the following Requests to Admit, Interrogatories and Requests for Production to Plaintiff's attorney at 514 Pettigru St., Greenville, SC 29601.

Requests to Admit

9. Plaintiff was required to give a portion of her tips as a "turn in" fee.

RESPONSE: ADMITTED.

10. Plaintiff was required to give this "turn fee" at the end of ever shift.

RESPONSE: ADMITTED.

11. The "turn in" fee amounted to 1% of each server's net sales for a shift.

RESPONSE: ADMITTED.

12. The sums Plaintiff gave as "turn in" were paid directly to one or more Defendants.

RESPONSE: ADMITTED.

13. None of the Defendants ever deducted any sums from Plaintiff's tips to pay for any credit card surcharge.

RESPONSE: DENIED.

Interrogatories

23. Set forth in full detail each and every fact in regarding to the decision to require a "turn in" fee. For this response, include:

- a. who made the decision;
- b. the basis for the decision;
- c. any and all persons that had any input in the decision;
- d. any and all persons that provided advice about the decision (and what the advice was);
- e. what amount was decided upon;
- f. the basis for the decision regarding the amount to be deducted
- g. whether any employees would be exempt from the deductions; and
- h. the basis for any exemptions.

RESPONSE: The Defendants noticed that much of the restaurant's silverware was turning up in the trash. The servers were carelessly cleaning off the plates by dumping everything in the trash including silverware. To ensure that this did not happen, Defendants considered hiring busboys who would share in 5% of the daily net sales of the servers. In a full staff meeting, whereby Plaintiff attended, this proposition was made to the servers, and the servers, including this Plaintiff, voted and decided to give up 1% of their daily net sales to cover the cost of the silverware in lieu of hiring busboys. Defendant believed that this amount would cover the cost of replacing the thrown away silverware. Further, Defendant relied on a belief that it was legal to deduct a service charge fee of 2.5% per transaction for customers paying with credit cards. Everyone who was present at the meeting had input and provided advice in the decision, and no one was eligible for exemptions.

24. If you contend any Defendant decided not to deduct credit card surcharges from servers' pay, state in full the basis of the decision, including, but not limited to:

- a. who made the decision;
- b. any and all persons that had any input in the decision;
- c. any and all persons that provided advice about the decision (and what the advice was).

RESPONSE: Defendant Addy Sully made the decision, and there were no other persons who had input into the decision.

25. If you contend Plaintiff did not work overtime while working at Hans & Franz, state in full the basis for your assertion, including, but not limited to:

- a. who has knowledge of Plaintiff not working overtime;
- b. the basis for said person's (or persons') knowledge; and
- c. identify any and all documentation supporting that basis.

RESPONSE: Defendant asserts that the most accurate description of Plaintiff's working hours has already been provided by Defendant's records generated by the point of sale system at the restaurant.

26. If you contend that any portion of the "turn in" fee paid by Plaintiff was paid directly to credit card companies to cover the 2.5% surcharge fee described by the Defendants' Opposition to Summary Judgement and Defendants' Responses to RTP No. 9, identify each and every document that proves such contention.

RESPONSE: The credit card company automatically withdraws the 2.5% fee for all credit card transactions from Defendant's bank account each month.

27. If you contend the 2.5% that could have been withheld from Plaintiff's credit card tips for a workweek was higher than the amount of "turn in" fee Plaintiff was required to pay for a workweek; identify

- a. which workweek(s) you contend the surcharge amount was higher; and
- b. any and all documents or records you rely on for making such contention.

RESPONSE: Defendant lacks sufficient records to make such comparison. The records in Defendant's possession do not itemize each transaction Plaintiff made to determine what she would have been charged under a 2.5% credit card deduction scheme.

28. If you contend the 2.5% that could have been withheld from Plaintiff's credit card tips for a shift was higher than the amount of "turn in" fee Plaintiff was required to pay for a shift, identify:

- a. which shift(s) you contend the surcharge amount was higher, and
- b. any and all documentation or records you rely on for making such contention.

RESPONSE: SEE ABOVE.

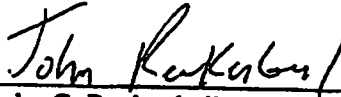
Requests to Produce

22. All documents, data, or other things identified in your response to the foregoing Interrogatories.

RESPONSE: NONE

[SIGNATURE PAGE FOLLOWS]

LAW OFFICE OF JOHN G. RECKENBEIL, LLC



John G. Reckenbeil
215 Magnolia Street (29306)
P.O. Box 1633
Spartanburg, SC 29304
Phone: (864) 582-5472
Fax: (864) 582-7280
john@johnreckenbeillaw.com

ATTORNEY FOR DEFENDANTS

Dated: April 23, 2014
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Laurin Stinson,)

Plaintiff,)

vs.)

Hans & Franz, LLC d/b/a Hans & Franz)
Biergarten, Addys Dutch Café and)
Restaurant, Addy Sulley, and Jurgen)
Haubach,)

Defendants.)

IN THE COURT OF COMMON PLEAS

CERTIFICATE OF SERVICE

C.A. NO.: 2013-CP-23-03057

I, Keri Eadie, the undersigned paralegal to John G. Reckenbeil, attorney for the Defendants, certify that I have mailed a copy of the herein below listed pleading to Counsel in this matter, postage prepaid, on this 24th day of April 2014, as follows:

PLEADING: Defendant's Responses to Plaintiff's Fourth Discovery Requests

COUNSEL SERVED: C. Alexander Cable, Esq.
Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601

LAW OFFICE OF JOHN G. RECKENBEIL, LLC



Keri A. Eadie
Paralegal to John G. Reckenbeil, Esq.
P.O. Box 1633
Spartanburg, SC 29304
Phone: (864) 582-5472
Fax: (864) 582-7280
keri@johnreickenbeillaw.com

Date: April 24, 2014
Spartanburg, South Carolina

EXHIBIT C

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT
GREENVILLE CO. S.C.

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2303057

Lauren Stinson

PAUL B. WICKENS

Hans & Franz, LLC

2014 MAR 11 PM 1 04

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:
ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Plaintiff's Motion for Summary Judgment is respectfully denied. A genuine issue of material fact exists as to the treatment of deductions, wages, and tips as well as the credit card service charge and "breakage" issue and their interplay with § 203(m). 29USC § 203(m). Court finds that viewing the complaint in the light most favorable to the Plaintiff further development of the facts is necessary to clarify application of the law.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge

may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2138

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on 3/11/14, and a copy mailed first class or placed in the appropriate attorney's box on 3/11/14, to attorneys of record or to parties (when appearing pro se) as follows:

Charles Alexander Cable

ATTORNEY(S) FOR THE PLAINTIFF(S)

John G. Reckenbeil

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

EXHIBIT D

United States Department of Labor

Wage and Hour Division

Wage and Hour Division (WHD)

(Revised July 2013) (PDF)

Fact Sheet #15: Tipped Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the FLSA to employees who receive tips.

Characteristics

Tipped employees are those who customarily and regularly receive more than \$30 per month in tips. Tips are the property of the employee. The employer is prohibited from using an employee's tips for any reason other than as a credit against its minimum wage obligation to the employee ("tip credit") or in furtherance of a valid tip pool. Only tips actually received by the employee may be counted in determining whether the employee is a tipped employee and in applying the tip credit.

Tip Credit: Section 3(m) of the FLSA permits an employer to take a tip credit toward its minimum wage obligation for tipped employees equal to the difference between the required cash wage (which must be at least \$2.13) and the federal minimum wage. Thus, the maximum tip credit that an employer can currently claim under the FLSA is \$5.12 per hour (the minimum wage of \$7.25 minus the minimum required cash wage of \$2.13).

Tip Pool: The requirement that an employee must retain all tips does not preclude a valid tip pooling or sharing arrangement among employees who customarily and regularly receive tips, such as waiters, waitresses, bellhops, counter personnel (who serve customers), bussers, and service bartenders. A valid tip pool may not include employees who do not customarily and regularly received tips, such as dishwashers, cooks, chefs, and janitors.

Requirements

The employer must provide the following information to a tipped employee before the employer may use the tip credit:

- 1) the amount of cash wage the employer is paying a tipped employee, which must be at least \$2.13 per hour;
- 2) the additional amount claimed by the employer as a tip credit, which cannot exceed \$5.12 (the difference between the minimum required cash wage of \$2.13 and the current minimum wage of \$7.25);
- 3) that the tip credit claimed by the employer cannot exceed the amount of tips actually received by the tipped employee;
- 4) that all tips received by the tipped employee are to be retained by the employee except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and
- 5) that the tip credit will not apply to any tipped employee unless the employee has been informed of these tip credit provisions.

The employer may provide oral or written notice to its tipped employees informing them of items 1-5 above. An employer who fails to provide the required information cannot use the tip credit provisions and therefore must pay the tipped employee at least \$7.25 per hour in wages and allow the tipped employee to keep all tips received.

Employers electing to use the tip credit provision must be able to show that tipped employees receive at least the minimum wage when direct (or cash) wages and the tip credit amount are combined. If an employee's tips combined with the employer's direct (or cash) wages of at least \$2.13 per hour do not equal the minimum hourly wage of \$7.25 per hour, the employer must make up the difference.

Retention of Tips: A tip is the sole property of the tipped employee regardless of whether the employer takes a tip credit. [1] The FLSA prohibits any arrangement between the employer and the tipped employee whereby any part of the tip received becomes the property of the employer. For example, even where a tipped employee receives at least \$7.25 per hour in wages directly from the employer, the employee may not be required to turn over his or her tips to the employer.

Tip Pooling: As noted above, the requirement that an employee must retain all tips does not preclude a valid tip pooling or sharing arrangement among employees who customarily and regularly receive tips. The FLSA does not impose a maximum contribution amount or percentage on valid mandatory tip pools. The employer, however, must notify tipped employees of any required tip pool contribution amount, may only take a tip credit for the amount of tips each tipped employee ultimately receives, and may not retain any of the employees' tips for any other purpose.

Dual Jobs: When an employee is employed by one employer in both a tipped and a non-tipped occupation, such as an employee employed both as a maintenance person and a waitperson, the tip credit is available only for the hours spent by the employee in the tipped occupation. The FLSA permits an employer to take the tip credit for some time that the tipped employee spends in duties related to the tipped occupation, even though such duties are not by themselves directed toward producing tips. For example, a waitperson who spends some time cleaning and setting tables, making coffee, and occasionally washing dishes or glasses is considered to be engaged in a tipped occupation even though these duties are not tip producing. However, where a tipped employee spends a substantial amount of time (in excess of 20 percent in the workweek) performing related duties, no tip credit may be taken for the time spent in such duties. .

Service Charges: A compulsory charge for service, for example, 15 percent of the bill, is not a tip. Such charges are part of the employer's gross receipts. Sums distributed to employees from service charges cannot be counted as tips received, but may be used to satisfy the employer's minimum wage and overtime obligations under the FLSA. If an employee receives tips in addition to the compulsory service charge, those tips may be considered in determining whether the employee is a tipped employee and in the application of the tip credit.

Credit Cards: Where tips are charged on a credit card and the employer must pay the credit card company a percentage on each sale, the employer may pay the employee the tip, less that percentage. For example, where a credit card company charges an employer 3 percent on all sales charged to its credit service, the employer may pay the tipped employee 97 percent of the tips without violating the FLSA. However, this charge on the tip may not reduce the employee's wage below the required minimum wage. The amount due the employee must be paid no later than the regular pay day and may not be held while the employer is awaiting reimbursement from the credit card company.

Youth Minimum Wage: The 1996 Amendments to the FLSA allow employers to pay a youth minimum wage of not less than \$4.25 per hour to employees who are under 20 years of age during the first 90 consecutive calendar days after initial employment by their employer. The law contains certain protections for employees that prohibit employers from displacing any employee in order to hire someone at the youth minimum wage.

Typical Problems

Minimum Wage Problems:

- Where an employee does not receive sufficient tips to make up the difference between the direct (or cash) wage payment (which must be at least \$2.13 per hour) and the minimum wage, the employer must make up the difference.
- Where an employee receives tips only and is paid no cash wage, the full minimum wage is owed.
- Where deductions for walk-outs, breakage, or cash register shortages reduce the employee's wages below the minimum wage, such deductions are illegal. Where a tipped employee is paid \$2.13 per hour in direct (or cash) wages and the employer claims the maximum tip credit of \$5.12 per hour, no such deductions can be made without reducing the employee below the minimum wage (even where the employee receives more than \$5.12 per hour in tips).
- Where a tipped employee is required to contribute to a tip pool that includes employees who do not customarily and regularly receive tips, the employee is owed all tips he or she contributed to the pool and the full \$7.25 minimum wage.

Overtime Problems:

- Where the employer takes the tip credit, overtime is calculated on the full minimum wage, **not** the lower direct (or cash) wage payment. The employer may not take a larger tip credit for an overtime hour than for a straight time hour (i.e., \$4.00 tip credit per hour for the nonovertime hours and \$5.12 tip credit per hour for overtime hours).
- Where overtime is not paid based on the regular rate including all service charges, commissions, bonuses, and other remuneration.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

[1] In *Oregon Restaurant and Lodging Ass'n et al. v. Solis*, -- F. Supp. 2d --, 2013 WL 2468298 (D. Or. 2013), the U.S. District Court for the District of Oregon declared the Department's 2011 regulations that limit an employer's use of its employees' tips when the employer has not taken a tip credit against its minimum wage obligations to be invalid. As a result of that decision and the judgment entered in that case, at least until the resolution of any appeal that may be taken in this case, the Department is prohibited against enforcing its tip retention requirements against plaintiffs (which include several associations, one restaurant, and one individual) and members of the plaintiff associations that can demonstrate that they were a member of one of the plaintiff associations in this litigation on June 24, 2013. The plaintiff associations in the Oregon litigation were the National Restaurant Association, Washington Restaurant Association, Oregon Restaurant and Lodging Association, and Alaska Cabaret, Hotel, Restaurant, and Retailer Association. As a matter of enforcement policy, the Department has decided that it will not enforce its tip retention requirements against any employer that has not taken a tip credit in jurisdictions within the Ninth Circuit while the federal government considers its options for appeal of the decision. The Ninth Circuit has appellate jurisdiction over the states of California, Nevada, Washington, Oregon, Alaska, Idaho, Montana, Hawaii, and Arizona; Guam; and the Northern Mariana Islands.

12/10/13

Fact Sheet - Wage and Hour Division (WHD) - U.S. Department of Labor

EXHIBIT E

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Laurin Stinson,

Plaintiff,

v.

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and Jorgen
Haubach,

Defendants.

IN THE COURT OF COMMON PLEAS

**DEFENDANTS' RESPONSES TO
PLAINTIFF'S THIRD DISCOVERY
REQUESTS**

Case No.: 2013-CP-23-03057

Defendant hereby responds to the following Interrogatories and Requests for Production to Plaintiff's attorney at 514 Pettigru St., Greenville, South Carolina 29601.

Requests to Admit

1. The chart, attached as Stinson 131, is an accurate summary representing the number of hours Plaintiff worked at Hans and Franz as a server for which she was paid.

RESPONSE: Admitted.

2. The chart, attached as Stinson 131, is an accurate summary representing Plaintiff's hourly rate of pay as a server while working at Hans and Franz.

RESPONSE: Denied.

3. The pay stubs produced at Stinson 02-67 are authentic copies of the pay stubs provided to Plaintiff

RESPONSE: Admitted.

4. The pay stubs produced at Stinson 02-67 accurately represent the number of hours Plaintiff worked at Hans and Franz for which she was paid

RESPONSE: Admitted in part, and denied in part. The 10/12/14 paycheck should not have overtime; Plaintiff never clocked out. All other are admitted.

5. The pay stubs produced at Stinson 02-67 accurately represent Plaintiff's hourly rates of pay while working at Hans and Franz.

RESPONSE: Denied.

6. The "Payroll Register" produced at Stinson 68-77 is an authentic copy of the Payroll Register used by Defendants' payroll company.

RESPONSE: Admitted.

7. The "Payroll Register" produced at Stinson 68-77 accurately represents the number of hours Plaintiff worked at Hans and Franz for which she was paid.

RESPONSE: Denied. On paycheck stubs dated 07/06/12, 10/12/12, and 01/04/13, Plaintiff did not work overtime; she failed to clock out.

8. The "Payroll Register" produced at Stinson 68-77 accurately represents Plaintiff's hourly rates of pay while working at Hans and Franz.

RESPONSE: Denied.

Interrogatories

21. If you deny any of the above requests to admit then, for each such request, state each and every fact upon which you rely in denying it.

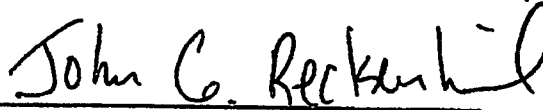
RESPONSE: See attached "Laurin Stinson Average Rate of Pay per Hour" chart.

Requests to Produce

21. All documents, data or other things identified in your response to the foregoing Interrogatories.

RESPONSE: See attached "Laurin Stinson Average Rate of Pay per Hour" chart.

LAW OFFICE OF JOHN G. RECKENBEIL, LLC



John G. Reckenbeil
215 Magnolia Street (29306)
P.O. Box 1633
Spartanburg, SC 29304
Phone: (864) 582-5472
Fax: (864) 582-7280
john@johnreckenbeillaw.com

ATTORNEY FOR DEFENDANTS

Dated: March 6, 2014
Spartanburg, South Carolina

Lauren Stinson Average Rate/Hour

Week	Rate/Hour
02/13/12-02/25/12	\$16.55
02/26/12-03/10/12	\$19.80
03/11/12-03/24/12	\$18.34
03/25/12-04/07/12	\$15.96
04/08/12-04/21/12	\$18.89
04/22/12-05/05/12	\$18.52
05/06/12-05/19/12	\$14.71
05/20/12-06/03/12	\$16.03
06/04/12-06/17/12	\$19.68
06/18/12-07/01/12	\$15.01
07/02/12-07/15/12	\$13.92
07/16/12-07/29/12	\$20.10
07/30/12-08/12/12	\$13.25
08/13/12-08/26/12	\$17.03
08/27/12-09/09/12	\$16.77
09/10/12-09/23/12	\$15.95
09/24/12-10/07/12	\$18.47
10/08/12-10/21/12	\$13.84
10/22/12-11/04/12	\$21.60
11/05/12-11/18/12	\$13.02
11/19/12-12/02/12	\$11.32
12/03/12-12/16/12	\$14.66
12/17/12-12/30/12	\$14.37
12/31/12-01/13/13	\$9.52
01/14/13-01/27/13	\$13.83
Avg rate/hour	\$16.05

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Laurin Stinson,)

Plaintiff,)

vs.)

Hans & Franz, LLC d/b/a Hans & Franz)
Biergarten, Addys Dutch Café and)
Restaurant, Addy Sulley, and Jurgen)
Haubach,)

Defendants.)

IN THE COURT OF COMMON PLEAS

CERTIFICATE OF SERVICE

C.A. NO.: 2013-CP-23-03057

I, Keri Eadie, the undersigned legal assistant to John G. Reckenbeil, attorney for the Defendants, certify that I have mailed a copy of the herein below listed pleading to Counsel in this matter, postage prepaid, on this 6th day of March 2014, as follows:

PLEADING: Defendant's Responses to Plaintiff's Third Discovery Requests

COUNSEL SERVED: C. Alexander Cable, Esq.
Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601

LAW OFFICE OF JOHN G. RECKENBEIL, LLC



Keri A. Eadie

Legal Assistant to John G. Reckenbeil, Esq.

P.O. Box 1633

Spartanburg, SC 29304

Phone: (864) 582-5472

Fax: (864) 582-7280

keri@johnreckenbeillaw.com

Date: March 6, 2014
Spartanburg, South Carolina

State of South Carolina
County of Greenville

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
IN THE COURT OF COMMON PLEAS
2013-CP-23-03057

~~2014 AUG 6 PM 2 34~~

Laurin Stinson,

Plaintiff,

v.

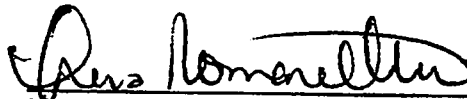
Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and Jurgen
Haubach,

Defendants.

CERTIFICATE OF SERVICE

This is to certify that a copy of Plaintiff's Memorandum in Support of Motion for Partial Summary Judgment was served on counsel for Defendants Hans & Franz, LLC d/b/a Hans & Franz Biergarten, Addys Dutch Café and Restaurant, Addy Sulley, and Jurgen Haubach, via United States mail, first class, with postage prepaid and properly affixed, on August 6, 2014 at the following address:

John G. Reckenbiel, Esquire
Law Office of John G. Reckenbiel, LLC
P.O. Box 1633,
Spartanburg, SC 29304



Lisa Romaniello
Legal Assistant to Brian Murphy
and C. Alexander Cable

Stephenson & Murphy, LLC
207 Whitsett Street
Greenville, SC 29601
Phone: (864) 370-9400
Fax: (864) 240-9292

STEPHENSON + MURPHY

ATTORNEYS AT LAW LLC

October 15, 2014

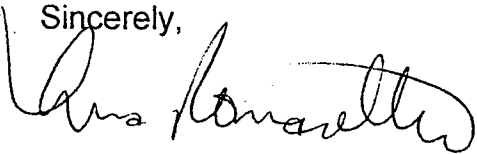
John G. Reckenbeil, Esquire
Law Office of John G. Reckenbeil, LLC
P.O. Box 1633,
Spartanburg, SC 29304

Re: *Laurin Stinson v. Hanz & Frans, LLC, et al.*
Civil Action No.: 2013-CP-23-03057

Dear Mr. Reckenbeil:

Enclosed please find a file-stamped copy of Plaintiff's Motion for Costs and Attorney's Fees with regard to the above-referenced matter.

Sincerely,



Lisa Romaniello
Legal Assistant

Enclosure

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Laurin Stinson,)

Plaintiff,)

vs.)

Hans & Franz, LLC d/b/a Hans & Franz)
Biergarten, et al)

Defendant.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-23-03057

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WICKENSIMER
2014 OCT 15 PM 3 15

Plaintiff's Attorney:

C. Alexander Cable, Bar No. 100561

Address:

Stephenson & Murphy, LLC, 207 Whitsett St.,
Greenville, SC 29601

Phone: 864-370-9400 Fax 864-240-9292

E-mail: alex@stephensonmurphy.com Other: _____

Defendant's Attorney:

John G. Reckenbeil, Bar No. _____

Address:

Law Office of John G. Reckenbeil, LLC,
Spartanburg, SC 29304

Phone: 864-582-5472 Fax 864-582-7280

E-mail: john@johnreckenbeillaw.com Other: _____

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached.

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

C. A. Cable

Signature of Attorney for ☒ Plaintiff/☐ Defendant

October 15, 2014

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

State of South Carolina)

IN THE COURT OF COMMON PLEAS

County of Greenville)

2013-CP-23-03057

Laurin Stinson,)

Plaintiff,
v.)

Plaintiff's Motion for Costs
and Attorney's Fees

Hans & Franz, LLC d/b/a Hans & Franz)
Biergarten, Addys Dutch Café and)
Restaurant, Addy Sulley, and)
Jurgen Haubach,)

Defendants.)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 OCT 15 PM 3 15

Introduction

Plaintiff, Laurin Stinson, by and through her undersigned counsel, hereby petitions this Court for approval of costs and attorney's fees related to Count I of the Complaint on which she has prevailed. For the reasons stated herein, Plaintiff respectfully requests that she be awarded \$20,700 in fees and \$1,523.65 in costs related to pursuing this litigation.¹

Statement of the Case

Count I arises under the Fair Labor Standards Act, 29 U.S.C. § 216(b). This Court granted summary judgment for Plaintiff's minimum wage claim in Form 4 judgment entered October 3, 2014.

Plaintiff's counsel handled this matter on a contingent basis. The Undersigned counsel for Plaintiff has handled this case as primary counsel of record. He has been involved in this case since February of 2013, and was formally retained by Plaintiff in

¹ See Affidavit of C. Alexander Cable (Exh. A). Plaintiff is seeking only those fees either directly associated with or related to the claim upon which judgment has been granted. Plaintiff does not seek fees for any other claims.

May of 2013. During the roughly 17 months that this case has been pending, he has devoted over 100 hours of attorney time to the case and his firm advanced over \$1,500 in expenses. See Affidavit of C. Alexander Cable and attachments (Exh. A). Detailed summaries of Plaintiff's counsel's time entries and costs are attached to the Affidavit.

Discussion

Costs and attorney's fees are specifically provided for by the FLSA. 29 U.S.C. § 216(b) ("The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action."). The award of fees is mandatory; however, the amount granted is subject to this Court's discretion. *Fegley v. Higgins*, 19 F.3d 1126, 1134 (6th Cir.1994), *cert. denied*, 513 U.S. 875 (1994)).

A. Attorney's Fees

"In calculating an award of attorney's fees, a court must first determine a lodestar figure by multiplying the number of reasonable hours expended times a reasonable rate." *Robinson v. Equifax Info. Services, LLC*, 560 F.3d 235, 243 (4th Cir. 2009) (citing *Grissom v. The Mills Corp.*, 549 F.3d 313, 320 (4th Cir. 2008)). In fee-shifting cases, this amount is generally considered the presumptively reasonable fee in a case that is successfully litigated to judgment. See *Alexander S. v. Boyd*, 929 F. Supp. 925, 932 (D.S.C. 1995), *aff'd mem.* 89 F.3d 827 (4th Cir. 1996).

In determining the lodestar "reasonable hours" and a "reasonable rate," Fourth Circuit precedent requires fees be awarded pursuant to the twelve-factor test of *Barber v. Kimbrell's Inc.*, 577 F.2d 216 (4th Cir. 1978) (adopting factors in *Johnson v. Georgia*

Hwy Express, Inc., 488 F.2d 714 (5th Cir. 1974)); *Robinson*, 560 F.3d at 243 (citations omitted).²

The lodestar figure, determined by multiplying reasonable hourly rates by the reasonable number of hours involved, is generally considered to be the proper starting point for determining a statutory award of attorney's fees. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The "reasonableness" of the lodestar figure is then tested against the following twelve factors from *Barber*: (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the expertise, reputation, and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorney's fees awards in similar cases.

577 F.2d at 266.

1. Time and Labor Expended

As set forth in the Affidavit of C. Alexander Cable and its attachments, which is provided as Exhibit A, Plaintiff's counsel has expended over 100 hours of attorney time in connection with this matter.

The undersigned attorney has been actively litigating this matter since late May 2013. This case involved significant discovery, including the review and analysis of hundreds of Bates-labeled documents, plus hundreds of individual entries on time and payroll records. Plaintiff also successfully brought a motion to compel discovery, which significantly helped shape and define the issues in the case. Plaintiff brought a prior motion for partial judgment, after which he engaged in more discovery in line with the

² Though the South Carolina Supreme Court has not addressed the matter, because the determination of fees relies on federal law, use of federal precedent and factors is appropriate. See, e.g., *Stanley v. McDaniel*, 128 Idaho 343, 350, 913 P.2d 76, 83 (Ct. App. 1996); *Tacke v. Energy W., Inc.*, 2010 MT 39, 355 Mont. 243, 251, 227 P.3d 601, 608.

order of Judge Hill. Defense counsel vigorously defended this claim, and presented a number of new and unique arguments for the Court to consider. "Such a vigorous defense necessarily requires the Plaintiffs counsel to expend more hours and drives up the ultimate charge of attorneys fees billed to a non-prevailing defendant." *James v. Wash Depot Holdings, Inc.*, 489 F. Supp. 2d 1341, 1353-54 (S.D. Fla. 2007).

As is discussed in the affidavit of Andrew Arnold, the amount of time and labor expended in this case was reasonable and expected. (Exh. B).

2. Novelty and Difficulty of Questions Raised

As the Court is aware, and as Defense counsel noted to this Court a number of times, minimum wage cases under the Fair Labor Standards Act can be very complex and difficult, involving the interaction among various statutes, regulations, and evolving caselaw. "FLSA claims and wage-and-hour law enforcement through litigation has been found to be complex by the Supreme Court and lower courts." *Brumley v. Camin Cargo Control, Inc.*, CIV.A. 08-1798 JLL, 2012 WL 1019337 (D.N.J. Mar. 26, 2012) *citing* *Barrentine v. Arkansas-Best Freight Sys.*, 450 U.S. 728, 743 (1981). The difficulty of this case is appropriately reflected in the hours and time entries submitted by Plaintiff's counsel.

3. Skill Required

Because of the difficulty of this case, as discussed above, a high degree of skill was required to perform the legal services rendered in this matter. "FLSA cases . . . tend to deter attorneys from representing plaintiffs because they involve novel legal issues and require special skill by counsel." *Briggins v. Elwood TRI, Inc.*, 1:08-CV-1861-KOB, 2014 WL 975701 (N.D. Ala. Mar. 11, 2014).

Employment law is currently perhaps one of the most dynamic areas of the law, requiring counsel to stay abreast of developments in both state and federal law. For that reason, this factor relies heavily upon "the attorney's work product, his preparation, and general ability before the court." *Johnson v. Georgia Highway Exp., Inc.*, 488 F.2d 714, 718 (5th Cir. 1974). The Undersigned respectfully submits that he has met this Court's expectations, as evidenced by winning summary judgment.

4. Opportunity Costs

As summarized in the time sheets attached to the Undersigned's Affidavit, this case involved more than 100 attorney hours. This time commitment represents a significant opportunity cost in terms of other cases, either hourly or contingency, on which the Undersigned could have worked over the past 17 months. In addition, Plaintiff's counsel has advanced all of the costs of this litigation, without any guarantee of recompense, since Plaintiff did not have the ability to pay the costs associated with this case.

5. Customary Fee for Like Work

Generally, the hourly rate included in an attorney fee calculation should be the "prevailing market rates in the relevant community." *Rum Creek Coal Sales, Inc v. Caperton*, 31 F.3d 169, 175 (4th Cir. 1994). As set forth in the Affidavit of Andrew Arnold, the requested attorney's fees rate is well within the market rate for competent employment lawyers in South Carolina. (Exh. B). Indeed, Mr. Arnold stated that he considers the fee hourly rate to be low. *Id.*

6. Attorney's Expectations

Plaintiff's counsel accepted this case on a contingent basis, with the understanding that if Plaintiff prevailed at trial, the Court would make an award of fees pursuant to the FLSA.

7. Time Limitations

The time required by the circumstances of this case are discussed in connection with items 1 and 4 above. No time other limitations were imposed by the client.

8. Amount in Controversy and Results Obtained

The Fourth Circuit has acknowledged that "'the most critical factor' in calculating a reasonable fee award 'is the degree of success obtained.'" *Brodziak v. Runyon*, 145 F.3d 194, 196 (4th Cir. 1998) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983)). As to the claim for which Plaintiff sought judgment, Plaintiff prevailed on every issue and has fully proven her entitlement to full recovery.

The purpose of statutory attorney's fees in wage cases is to provide an incentive for attorneys to accept and prosecute claims under the statute where relatively small sums for a particular Plaintiff are at issue. Otherwise, an aggrieved Plaintiff would not be able to obtain representation against an employer who has more resources to hire lawyers to defend claims. Employer violations would then occur with impunity. See, e.g., *James v. Wash Depot Holdings, Inc.*, 489 F. Supp. 2d 1341, 1353 (S.D. Fla. 2007); see also *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 483 U.S. 711, 725, 107 S. Ct. 3078, 3087, 97 L. Ed. 2d 585 (1987) (discussing the purpose of fee-shifting statutes). In summary, the results obtained on Plaintiffs' behalf in this case amply support the request for attorney's fees and costs.

9. Expertise, Reputation, and Ability of Attorney

This case was handled entirely by the undersigned counsel, who is part of a small firm in Greenville, South Carolina. Plaintiff's counsel's qualifications are recited in the Affidavit of C. Alexander Cable attached hereto. In summary, the undersigned graduated from law school with honors while serving as an editor for the *South Carolina Law Review*. Since entering private practice, the undersigned has practiced extensively in the area of employment litigation. Furthermore, the Affidavit of Andrew Arnold, a noted and respected employment lawyer attorney in South Carolina, has offered a favorable opinion of the Undersigned counsel's ability and reputation.

10. Undesirability of the Case

The risk of non-payment makes Plaintiffs' employment cases, particularly ones involving such complex and little-known provisions of the FLSA, undesirable. Courts across the country have recognized the need for lawyers who are willing to represent plaintiffs in employment cases. *E.g.*, *Lattimore v. Oman Contr.*, 868 F.2d 437, 439 (11th Cir. 1989); *see also Stokes v. City of Montgomery, Ala.*, 705 F. Supp. 811, 817 (M.D. Ala. 1988); *Caston v. Sears, Roebuck & Co., Hattiesburg, Miss*, 556 F. 2d 1305, 1309 (1977).

11. Nature and Length of Professional Relationship

The undersigned has represented Plaintiff for approximately seventeen months during the course of this litigation. This is the first matter for which the undersigned has provided any legal services to Plaintiff, so this factor does not have much application in this Motion.

12. Attorney's Fee Awards in Similar Cases

The attorney's fees and costs requested by Plaintiffs are in line with awards in other employment cases in South Carolina. *E.g.*, *Barton v. House of Raeford Farms, Inc.*, No. 6:09-cv-01901-JMC (D.S.C. July 18, 2012), *reversed on other grounds*, 745 F.3d 95, 100 (4th Cir. 2014) *cert. denied*, 13-1544, 2014 WL 2891538 (U.S. Oct. 6, 2014) (300 per hour and 200 per hour for associate work); *George et al. v. Pro Med Ambulance Service, LLC*, C/A No. 2:10-cv-00087-RMG (D.S.C. Oct. 20, 2011) (\$350 per hour); *Banks v. Allied Crawford Greenville, Inc. et al.*, C/A No. 6:09-cv-01337-JMC (\$300); *Rosetti v. World Group Mortgage, LLC*, 2005-CP-23-00550 (Greenville County Ct. of Common Pleas) (\$300.00 per hour); *Miller v. HSBC Fin. Corp.*, 3:08-cv-01942-MJP, 2010 WL 2722689 (D.S.C. July 9, 2010) (\$290.00 per hour); *Harrison-Belk v. Rockhaven Community Care Home*, 3:07-54-CMC, 2008 WL 2952442 (D.S.C. July 29, 2008) (\$290.00 per hour), *aff'd sub. nom Harrison-Belk v. Barnes*, 319 Fed. Appx. 277 (4th Cir. 2009).

B. Costs and Expenses

Plaintiff has also provided an accounting for the costs and expenses associated with this litigation totaling \$1,523.65. Exh. A. Such sums are permitted under 29 U.S.C. § 216. Furthermore, "where attorney's fees are expressly authorized by statute . . . , the trial court is not limited to Rule 54(d), but, in addition, has authority to include litigation expenses as part of a reasonable attorney's fee." *Hexion Specialty Chemicals, Inc. v. Oak-Bark Corp.*, 7:09-CV-105-D, 2012 WL 2458638 (E.D.N.C. June 27, 2012) (quoting *Herold v. Hajoca Corp.*, 864 F.2d 317, 323 (4th Cir. 1988)).

Conclusion

For all of the foregoing reasons, Plaintiff respectfully requests that the Court approve attorney's fees of \$20,700 to Plaintiff's counsel. In addition, Plaintiff respectfully requests that the Court approve reimbursement of \$1,523.67 in costs, for a total of \$22,223.67.

Respectfully submitted this 15th day of October, 2014.

For the Plaintiff:



Brian P. Murphy, No. 6770
C. Alexander Cable, No. 100561

Stephenson & Murphy, LLC
207 Whitsett Street
Greenville, SC 29601
(864) 370-9400
(864) 240-9292 (fax)

Attorneys for Plaintiff

EXHIBIT A

County of Greenville

IN THE COURT OF COMMON PLEAS

2013-CP-23-03057

Plaintiff,

V.

Affidavit

**Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and
Jurgen Haubach,**

Defendants.

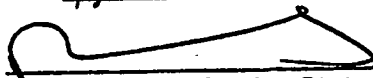
4. I served as the principal attorney in the above-captioned matter.

5. My regular hourly rate for employment cases is \$200. To the best of my knowledge, this is the hourly rate customarily charged by lawyers with my experience and type of practice in South Carolina.
6. All of the hours for which I am seeking fees as indicated in the attached chart were devoted either entirely to the minimum wage claim for which summary judgment was granted or were related and intertwined to actions advancing that claim.
7. The records of my time and activities in this matter were kept contemporaneously as the events occurred and were documented in time-keeping software that I regularly use.
8. I verify under oath that the amount of my fees and costs stated in Plaintiffs' Verified Motion for Attorney Fees and Costs are true and correct.

FURTHER THE AFFIANT SAYETH NAUGHT.


C. Alexander Cable

Sworn to and subscribed before me
this 13th day of October, 2014.


Notary Public for the State of South Carolina
My Commission Expires: 9/11/15

ATTACHMENT 1

Stinson v. Hans & Franz et al

Date	Emp	Hours	Rate	Amount	Description
2/12/13	Cac	:45	200	150	Initial client meeting and review of facts of case
2/13/13	Cac	6:21	200	1270	Researching FLSA and SC Wage Payment Law.
2/18/13	Cac	:28	200	93.33	Email communications with client regarding claims
5/19/13	Cac	2:11	200	436.67	Additional legal research and drafting explanatory memorandum regarding claims
5/20/13	Cac	3:02	200	606.67	Drafting initial pleadings
5/24/13	Cac	1:11	200	236.67	Continued drafting of pleadings
5/30/13	Cac	:31	200	103.33	Continued drafting of pleadings and filing Complaint
7/9/13	Cac	2:11	200	436.67	Drafting initial discovery requests
7/10/13	Cac	:52	200	173.33	Continued drafting of discovery requests
7/17/13	Cac	:29	200	96.67	Finalizing and serving discovery requests
10/3/13	Cac	1:09	200	230	Review of Defendants' discovery responses
10/4/13	Cac	:14	200	46.67	Conference with Defense counsel regarding discovery
10/7/13	Cac	1:26	200	286.67	Drafting and filing Motion to Compel
10/9/13	Cac	1:09	200	230	Meeting with Client to review Defense discovery requests
11/1/13	Cac	5:02	200	1006.67	Preparing Plaintiffs discovery responses
11/4/13	Cac	7:28	200	1493.33	Preparing Plaintiff's discovery responses
11/5/13	Cac	:22	200	73.33	Preparing Plaintiff's discovery responses
11/11/13	Cac	:54	200	180	Hearing prep for Motion to Compel
11/12/13	Cac	4:05	200	816.67	Additional Hearing prep and Hearing before Judge Hill
12/3/13	Cac	:41	200	136.67	Reviewing Defendants' discovery responses
12/4/13	Cac	:40	200	133.33	Conference with Defense counsel regarding discovery and settlement
12/18/13	Cac	1:59	200	396.67	Researching and beginning initial draft of motion for partial summary judgment
12/20/13	Cac	:33	200	110	Drafting motion to partial summary judgment
12/23/13	Cac	2:53	200	567.67	Meeting with client and procuring affidavit for motion for partial summary judgment. Finalizing and serving motion
2/10/14	Cac	:31	200	103.33	Initial research and drafting for MSJ memo
2/11/14	Cac	:53	200	176.67	Initial research and drafting for MSJ memo

000244

2/12/14	Cac	7:39	200	1530	Drafting MSJ memo and Drafting/serving PL Third Discovery to Defendants
2/13/14	Cac	1:28	200	293.33	Drafting MSJ memo
2/14/14	Cac	1:19	200	263.33	Revising and editing MSJ memo
2/17/14	Cac	1:47	200	356.67	MSJ hearing prep
2/18/14	Cac	4:06	200	820	MSJ hearing preparation and hearing before Judge Hill
3/18/14	Cac	3:04	200	613.33	Drafting PL Fourth Discovery to Defendants
3/19/14	Cac	:38	200	126.67	Drafting PL Fourth Discovery to Defendants
4/4/14	Cac	3:02	200	606.67	Mediation preparation and conference
6/11/14	Cac	1:01	200	203.33	Drafting second motion for partial summary judgment
8/4/14	Cac	6:23	200	1276.67	Researching and Drafting MSJ memorandum
8/6/14	Cac	1:33	200	310	Drafting MSJ memonrandum
8/11/14	Cac	8:14	200	1646.67	Summary judgment hearing before Judge Hill. Further case research regarding actual economic harm in cases of 203(m) violations
9/10/14	Cac	:41	200	136.67	Pretrial conference communications with opposing counsel and filling out form
9/18/14	Cac	1:56	200	386.67	Drafting proposed settlement agreement for mediation and draft letter to Judge Hill with additional authorities in case of unsuccessful mediation
9/21/14	Cac	:44	200	146.67	Mediation preparation
9/22/14	Cac	5:11	200	1036.67	Mediation Conference and Draft letter to Judge Hill regarding failed mediation and additional authorities
9/26/14	Cac	1:38	200	326.67	Additional correspondence to Judge Hill regarding Defense counsel's letter and additional authorities
10/8/14	Cac	4:28	200	893.33	Drafting proposed order of summary judgment

Case Totals:

100:21 (100.35)

20,070.00

ATTACHMENT 2

Laurin Stinson - Costs

Date	Check No.	Vendor	Amount	For
5/30/13	3334	Clerk of Court	\$150.00	Filing fee - summons & complaint
6/14/13	3350	Proietta & Assoc.	\$95.00	Service of Summons, Complaint & Discovery on all defendants
6/28/13	3365	SCDEW	\$20.00	Subpoena - fees for processing
7/9/13	3373	Clerk of Court	\$25.00	Filing fee - Pl Motion for Default
7/16/13	3393	SCDEW	\$5.00	Supplemental fee for subpoena - fees are now \$25
10/7/13	3460	Clerk of Court	\$25.00	Filing fee - Pl Motion to Compel
12/23/13	3543	Clerk of Court	\$25.00	Filing fee - Pl Motion for Partial Summary Judgment
2/21/14	3604	Hollie M. Jenkins/Court Reporter	\$65.00	Copy of Hearing Transcript for hearing on 2/18/14
4/7/14	3662	Rothstein Law Firm, PA	\$270.00	Mediation - 4/4/14
8/18/14	TBD	Hollie Jenkins, Circuit Court Reporter	\$110.50	Copy of Hearing Transcript for hearing of 8/11/14
9/22/14	1092	Alex - 59.2 miles/Spartanburg	\$33.15	Mileage reimbursement - Mediation on 9/22/14
9/22/14	TBD	Ford & Harrison	\$700.00	Mediation on 9/22/14 with Clay Keim
			1523.65	

EXHIBIT B

State of South Carolina)
) Affidavit
County of Greenville)

W. Andrew Arnold states that he is an adult over the age of eighteen (18) years of age, that the factual matters herein are true and correct to the best of his knowledge, and that the opinions expressed herein are provided in good faith and are honestly held by the affiant:

1. I am a 1992 graduate of the University of South Carolina School of Law and have practiced primarily in the area of employment law during the past twenty two years. I was employed a large defense firms for approximately for (2) years before starting my own practice. Since 1994, I have represented primarily plaintiffs in employment litigation as a solo practitioner and now for a two lawyer firm, Law Office of W. Andrew Arnold, P.C. I am licensed to practice law before the United States Court of Appeals for the Fourth Circuit, the United States District Court for the District of South Carolina, and all courts in the State of South Carolina. I am listed in both SuperLawyers and Best Lawyers in America.

2. Since November 1992, I have practiced law in Greenville, South Carolina. I am familiar with and/or know well most of the employment law practitioners in the Upstate on both sides, including counsel for Plaintiff and Defendant. For a couple of years, I practiced law with Brian Murphy, Alex Cable's supervising partner, and am familiar with the work of Mr. Cable and Mr. Murphy do in the employment litigation arena. This firm is well respected and considered one of the top employment law firms in South Carolina.

3. There are few employment law practitioners in South Carolina who represent individuals in employment matters. This area is not as lucrative as personal injury, and the subject matter is not generally known or understood by most plaintiff's lawyers. The Fair Labor Standards Act (FLSA) can be particularly complex, and I know that individuals with FLSA

claims that have a hard time obtaining representation. Moreover, many employment claims face aggressive defense by defense lawyers who specialize in employment law and/or defense lawyers whose practice is exclusively employment litigation defense. The Defendant in this case was well represented, and counsel for the defense is known for providing skilled representation in employment matters.

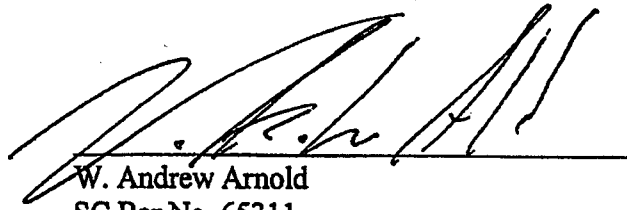
4. I have reviewed Mr. Cable's time entries and his fee petition. I submit that the time spent is reasonable and that the overall petition is fair and reasonable given the complexities of this matter and the skill and effort necessary to represent the Plaintiff in this matter. Moreover, prevailing on summary judgment is a not only a favorable outcome, but one that is achieved with less time than is typical in a case such as this.

5. I am also aware that Plaintiff seeks \$200 per hour for Mr. Cable's time. This is below my normal hourly rate and below what many employment practitioners charge, although I know Mr. Cable's has been practicing only a few years and his rate reflects his experience level. Nonetheless, the rate sought is well within the market rates charged by those with similar skills and experience, although I believe it is on the low side. I generally charge fees at a rate of \$300/hr and know that lawyers who defend these claims charge rates considerably higher.

6. An award of attorney fees in cases brought under the FLSA is essential if South Carolinians are going to be able to obtain representation. Defendants are well represented by legal counsel who practice employment law exclusively. Plaintiff's lawyers accept employment cases on a contingency fee in most cases and this risk can only be justified if courts will award a reasonable fee when their clients prevail. The fee sought in this case is more than reasonable.

7. I swear that the foregoing is true and correct.

Dated this 14th day of October 2014.

A handwritten signature in black ink, appearing to read 'W. Andrew Arnold', is written over a horizontal line.

W. Andrew Arnold
SC Bar No. 65311
712 E. Washington Street
Greenville, SC 29601
864.242.4800 864.242.4885 fax
aarnold@aalawfirm.com

State of South Carolina

County of Greenville

) IN THE COURT OF COMMON PLEAS
)
) 2013-CP-23-03057

Laurin Stinson,

Plaintiff,

v.

Hans & Franz, LLC d/b/a Hans & Franz
Biergarten, Addys Dutch Café and
Restaurant, Addy Sulley, and Jurgen
Haubach,

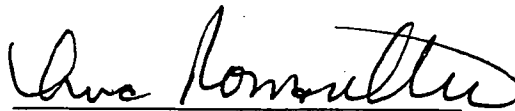
Defendants.

CERTIFICATE OF SERVICE

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 OCT 15 PM 3 15

This is to certify that a copy of Plaintiff's Motion for Costs and Attorney's Fees was served on counsel for Defendants Hans & Franz, LLC d/b/a Hans & Franz Biergarten, Addys Dutch Café and Restaurant, Addy Sulley, and Jurgen Haubach, via United States mail, first class, with postage prepaid and properly affixed, on October 15, 2014 at the following address:

John G. Reckenbiel, Esquire
Law Office of John G. Reckenbeil, LLC
P.O. Box 1633,
Spartanburg, SC 29304



Lisa Romaniello
Legal Assistant to Brian Murphy
and C. Alexander Cable

Stephenson & Murphy, LLC
207 Whitsett Street
Greenville, SC 29601
Phone: (864) 370-9400
Fax: (864) 240-9292

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Laurin Stinson

vs.

Hans & Franz, LLC, et al.

FILED-CLERK OF COURT

GREENVILLE CASE NO: 2013-CP-23-03057

PAUL B. WICKENSIMER

MOTION AND ORDER INFORMATION

2017 DEC 18 AM 9 35 FORM AND COVERSHEET

Defendant.

Plaintiff's Attorney:

Brian Murphy, Bar No. _____

Address:

201 Whitsett Street, Greenville, SC 29601

Phone: 864-370-9400 Fax 864-240-9292

E-mail: brian@stephensonmurphy.com Other: _____

Defendant's Attorney:

John G. Reckenbeil, Bar No. 68610

Address:

P.O. Box 1633, Spartanburg, SC 29304

Phone: 864-582-5472 Fax 864-582-7280

E-mail: john@johnreckenbeillaw.com Other: _____

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Reconsider

Estimated Time Needed: 30 min

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25-

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

LAURIN STINSON,)

Plaintiff,)

v.)

HANS & FRANZ, LLC d/b/a HANS &
FRANZ BIERGARTEN, ADDYS DUTCH
CAFÉ AND RESTAURANT, ADDY
SULLEY, AND JUERGEN HAUBACH,)

Defendants.)

IN THE COURT OF COMMON PLEAS

**DEFENDANTS' MOTION TO
RECONSIDER**

C.A. No. 2013-CP-23-03057

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 DEC 18 AM 9 33

TO: THE HONORABLE D. GARRISON HILL

Defendants, by and through their undersigned counsel, respectfully submit this Motion to Reconsider the Order Granting Plaintiff's request for attorney fees and costs.

BACKGROUND

On May 30, 2013, Plaintiff filed a complaint against the above-named Defendants alleging that they failed to pay her minimum wage and overtime during her employment as a server at the Hans & Franz Restaurant. As to the minimum wage claim, Plaintiff alleged that "Defendant impermissibly shifted operating costs to Plaintiff by deducting sums from her wages, thereby reducing her hourly compensation amount below minimum wage [and that] Defendant did not pay Plaintiff minimum during her training period." (Pl.'s comp. ¶ 21-22).

As to the overtime claim, Plaintiff alleged that "Defendant impermissibly calculated Plaintiff's overtime rate at 150% of her tip credit wage, rather than minimum wage. . . [thereby leading] to a deficiency in Plaintiff's compensation." (Pl.'s comp. ¶ 24-25).

After conducting discovery, Plaintiff seemed to all but abandon the overtime claim and focus on the minimum wage claim. Essentially, Plaintiff's minimum wage claim rested solely on this Court's interpretation of § 203(m) of the FLSA which lays out the rules employers must follow when they pay their employees pursuant to a tip credit scheme (\$2.13 direct wages + \$5.12 tip credit = \$7.25 minimum wage). 29 U.S.C. § 203(m) mandates that in order to take a tip credit the employer must: (1) inform the employee of the tip credit; and **(2) allow the employee to retain all their tips**. Plaintiff made the argument that because she was not allowed to retain all her tips her employer cannot benefit from a tip credit thereby deeming her hourly wage to only \$2.13 in direct wages. Plaintiff moved for partial summary judgment on this issue alone.

Defendants argued that even if this was the case they would be entitled to an offset by the sums distributed to Plaintiff as service charges. (Pl's Motion in Opp. P. 4 *relying on* U.S. Dept. of Labor Fact Sheet # 15). At the Hans & Franz Restaurant, each party of six (6) or more guests is assessed a mandatory 20% service charge added to the costs of the bill. The FLSA, U.S. Department of Labor, and the IRS treat these service charges as wages and not as tips.¹ Since Plaintiff was paid this money, she made more than only \$2.13 in direct wages.

This Court granted Plaintiff's motion for partial summary judgment in reliance of Plaintiff's interpretation of 29 U.S.C. § 203 and calculated her actual damages as \$9,587.25. To arrive at this number, this Court multiplied the amount of the tip credit (\$5.12) x the number of hours worked (1872.51). Nowhere in this Court's Order, dated October 17, 2014, was there any mention of Defendant's argument addressing the service charges issue. The Court's only statement concerning Defendants' argument addressed "surcharges from Plaintiff's credit card

¹ 29 CFR 531.55(b) As stated above, service charges and other similar sums which become part of the employer's gross receipts are not tips for the purposes of the Act. Where such sums are distributed by the employer to its employees, however, they may be used in their entirety to satisfy the monetary requirements of the Act; Wage-Hour Opinion Letter 2005-31; IRS Revenue Ruling 2012-18.

tips.” (Court’s October 17, 2014 Order P. 4 fn. 4). Defendants believe that the Court was referring to charges assessed against Defendants by the credit card companies when customers charge items at their restaurant and not service charges that Defendants assess against large parties.

It is currently unclear as to whether this Court ruled on Defendants’ argument addressing service charges. Defendants have appealed the actual damage calculation of this Court’s October 17th Order. However, Defendants believe that a ruling on his argument is necessary before such can be heard before the South Carolina Court of Appeals. Ranson v. SC Water Resources Comm., 321 S.C. 211 (Ct. App. 1996).

Defendants believe that the Plaintiff’s attorney fee and costs award would be overturned if the Court of Appeals finds that Plaintiff’s actual damage award was miscalculated.² Further, Defendants believe it is improper to award attorney fees without a full hearing and opportunity to discuss certain issues involving the actual damage calculation performed by this Court.

STANDARD

“The purpose of Rule 59(e), SCRPC, to alter or amend the judgment[,] is to request the trial judge to reconsider matters properly encompassed in a decision on the merits.” Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992) (quoting Budinich v. Becton Dickinson and Co., 486 U.S. 196, 200, 108 S.Ct. 1717, 100 L.Ed.2d 178 (1988)).

Generally, an issue must be raised to and ruled upon by the circuit court to be preserved. Elam v. S. Carolina Dep’t of Trans., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (noting a party must file a Rule 59(e) motion “when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review”).

² If Defendants’ argument concerning service charges prevails then Plaintiff would only be entitled to approximately \$2,395.98 (See Exhibit A)

ANALYSIS

A. Attorney Fees and Costs Award

In assessing the reasonableness of the hours and rate claimed, the Court considers the following twelve factors, as adopted by the Fourth Circuit:

(1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases.

Barber v. Kimbrell's, Inc., 577 F.2d 216, 226 n.28 (4th Cir. 1978). The twelve-factor test is subsumed in the initial calculation of the lodestar award.

However, several circumstances will counsel a reduction in an attorney's fee, even where the FLSA plaintiff is entitled to an award. Mainly, a reduction is warranted when success was achieved on only some claims or when there is a disproportionately low recovery relative to the attorney fee award sought. Hensley v. Eckerhart, 461 U.S. 424 (1983); Dotson v. Pfizer, Inc., 558 F.3d 284, 303 (4th Cir. 2009) ("Even when an award of attorneys' fees is mandatory, the district court may decrease the amount of fees that might otherwise be awarded in order to account for the plaintiff's limited success."). Lewis v. Kendrick, 944 F. 2d 949, 958 (1st Cir. 1991) (attorney's fee request of over \$50,000 denied in light of 3 jury verdict of \$1,000); Saizan v. Delta Concrete Products Co., Inc., 448 F.3d 795 (5th Cir. 2006) (Fees reduced from \$114,000

to \$13,000 due to limited success); Goss v. Killian Oaks House of Learning, 248 F. Supp. 2d 1162 (S.D. Fla. 2003) (\$316 damages recovered versus \$16,000 fees requested).

Since Defendants believe that Plaintiff's recovery is disproportionately low relative to the attorney fees requested, they believe that such award is improper. The Court's Order granting Plaintiff's partial summary judgment on the minimum wage issue makes no mention of Defendants' argument concerning an offset for the service charges. With the offset equating to a material issue of genuine fact in dispute, summary judgment is not proper, and if summary judgment is not proper then the award for Plaintiff's counsel is premature. Until there is a hearing on this issue, this Court cannot properly assess whether an attorney fee award is proper.

LAW OFFICE OF JOHN G. RECKENBEIL, LLC



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Lawrence E. McNair, III
215 Magnolia Street (29306)
Post Office Box 1633
Spartanburg, SC 29304
Phone: (864) 582-5472
Fax: (864) 582-7280

ATTORNEYS FOR DEFENDANTS

Dated: December 15, 2014
Spartanburg, South Carolina

2/13/2012	2/25/2012
svc charges	hrs worked
180.63	58.13
direct wages (\$2.13)	\$2.13
direct wages svc	\$3.11
Total hourly wage	\$5.24
Short Min Wage	\$2.01
Total Amt. Owed	\$117.00

2/26/2012	3/10/2012
svc charges	hrs worked
237.28	54.52
direct wages (\$2.13)	\$2.13
direct wages svc	\$4.35
Total hourly wage	\$6.48
Short Min Wage	\$0.77
Total Amt. Owed	\$41.86

3/11/2012	3/24/2012
svc charges	hrs worked
326.24	63.64
direct wages (\$2.13)	\$2.13
direct wages svc	\$5.13
Total hourly wage	\$7.26
short Min Wage	\$0.00
Total Amt. Owed	\$0.00

3/25/2012	4/7/2012
svc charges	hrs worked
335.15	80
direct wages (\$2.13)	\$2.13
direct wages svc	\$4.19
Total hourly wage	\$6.32
short Min Wage	\$0.93
Total Amt. Owed	\$74.45

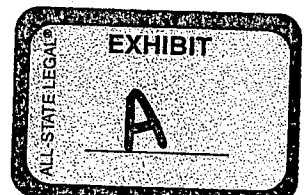
4/8/2012	4/21/2012
svc charges	hrs worked
552.48	78.39
direct wages (\$2.13)	\$2.13
direct wages svc	\$7.05
Total hourly wage	\$9.18
short Min Wage	\$0.00
Total Amt. Owed	\$0.00

4/22/2012	5/5/2012
svc charges	hrs worked
359.1	65.45
direct wages (\$2.13)	\$2.13
direct wages svc	\$5.49
Total hourly wage	\$7.62
short Min Wage	\$0.00
Total Amt. Owed	\$0.00

5/6/2012	5/14/2012
svc charges	hrs worked
164.39	58.86
direct wages (\$2.13)	\$2.13
direct wages svc	\$2.79
Total hourly wage	\$4.92
short Min Wage	\$2.33
Total Amt Owed	\$136.97

5/20/2012	6/3/2012
svc charges	hrs worked
222	63.21
direct wages (\$2.13)	\$2.13
direct wages svc	\$3.51
Total hourly wage	\$5.64
short Min wage	\$1.61
Total Amt Owed	\$101.64

Total \$471.92
Avg Owed \$58.99



6/4/2012	6/17/2012
svc charges	hrs worked
280.29	62.25
direct wages (\$2.13)	\$2.13
direct wages svc	\$4.50
Total hourly wage	\$6.63
Short Min Wage	\$0.62
Total Amt. Owed	\$38.43

6/18/2012	7/1/2012
svc charges	hrs worked
245.03	62.5
direct wages (\$2.13)	\$2.13
direct wages svc	\$3.92
Total hourly wage	\$6.05
Short Min Wage	\$1.20
Total Amt. Owed	\$74.97

7/2/2012	7/15/2012
svc charges	hrs worked
96.5	45
direct wages (\$2.13)	\$2.13
direct wages svc	\$2.14
Total hourly wage	\$4.27
Short Min Wage	\$2.98
Total Amt. Owed	\$133.90

7/16/2012	7/29/2012
svc charges	hrs worked
349.09	60.16
direct wages (\$2.13)	\$2.13
direct wages svc	\$5.80
Total hourly wage	\$7.93
Short Min Wage	\$0.00
Total Amt. Owed	\$0.00

7/30/2012	8/12/2012
svc charges	hrs worked
116.44	63.83
direct wages (\$2.13)	\$2.13
direct wages svc	\$1.82
Total hourly wage	\$3.95
Short Min Wage	\$3.30
Total Amt. Owed	\$210.37

8/13/2012	8/26/2012
svc charges	hrs worked
488.49	71.54
direct wages (\$2.13)	\$2.13
direct wages svc	\$6.83
Total hourly wage	\$8.96
Short Min Wage	\$0.00
Total Amt. Owed	\$0.00

8/27/2012	9/9/2012
svc charges	hrs worked
341.41	57.85
direct wages (\$2.13)	\$2.13
direct wages svc	\$5.90
Total hourly wage	\$8.03
Short Min Wage	\$0.00
Total Amt. Owed	\$0.00

9/10/2012	9/23/2012
svc charges	hrs worked
347.29	73.63
direct wages (\$2.13)	\$2.13
direct wages svc	\$4.72
Total hourly wage	\$6.85
Short Min Wage	\$0.40
Total Amt. Owed	\$29.70

Total \$487.37
Avg Owed \$60.92

9/24/2012	10/7/2012
svc charges	hrs worked
242.05	80
direct wages (\$2.13)	\$2.13
direct wages svc	\$3.03
Total hourly wage	\$5.16
Short Min Wage	\$2.09
Total Amt. Owed	\$167.55

10/8/2012	10/21/2012
svc charges	hrs worked
334.86	75.14
direct wages (\$2.13)	\$2.13
direct wages svc	\$4.46
Total hourly wage	\$6.59
Short Min Wage	\$0.66
Total Amt. Owed	\$49.86

10/22/2012	11/4/2012
svc charges	hrs worked
397.18	50.34
direct wages (\$2.13)	\$2.13
direct wages svc	\$7.89
Total hourly wage	\$10.02
Short Min Wage	\$0.00
Total Amt. Owed	\$0.00

11/5/2012	11/18/2012
svc charges	hrs worked
124.85	44.67
direct wages (\$2.13)	\$2.13
direct wages svc	\$2.79
Total hourly wage	\$4.92
Short Min Wage	\$2.33
Total Amt. Owed	\$103.86

11/19/2012	12/2/2012
svc charges	hrs worked
29.1	24.03
direct wages (\$2.13)	\$2.13
direct wages svc	\$1.21
Total hourly wage	\$3.34
Short Min Wage	\$3.91
Total Amt. Owed	\$93.93

12/3/2012	12/16/2012
svc charges	hrs worked
215.93	46.94
direct wages (\$2.13)	\$2.13
direct wages svc	\$4.60
Total hourly wage	\$6.73
Short Min Wage	\$0.52
Total Amt. Owed	\$24.40

12/17/2012	12/30/2012
svc charges	hrs worked
159.09	50.59
direct wages (\$2.13)	\$2.13
direct wages svc	\$3.14
Total hourly wage	\$5.27
Short Min Wage	\$1.98
Total Amt. Owed	\$99.93

12/31/2012	1/13/2013
svc charges	hrs worked
15.22	32.03
direct wages (\$2.13)	\$2.13
direct wages svc	\$0.48
Total hourly wage	\$2.61
Short Min Wage	\$4.64
Total Amt. Owed	\$148.77

1/14/2013	1/27/2013
svc charges	hrs worked
120.71	36.94
direct wages (\$2.13)	\$2.13
direct wages svc	\$3.27
Total hourly wage	\$5.40
Short Min Wage	\$1.85
Total Amt. Owed	\$68.42

2/13/12 - 1/27/13	
Total Amt. Owed	\$1,716.01
Missing Oct 2011 (DOH) - Feb 2012	
Average Owed Per 2 week period	\$68.00
roughly 20 weeks missing -average amt	
owed every 2 weeks is \$68.00	
Total Amt. Owed for missing weeks	\$679.97
Total Amt. Owed for entire employment	\$2,395.98

Total \$756.73
Avg Owed \$84.08

961.92

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay
101 - Server	58.13		123.82	0.00
Job Totals:	58.13	0.00	123.82	0.00

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid
Tip Totals:	4,840.88	180.63	657.47	0.00	0.00	17.31%	838.10	838.10

2025 - Stinson, Lauren
2,025

02/26/12 - 03/10/12

1,079.57

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay
101 - Server	54.52		116.13	0.00
Job Totals:	54.52	0.00	116.13	0.00

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid
Tip Totals:	4,440.69	237.28	726.16	0.00	0.00	21.70%	963.44	963.44

2025 - Stinson, Lauren
2,025

03/11/12 - 03/24/12

1,167.07

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay
101 - Server	63.64		135.55	0.00
Job Totals:	63.64	0.00	135.55	0.00

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid
Tip Totals:	4,802.03	326.24	705.28	0.00	0.00	21.48%	1,031.52	1,031.52

- Stinson, Lauren

03/25/12 - 04/07/12

1,276.59

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay
101 - Server	80.00	8.92	170.40	28.50
Job Totals:	80.00	8.92	170.40	28.50

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid
Tip Totals:	6,238.41	335.15	771.04	0.00	0.00	17.73%	1,106.19	1,106.19

2025 - Stinson, Lauren
2,025

04/08/12 - 04/21/12

1,578.66

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay
101 - Server	78.39	6.23	166.97	19.90
Job Totals:	78.39	6.23	166.97	19.90

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid
Tip Totals:	6,497.44	552.48	859.21	0.00	0.00	21.73%	1,411.69	1,411.69

2025 - Stinson, Lauren
2,025

04/22/12 - 05/05/12

1,211.83

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay
101 - Server	65.45		139.41	0.00
Job Totals:	65.45	0.00	139.41	0.00

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid

2,025

05/06/12 - 05/19/12

865.69

5

Bi-Weekly Employee Time Card Summary

Hans and Franz - Greenville, SC

Period From : 05/06/2012 To : 05/19/2012

Printed on Wednesday, May 23, 2012 - 10:15 AM

Employee Number and Name: Payroll ID:

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	58.86		125.37	0.00	125.37
Job Totals:	58.86	0.00	125.37	0.00	125.37

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	4,451.94	164.39	676.93	0.00	0.00	16.63%	740.32	740.32	0.00

2025 - Stinson, Lauren
2,025

05/20/12 - 06/03/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	63.21		134.64	0.00	134.64
Job Totals:	63.21	0.00	134.64	0.00	134.64

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	4,969.45	222.00	656.59	0.00	0.00	17.68%	878.59	878.59	0.00

1,013.23

000263

2025 - Stinson, Lauren
2,025

06/04/12 - 06/17/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	62.25		132.59	0.00	132.59
Job Totals:	62.25	0.00	132.59	0.00	132.59

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	6,020.97	280.29	812.41	0.00	0.00	18.16%	1,092.70	1,092.70	0.00

1,225.29

2025 - Stinson, Lauren
2,025

06/18/12 - 07/01/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	57.22		121.88	0.00	121.88
102 - Bartender	5.28		26.40	0.00	26.40
Job Totals:	62.50	0.00	148.28	0.00	148.28

938.40

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	4,881.30	245.03	845.09	0.00	0.00	16.19%	790.12	790.12	0.00

2025 - Stinson, Lauren
2,025

07/02/12 - 07/15/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	45.00		95.85	0.00	95.85
102 - Server			0.00	0.00	0.00

626.28

Bi-Weekly Employee Time Card Summary

Hans and Franz - Greenville, SC

Period From: 07/02/2012 To: 07/15/2012

Printed on Wednesday, July 18, 2012 - 4:29 PM

Employee Number and Name: Payroll ID:

Job Totals:	45.00	0.00	95.85	0.00	95.85

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	3,009.01	96.50	433.93	0.00	0.00	17.63%	830.43	830.43	0.00

2025 - Stinson, Lauren
2,025

07/16/12 - 07/29/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	60.16		128.14	0.00	128.14
Job Totals:	60.16	0.00	128.14	0.00	128.14

1,209.50

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	6,403.28	349.09	732.27	0.00	0.00	20.01%	1,081.36	1,081.36	0.00

2025 - Stinson, Lauren
2,025

07/30/12 - 08/12/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	63.82		136.94	0.00	136.94
Job Totals:	63.82	0.00	136.94	0.00	136.94

845.62

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	3,961.62	116.44	593.24	0.00	0.00	17.91%	709.68	709.68	0.00

2025 - Stinson, Lauren
2,025

08/13/12 - 08/26/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	71.54		152.38	0.00	152.38
Job Totals:	71.54	0.00	152.38	0.00	152.38

1,218.43

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	5,892.56	488.49	577.56	0.00	0.00	18.09%	1,066.05	1,066.05	0.00

2025 - Stinson, Lauren
2,025

08/27/12 - 09/09/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	57.85		123.22	0.00	123.22
Job Totals:	57.85	0.00	123.22	0.00	123.22

970.05

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	4,784.43	341.41	508.42	0.00	0.00	17.70%	846.83	846.83	0.00

2025 - Stinson, Laurin
2,025

09/10/12 - 09/23/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	73.63		156.83	0.00	156.83
Job Totals:	73.63	0.00	156.83	0.00	156.83

1,174.16

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	5,978.99	374.29	643.04	0.00	0.00	17.02%	1,017.33	1,017.33	0.00

000265

2025 - Stinson, Laurin
2,025

09/24/12 - 10/07/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	80.00	5.80	170.40	18.53	188.93
Job Totals:	80.00	5.80	170.40	18.53	188.93

1,584.48

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	6,851.67	242.05	1,153.50	0.00	0.00	20.37%	1,395.55	1,395.55	0.00

2025 - Stinson, Laurin
2,025

10/08/12 - 10/21/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	75.14		160.05	0.00	160.05
Job Totals:	75.14	0.00	160.05	0.00	160.05

1,039.69

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	4,863.79	334.86	544.78	0.00	0.00	18.09%	879.64	879.64	0.00

2025 - Stinson, Laurin
2,025

✓ 10/22/12 - 11/04/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	50.34		107.22	0.00	107.22
Job Totals:	50.34	0.00	107.22	0.00	107.22

1,087.47

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	3,973.81	397.18	583.07	0.00	0.00	24.67%	980.25	980.25	0.00

2025 - Stinson, Laurin
2025

11/05/12 - 11/18/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	44.67		95.15	0.00	95.15
Job Totals:	44.67	0.00	95.15	0.00	95.15

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	2,768.98	124.85	361.43	0.00	0.00	17.56%	486.28	486.28	0.00

000266

Bi-Weekly Employee Time Card Summary

Hans and Franz - Greenville, SC

Period From : 11/19/2012 To : 12/02/2012

Printed on Monday, December 03, 2012 - 11:31 AM

Employee Number and Name: Payroll ID:

2025 - Stinson, Laurin
2,025

11/19/12 - 12/02/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	24.03		51.18	0.00	51.18
Job Totals:	24.03	0.00	51.18	0.00	51.18

272.10

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	1,247.27	29.10	191.82	0.00	0.00	17.71%	220.92	220.92	0.00

Bi-Weekly Employee Time Card Summary

Hans and Franz - Greenville, SC

Period From : 12/03/2012 To : 12/16/2012

Printed on Tuesday, December 18, 2012 - 10:54 AM

Employee Number and Name: Payroll ID:

2025 - Stinson, Laurin
2,025

12/03/12 - 12/16/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	46.94		99.98	0.00	99.98
Job Totals:	46.94	0.00	99.98	0.00	99.98

688.18

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	3,632.95	215.93	372.27	0.00	0.00	16.19%	588.20	588.20	0.00

Bi-Weekly Employee Time Card Summary

Hans and Franz - Greenville, SC

Period From : 12/17/2012 To : 12/30/2012

Printed on Monday, December 31, 2012 - 9:27 AM

Employee Number and Name: Payroll ID:

2025 - Stinson, Laurin
2,025

12/17/12 - 12/30/12

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	50.59		107.76	0.00	107.76
Job Totals:	50.59	0.00	107.76	0.00	107.76

726.84

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due

000267

2025 - Stinson, Laurin
2,025

12/31/12 - 01/13/13

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	32.03		68.22		68.22
Job Totals:	32.03	0.00	68.22	0.00	68.22

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	1,704.19	15.22	221.44	0.00	0.00	13.89%	236.66	236.66	0.00

304.88

Period From : 01/14/2013

To : 01/27/2013

Hans and Franz - Greenville, SC

Printed on Monday, January 28, 2013 - 9:58 AM

Employee Number and Name:

Payroll ID:

2025 - Stinson, Laurin
2,025

01/14/13 - 01/27/13

Jobs	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
101 - Server	36.94		78.68	0.00	78.68
Job Totals:	36.94	0.00	78.68	0.00	78.68

Tips	Gross Recpts	Svc Charges	Charged Tips	Tips Declrd	Indirect Tips	Tip %	Ttl Tips	Tips Paid	Tips Due
Tip Totals:	2,920.94	120.71	311.32	0.00	0.00	14.79%	432.03	432.03	0.00

510.71 340.00

000268

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF COMMON PLEAS
2013-CP-23-03057

LAURIN STINSON,
PLAINTIFF,

vs.

TRANSCRIPT OF RECORD

HANS & FRANZ, LLC, ET AL.,
DEFENDANTS.

COPY

February 18, 2014
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

A P P E A R A N C E S:

C. ALEXANDER CABLE, ESQ.
Attorney for the Plaintiff

JOHN G. RECKENBEIL, ESQ.
Attorney for the Defendants

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

THE COURT: The next case is Stinson v. Hans & Franz, LLC.

MR. RECKENBEIL: Your Honor, if I may approach.

MR. CABLE: May I approach, Your Honor, as well?

You may get several references to both of these cases, so I just wanted to hand you up some copies.

THE COURT: Thank you.

All right. Motion for partial summary judgment.

Yes, sir.

MR. CABLE: Your Honor, may it please the Court.

Alex Cable here on behalf of the Plaintiff.

As you said, this is a motion for partial summary judgment as to both liability and damages. There are, actually, three claims in this case. It's an FLSA minimum wage claim and FLSA overtime, and a South Carolina payment of wages claim. We're, actually, just here today on the FLSA minimum wage claim.

A little bit of background on what's going on in the case. The Defendants -- at least, the company Defendants are restaurants here in Greenville, German- and Dutch-themed restaurants. The individual Defendants, Addy Sully and Jurgen Hauback, are the owner and general manger of the restaurants.

The Plaintiff, Lauren Stinson, works at -- worked at

1 the Defendants restaurant as a server from October of
2 2011, until January of 2013. The entire time the
3 Plaintiff worked for the Defendants, she was never paid
4 the \$7.25 minimum wage under the FLSA.

5 Now, there's a reason for that. The Plaintiff, as a
6 server, is what's called a tipped employee under Section
7 203 of the FLSA, which means that, under certain
8 circumstances, employers may take what's called a tip
9 credit. And that means that the employer can pay less
10 than \$7.25, as little as \$2.13 an hour under the
11 understanding that the Plaintiff will make up that
12 difference in tips.

13 So that's what occurred here. The Defendants paid
14 the Plaintiff \$2.13 an hour. It's a very common practice.
15 And if done correctly under the statute, it is perfectly
16 fine.

17 The problem is the Defendants took an additional fee
18 from the Plaintiff's pay. This is uncontested. In fact,
19 it's admitted that the Plaintiffs [sic] have done this.
20 They admitted to it in discovery responses. They took a
21 one percent fee from the Plaintiff every night at the end
22 of her shift, based on net sales.

23 So just, for example, if the Plaintiff did \$700 in
24 sales, they'd take \$7 from her. The fee was purportedly
25 for broken or damaged items, plates, cups, things like

1 that. And it was often called a breakage fee or a turn-in
2 fee, or alternatively a tip out.

3 As I said earlier, the Plaintiff paid this fee at the
4 end of each shift every night that she worked, or if she
5 worked lunch at the end of that evening. And the breakage
6 fee or the turn-in fee was in place the entire time that
7 the Plaintiff worked for the Defendants.

8 So the tip credit under the FLSA under Section 203 is
9 not automatic. There are very specific factors under
10 203(m) that must be in place in order for an employer to
11 claim a tip credit.

12 The Chisolm case that I've hand you, actually, breaks
13 these factors down to a list of four that I think is --
14 reads a little bit easier than the language of the
15 statute. The four factors are that the employer pays, at
16 least, \$2.13 an hour, that the employer inform the
17 employees of the tip-credit provisions, that the employer
18 permits its employees to retain all of their tips. And
19 then the fourth issue is that the employer ensures that
20 the wages paid, plus the tip, equal, at least, minimum
21 wage.

22 And that being said, say, a waitress has a really bad
23 night and only averages \$3.00 an hour in tips, plus \$2.13,
24 that's not \$7.25. That means the employer must then make
25 up that difference. That's the fourth factor.

1 Well, it's undisputed under these facts -- in fact,
2 it's admitted that the Plaintiff did not retain all of her
3 tips, which is a violation of the third factor. The
4 Plaintiff was required to give a portion of her earnings
5 to the Defendants after every shift. The law is clear on
6 this.

7 Again, I'll refer you to the Chisolm case. The
8 burden of showing entitlement to a tip credit is on the
9 Defendants. And if the employer fails to comply with any
10 of the factors for claiming the tip credit, they lose
11 their entitlement to it.

12 The Fourth Circuit in the Richard case that I handed
13 you, actually, I think, sums it up the best. I'm quoting
14 from -- I'm sorry, Page 305 of that opinion. What the
15 Congress has said, in effect, to restaurant employers is
16 if you precisely follow the language of 203(m) and fully
17 implore -- inform your employees of it, you may obtain a
18 credit from the receipt of tips towards your obligation to
19 pay the minimum wage.

20 The corollary seems obvious and unavoidable. If the
21 employer does not follow the command of statute, he gets
22 no credit. And so because the Defendants here have
23 violated factor three, i.e. not letting the employer --
24 excuse me, the employee keep all of her tips, they are not
25 entitled to a tip credit under the law.

1 Now, what does that have to do with minimum wage?
2 Well, that's -- walks us into the damages portion. The
3 FLSA is pretty clear in both the Chisolm case and Richard
4 case that I handed you to tell you that the measure of
5 damages in a case like this is that the employee is
6 entitled to her minimum wage in full. And the logic makes
7 sense. Okay.

8 The tip credit allows employers to pay less than
9 minimum wage, if all of the factors are met. However, in
10 order to get the tip credit, you've got to show that you
11 meet all of these factors. And failure to comply with
12 that means you lose your tip credit. Therefore, the
13 employee is entitled to be paid as if the tip credit never
14 existed.

15 So that's -- becomes just an issue of simple math,
16 really. Minimum wage is \$7.25. The Plaintiff was paid
17 \$2.13 an hour. That's a difference of \$5.12. If you look
18 at exhibit six to my memorandum, what that is is that's a
19 chart that I made that just lays out the number of
20 uncontested hours that the Plaintiff worked for the
21 Defendants. I have the actual stubs here, if you'd like
22 to see them. They are 70-something pages long, so I just
23 made a chart to make it easier.

24 Would you like me to --

25 THE COURT: No, no.

1 MR. CABLE: Okay. I had a feeling.

2 But the total hours -- the total uncontested hours --
3 there are some -- the Plaintiff, actually, claims she
4 worked more than what she was paid for. But that's not
5 germane to this motion. The total number of uncontested
6 hours comes to 1,872.51 hours. And then if you multiply
7 that times \$5.12, that comes to \$9,587.25 in actual
8 damages for nonpayment of minimum wage.

9 Furthermore, the FLSA provides for liquidated damages
10 when the act is violated. That's pursuant to Section 206.
11 And so that's just a matter of taking the actuals and
12 multiplying it by two, which comes \$19,174.50. And, of
13 course, in my memorandum, I have cited a number of cases
14 that point out that under the FLSA, the liquidated damage
15 award is mandatory.

16 And then, finally, again, under the FLSA Section 216,
17 A successful plaintiff is entitled to costs and attorney's
18 fees. And so should Your Honor decide in favor of the
19 Plaintiff here today, we will be submitting a petition for
20 those as well.

21 Thank you.

22 THE COURT: Thank you, Mr. Cable.

23 Yes, sir, Mr. Reckenbeil.

24 MR. RECKENBEIL: Thank you, Your Honor.

25 May it please the Court.

1 Your Honor, \$16.28. \$16.28 is what the Plaintiff
2 averaged an hour while working for my client. We've got
3 documentation that we've submitted in our memorandum that
4 shows that the credit card receipts from customers
5 tallying up each week with the amount of tips that were
6 left on the credit cards, and the hours that she was paid
7 \$2.13 and the service charge -- and I'll get into that in
8 a second -- equated to the fact that this lady made \$16.28
9 an hour.

10 Now, I can barely understand my clients. They're
11 from Austria, they're from Germany. They speak with a
12 very different tone and dialect than most of us do. Most
13 people would say I do the same.

14 There was a meeting that these gentlemen had, the
15 owners of this restaurant had with their employees. And
16 everything that I'm speaking about, Your Honor, is in the
17 record and establishes facts that I think would be --
18 [inaudible].

19 They had a meeting with their waiters and waitresses
20 and said, listen, we're getting hit 2.5 percent by Visa
21 and MasterCard every single time somebody swipes a debit
22 card or a credit card. So we're going to let you vote
23 that you can either pay the 2.5 percent at the end of the
24 week for the service charges, or you can pay one percent
25 for a turn-in fee each night based upon the net of the

1 credit card tips that you get.

2 Well, the employees decided in that meeting that
3 they'll select option two, which is the one percent. FLSA
4 talks about the fact that the employer has the ability to
5 charge back to a waiter or a waitress a percentage of what
6 they've got to pay the bank for a customer to use a credit
7 card. It's in my memorandum. And I've cited that. It's
8 under code regulations. And, Your Honor, that's the
9 essence of this case.

10 Are you going to punish a restaurant owner, who by
11 every stretch of the imagination is trying to do the right
12 thing, just because of the fact that they don't use the
13 proper term -- and there may be a thing called a breakage
14 fee -- when, in essence, at the end of the day, they meet
15 the requirements of the law? And that is that we want
16 Americas to make \$7.25 an hour. We say that it's okay if,
17 in fact, you deduct certain portions of what they earn in
18 order to pay for certain service charges. We, also, say
19 the fact that you can do that during the course of the
20 week as long as you pay them at the end of the week what
21 they're entitled to under the law.

22 And that leads me to my last position, Your Honor.
23 And I put a yellow sticky tab for Your Honor to go to.
24 First is a text message that my client sent to the
25 Plaintiff. And that's where we find the word "turn in."

1 And I've circled it in the middle of the text message
2 where it is my client in a fit of rage where he's finding
3 plates, and knives, and forks in the trash bin. He sends
4 a text to the Plaintiff and says, hey, if I keep finding
5 plates in the garbage, I'm going to increase the turn-in
6 fee.

7 So I think, Your Honor, that is the only definitive
8 evidence of what we talk about that the Plaintiff wants
9 the Court to classify as a breakage fee. So right then
10 and there, Your Honor, I think that that's a question of
11 fact as to what, actually, is being deducted from this
12 Plaintiff's pay.

13 Secondly, the next page --

14 THE COURT: So you're saying that regardless of what
15 it's called, it still comes within 203(m)?

16 MR. RECKENBEIL: Yes, sir.

17 THE COURT: All right.

18 MR. RECKENBEIL: Yes, sir.

19 Because of the second page that we flip over to, Your
20 Honor, that's right after the text message. And the
21 second page of what I've tried to do is I just took one.
22 Because Plaintiff's counsel is absolutely correct. There
23 is -- it's voluminous with the paycheck stubs. But this
24 is indicative of every other paycheck stub is -- I took
25 the week of September 24th, 2012, through October 7th,

1 2012, or the biweekly pay period and I've highlighted
2 where the amount of the total tips that were, basically,
3 given to this Plaintiff by customers using credit cards,
4 then the service charges that were accrued, and then the
5 total that she was paid. And that's where I think the law
6 is in the benefit of these restaurant owners.

7 The service charges that I've highlighted there, Your
8 Honor, are not entitlement of wages to this Plaintiff. I
9 set forth the fact sheet from the Department of Labor that
10 has, clearly, set forth that service charges are not, in
11 fact, tipped wages that are earned by this Plaintiff.
12 However, if the employer decides to pay at the end of the
13 week or at the end of the pay period, which my clients
14 did, those service charges to the Plaintiff, then they get
15 to credit whatever may have been deducted from the tip
16 credit.

17 So as long as that 245 -- \$242.05 in a two-week
18 period gives the Plaintiff the ability to raise her \$2.13
19 back up maybe to \$7.25, then she can't make any sort of
20 violation based upon the fact that there is a deduction of
21 the one percent breakage fee, or turn-in fee, whatever you
22 might call it.

23 So, here again, Your Honor, the point that we're
24 making to this Court is that \$16.28 is what she averaged
25 over the course of a period of about a year. I think what

1 we have set forth, Your Honor, in our brief and with the
2 evidence presented is that there is a significant question
3 of fact that needs to be determined by a jury.

4 Number one is what exactly is that turn-in fee? And
5 then, secondly, did, in fact, my clients go blow that
6 \$7.25 or any other violation of tip credit? With this
7 paycheck stub and with the other things that we have
8 presented, Your Honor, we feel that we have presented
9 significant facts that should be determined by a jury.

10 THE COURT: Thank you.

11 MR. RECKENBEIL: Thank you.

12 THE COURT: Mr. Cable.

13 MR. CABLE: I fail to see the issue of facts that
14 Mr. Reckenbeil is talking about. First of all, he says,
15 well, what is the turn-in fee? The only thing is his
16 exhibit one. Well, that's not true.

17 In their interrogatories -- excuse me, in responses
18 in their requests to produce, they, specifically, talk
19 about the breakage fee and said it was one percent of net
20 sales. That tells you exactly what that is. That's -- I
21 apologize, Your Honor. That's exhibit four in my
22 memorandum.

23 And as far as the issue of did they go below paying
24 my client minimum wage, you know, she averaged \$6.18 an
25 hour, or whatever it is he said. That's fine. And he's

1 not wrong about that. But he's missing the point.

2 Recall that we talked about there are four factors to
3 claiming a tip credit. What he's talking about is factor
4 number four, ensuring that the cash wage, plus the tip
5 credit is equal to the minimum wage. Okay. All he's
6 telling you is that they met factor number four. That has
7 nothing to do with factor number three of not allowing her
8 to retain all of her tips. Okay. And 203(m) is clear
9 that all of the factors must be met. Okay.

10 And the Defendant, in his memorandum, he cites this
11 Department of Labor fact sheet. The fact sheet, actually,
12 says that. If you look, it's his exhibit number six and I
13 believe it's Page 2 of that under, Retention of Tips. It
14 talks about the employee must be able to keep all of her
15 tips in order to claim the tip credit. That's, also, on
16 the first page of Defendant's six under Requirements --
17 their factor number four. They, actually, lay out five
18 factors for claiming a tip credit. The Chisolm case does
19 four. They say the same thing.

20 Their factor number four is all tips must be retained
21 by the employee with the exception of a valid tip pool,
22 which the Defendants have said they don't have a tip pool.
23 So that's not even relevant here. Which means the only
24 exception to the employee not keeping all of her tips
25 isn't in play here.

1 And he wants to talk about, oh, well, they could have
2 taken two and a half percent, but they chose not to.
3 Well, that's fine. But I've yet to find any authority
4 under the FLSA that says, well, just because you choose
5 not to do one provision under the FLSA doesn't mean you
6 get to break another. Okay.

7 He wants to say that the one percent could be part of
8 the -- that they took from them could be part of the 2.5
9 percent that they didn't take. Those are totally
10 different provisions under the FLSA. The only exception
11 under 203(m) to taking part of the Plaintiff's tips is for
12 a tip pool. The Defendants admit that doesn't happen
13 here. And that's the only portion that's relevant.

14 THE COURT: So the credit card transaction fee as a
15 turn-in is not a valid vehicle under 203(m), is that what
16 you're saying?

17 MR. CABLE: Right, Your Honor. Correct.

18 THE COURT: What authority are you relying on that
19 point?

20 MR. RECKENBEIL: Your Honor, Page 3 of my brief, 29
21 CFR 531.3, Subsection D-1. It's the reasonable costs.
22 And way down there in some of the footnotes, it talks
23 about the credit card surcharges.

24 And I'll respond to any other questions the Court
25 has. But I'd like to point out one other --

1 THE COURT: Yes, sure. Go ahead.

2 MR. RECKENBEIL: Your Honor, the service credit that
3 my client paid to the Plaintiff is \$5,948.70. What she's
4 claiming is the one percent deduction that she was cheated
5 out of is \$994.

6 So if we're looking at the big picture here and
7 saying you took \$994 from me, however, we paid you
8 \$5,948.70 that we didn't have to pay you, I fail to see
9 the violation of the Fair Labor Standards Act. The Fair
10 Labor Standards Act says that service credit, which is
11 clearly in exhibit number four that we provided, is not
12 tip wages.

13 So if we're paying something to you, money, that
14 you're not entitled to anyway, but we do it gratuitously,
15 I think we get some sort of benefit from it. And so just
16 because my clients, obviously, don't know certain verbiage
17 that they should or the fact that they didn't realize that
18 they didn't have to pay them, but they did anyway,
19 serendipitously, they should probably get the benefit of
20 that. So that money every single two weeks being paid is
21 higher than any sort of minimum wage that this Plaintiff
22 is entitled to.

23 THE COURT: This is the Fair Labor Standards Act
24 equity provision you're relying on?

25 MR. RECKENBEIL: Well, Your Honor, I'm, also, relying

1 upon -- yes. There's an equity provision.

2 But there's -- but, also, the fact of just the sheer
3 numbers. Because at the end of the -- if you say to a
4 company that you've got the ability to take a 2.5 percent
5 reduction because of credit card receipts, but you decide
6 to take that one percent every single night, but then, at
7 the end of the day, you pay them more than what you took
8 from them at the end of the pay period, don't you meet
9 Subsection 3? You let them keep every single tip they
10 made. In fact, you're giving them more.

11 So I fail -- while it's not perfect, I think it still
12 meets the law. Because at the end of the pay period,
13 they're still getting paid what, in fact, they earned.

14 THE COURT: Well, I'm still having trouble with the
15 credit card surcharge. If 29 CFR 531.3(d)(1) talks about
16 employers right to deduct reasonable costs of furnishing
17 an employee with "board, lodging, or other facilities,"
18 you're saying there's some kind of provision that allows
19 them to term facilities as credit card?

20 MR. RECKENBEIL: Your Honor, I would say that in that
21 subsection. But I, also, point to the fact that what I've
22 provided is the very simple basic sheet that the
23 Department of Labor has set forth. And that's exhibit
24 number seven.

25 THE COURT: Where is it on there?

1 MR. RECKENBEIL: Excuse me. Exhibit number six that
2 I provided. And it's Page 2. And it's -- it goes down,
3 there's service charges. And then there's, also, credit
4 cards.

5 So it is, basically, the second to the last page --
6 or I'm sorry, the third to the last page of my --

7 THE COURT: All right. Wait a minute. I've got to
8 find this.

9 Where is it again? I'm sorry.

10 MR. RECKENBEIL: The third to the last page of the
11 brief.

12 THE COURT: Okay.

13 MR. RECKENBEIL: And the -- so I draw the Court's
14 attention to the last sentence. It says that you can hit
15 the employee with a surcharge, but you cannot withhold
16 paying them that money while you're waiting for the credit
17 card company to kind of send you the money. You've got to
18 pay them by the regular pay date. Well, that's what has
19 happened here.

20 The service charge that is being deducted from the
21 credit card receipts, which are not deemed tip wages, that
22 the Plaintiff is not entitled to, she's getting paid that
23 biweekly. That in itself raises her above the minimum
24 wage.

25 THE COURT: All right. I understand your argument.

1 Thank you.

2 I'll look at it further and let you know my decision,
3 hopefully, in the next two weeks.

4 Thank you.

5 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

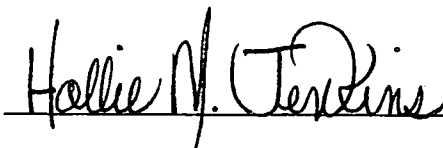
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 18th day of February, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 20, 2014

A handwritten signature in cursive script, reading "Hollie M. Jenkins", is written over a horizontal line.

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF COMMON PLEAS
2013-CP-23-03057

LAURIN STINSON,
PLAINTIFF,
vs.
HANZ & FRANZ, LLC, ET AL.
DEFENDANTS.

TRANSCRIPT OF RECORD

COPY

August 11, 2014
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

A P P E A R A N C E S:

C. ALEXANDER CABLE, ESQ.
Attorney for the Plaintiff

JOHN G. RECKENBEIL, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

THE COURT: This is Stinson v. Hanz & Franz,
2013-CP-23-3057.

Motion for partial summary judgment; is that right?

MR. CABLE: Yes, sir. That's correct.

May it please the Court, Your Honor.

Alex Cable on behalf of the Plaintiff, Laurin
Stinson. You've, actually, heard this case before. And
you've, actually, heard this motion before, believe it or
not. It was back in February. It was the Plaintiff's
motion for summary judgment --

THE COURT: So why are we going through it again?

MR. CABLE: Well, your order -- your denial said that
further development of facts as necessary. That was the
quote from the Form 4. And I can take a hint. So the
parties have engaged in additional discovery.

At this point, all of the facts are 100 percent clear
and undisputed. As a matter of fact, they are admitted.
And we'll talk about that in just a second. The only
thing that is left now, at this point, is the legal
determination of whether the Defendants actions are
lawful. As you see, they are not. The Plaintiff is
entitled to summary judgment. Since it's been some time
since you heard this, a quick refresher of the facts.

The company Defendants -- the corporate Defendants

1 are two restaurants here in town, Hanz & Franz Biergarten,
2 and Addys Dutch Cafe. They are Dutch- and German-themed
3 restaurants. The individual Defendants are Mr. Addy Sully
4 and Jurgen Haubach, the owner and general manager of the
5 restaurants.

6 The Plaintiff, Laurin Stinson, worked for the
7 Defendants as a waitress from October of 2011 until
8 January of 2013. During that time -- the entirety of the
9 time that Ms. Stinson worked for the Defendants, she was
10 never paid the federally mandated minimum wage of \$7.25 an
11 hour. Now, there's a reason for that.

12 Under the FLSA, the Fair Labor Standards Act, Section
13 203(M) allows restaurant employers to take what's called a
14 tip credit. What the tip credit does, it says you can pay
15 as low as \$2.13 an hour with the understanding that tips
16 coming in are going to get you to, at least, that \$7.25 an
17 hour. It's an incredibly common practice. It's done all
18 the time, no big deal.

19 The problem in this case is that the Defendants took
20 something else from the Plaintiff in addition to that.
21 And this is what probably was the genuine issue of fact
22 and is no longer. It's been admitted at this point. What
23 they did was they made Plaintiff at the end of every
24 single shift give them a portion of her tips. And they
25 called it -- it's been alternatively called a breakage

1 fee, a turn-in fee, any number of different things.

2 And what it did is it amounted to one percent of that
3 shift's net sales. So, say, Plaintiff sold 700 bucks of
4 food and beer, one percent of that is \$7. The Plaintiff,
5 at the end of the shift, had to give that to the
6 Defendants. Reportedly, it was for things like broken
7 plates, and missing silverware, things like that.

8 Now, Mr. Reckenbeil at the last hearing -- and I'm
9 quoting from the transcript here -- his question was, What
10 is this turn-in fee? And, apparently, there was some
11 ambiguity as to what it was and how much it was. And I
12 would submit that even at the time to the extent there was
13 any issues of fact, they were not material. But we have
14 engaged in additional discovery.

15 Basically, what I did, very simply, is I just sent
16 him over a bunch of requests to admit. And that's Exhibit
17 B to my memorandum. And they just went down through and
18 ticked off and admitted that the charges taken out of
19 Plaintiff's tips is taken out at the end of each shift.
20 It amounts to one percent of the shift's net sales, and is
21 paid directly to the Defendants. So there's no more
22 question as to what it is, no more dispute of facts. They
23 have 100 percent admitted.

24 So what's the problem with this? Well, under 203(M),
25 it is not automatic. The burden is on the employer to

1 show entitlement to take this tip credit. It is not on
2 me. It's not on the employee. It's on the employer. And
3 the language of the statute, 203(M), it's kind of oddly
4 worded. It's kind of written backwards almost. And so
5 courts have listed out a number factors. The DOL has put
6 out a worksheet that lists a number of factors that the
7 employers must show that they have satisfied in order to
8 claim the tip credit.

9 Substantively, there's really four factors. And I
10 can go through these very quickly, because three of the
11 four are not at issue. Okay. The first factor is that
12 the employer pays, at least, \$2.13 an hour. It's not
13 disputed, no question they paid her \$2.13. No problem.

14 The second one is that they informed the employee of
15 the tip credit provision. Again, not an issue. No
16 problem.

17 Skip number three and move to number four. The
18 employer ensures that the wages paid, the \$2.13, plus
19 whatever tips the employee gets equals minimum wage, at
20 least, \$7.25 an hour. And so say it's a bad night. It's
21 a slow night. The Plaintiff only gets three bucks an hour
22 in tips. Three plus 2.13 is not 7.25. The employer must
23 then make up that difference. That's not at issue here
24 either. No problem with that.

25 The issue is number three. And that is that the

1 employer must permit its employees to retain all of their
2 tips. And that is -- let me, actually, quote from the
3 statute. This is one clear provision of the statute.
4 203(M) says that the tip credit provision shall not apply
5 with respect to any tip employee, unless all tips are
6 retained by such employee -- or excuse me, all tips by
7 such employee have been retained by such employee.

8 Well, as I said before, if you look at their request
9 to admit, the Defendants took part of her tips. They did
10 it every single night. There's no question about it.
11 They did it for well over a year. Therefore, they have
12 violated Section 203(M). They lose their entitlement to a
13 tip credit. If they cannot meet all of the factors, they
14 can't meet 203(M).

15 The Fourth Circuit Court of Appeals, I think, summed
16 it up the best. This is in the Richards case that I've
17 cited for you in the memorandum.

18 THE COURT: Okay.

19 MR. CABLE: It says what Congress has said, in
20 effect, to restaurant employers is if you precisely follow
21 the language of 203(M) and fully inform your employees of
22 it, you may obtain a credit from the receipt of tips
23 towards your obligation to pay the minimum wage. The
24 corollary seems obvious and unavoidable. If the employer
25 does not follow the command of the statute, he gets no

1 credit. The employer did not follow the steps under
2 203 (M). He gets no tip credit.

3 Now, really, that should be the end of the analysis.
4 We can stop right there. The Court has everything it
5 needs to write its order. But Mr. Reckenbeil, at the last
6 hearing, for the first time brought up this issue of
7 credit card fees. And, admittedly, I was unprepared to
8 address it at that time.

9 Basically, what these credit card fees are -- and I
10 believe it was the Bivens case out of the Sixth Circuit
11 that first recognized and said, you know, credit card
12 companies take a portion of each transaction as their fee.
13 That's how they make money. And the Defendants, in this
14 case, have used the number two and a half percent. Okay.
15 So we'll go with that number.

16 And, basically, what it means is if someone charges a
17 tip, the credit card company gets to have two and a half
18 percent of that. So you, employer, you can take that two
19 and a half percent out of their tip and go give it to the
20 credit card company. And every time that happens, you can
21 take it and get it, take it and get it.

22 But the courts have, also, been very clear that the
23 employer may not retain any of that money. So, for
24 instance, you can't take three percent from the employee
25 and give two and a half percent to the credit card

1 company. You can't do that. Okay.

2 Mr. Reckenbeil's argument at the last hearing was,
3 essentially, the Defendants didn't do this credit card fee
4 thing. They let the employee keep that. And so his
5 reasoning was, well, we didn't do the credit card fee
6 thing. We did do this breakage thing. So, hey, no harm,
7 no foul. It all evens out. What's the problem?

8 Well, there's two problems with it. For one, it's a
9 red herring. It's an apple seed. There's no authority
10 under the FLSA. And Mr. Reckenbeil has not provided
11 anything to the contrary that says you can violate this
12 section of the FLSA because you choose not to implement
13 this one over here. There's no -- let's call it
14 substitutionary compliance. There's not that anywhere.

15 Secondly, the United States Supreme Court has held
16 that employers cannot make employee waive their rights
17 under the FLSA. So it's in -- it serves no purpose here.

18 The second part is it's not a no harm, no foul, it
19 all evens out situation. Because, as I said before, all
20 of the courts require that the employer keeps no more than
21 what is necessary to give to the credit card companies.
22 They cannot, as the courts have said, "enrich themselves."
23 Because if they do, think about it. We go right back to
24 factor number three, an employee is not allowed to retain
25 all of her tips.

1 So what I did, I said, okay, fine. And I sent over a
2 couple of interrogatories. And in those, I just copied
3 and pasted them directly into the memorandum -- Page 6 of
4 my memorandum. And I said, okay, if you contend that the
5 amount that you could have taken for these credit card
6 fees is higher than the amount you did, actually, take,
7 tell me about it. Because if it's not, if they took more
8 than what they would have otherwise been allowed to take,
9 then they have still retained a portion of the Plaintiff's
10 tips. They still violate factor number three. I said if
11 you contend that the opposite is the case, tell me about
12 it. And they said, we can't. We don't have the records.
13 We can't do it.

14 Well, I'll remind you the burden is on the Defendants
15 in this case to show entitlement to the tip credit. They
16 acknowledge here in our interrogatories 27 and 28 that
17 they are unable to do so. So, again, it's another stop
18 sign. Even if we're going to do this substitutionary
19 compliance sort of reasoning, then the Defendants admit
20 they cannot carry their burden under that.

21 But let's go -- just because I'm kind of tired of
22 this case and ready to put it to bed, let's go one step
23 further. Okay. The Defendants have said that they can't
24 do that. They can't prove that amount because they don't
25 have the records. Well, that's, actually, not entirely

1 true. They do have the records or, at least, they have
2 access to them. Because I have them. And I have made
3 them fully disclosed, fully aware in discovery.

4 What I have are hundreds of these slips right here.
5 And why in the world my client kept every one of these, I
6 have no idea. But God bless her for it. These are
7 printed out at the end of each and every shift. And what
8 it does -- it contains a lot of numbers on here. But
9 there's a couple of numbers in particular that matter.
10 Here is the net sales number, and here is the charge tips
11 number.

12 So what I did -- and I'm not required to do this.
13 The burden is not on me. But I said, you know what? I
14 sat down and I pulled one percent of every single one of
15 these net sales. And I pulled two and a half percent of
16 every single one of these charged tips. And I said, which
17 one is bigger? And, as it turns out, the amount that they
18 took from her through the breakage fees is higher than the
19 amount they could have taken through the charge tips every
20 time, every work week.

21 And so that means that even if we want to apply this
22 substitutionary compliance, which we shouldn't, and even
23 if we want to relax their burden of proof, they still
24 affirmatively lose. They still violate 203(M).

25 And, now, we just have to ask the question of the

1 damages. Why is this a minimum wage case? Well, because
2 the Courts have been entirely clear.

3 Again, I'm quoting from the Fourth Circuit, The
4 measure of damages is payment of the applicable minimum
5 wage in full. Basically, what it's saying is 203(M) lets
6 you pay less than the minimum wage. To get to 203(M), you
7 have to meet these factors. If you don't meet the
8 factors, no 203(M). You have to pay the minimum wage as
9 if 203 never applied.

10 Well, the minimum wage is \$7.25. They paid her
11 \$2.13. So they still owe her a simple math \$5.12 an hour
12 for every hour that she worked. Okay. The number of
13 undisputed uncontested hours that the Plaintiff worked --
14 and, again, the Defendants have admitted to this in
15 requests to admit, that is Exhibit E to my memorandum, is
16 1,872.51 hours. It's very simple math. You multiply that
17 times \$5.12. That comes to \$9,587.25 in actual damages.

18 The FLSA, also, provides for liquidated damages. And
19 that's just simply doubling actuals. It's very simple,
20 \$19,174.50. And then, of course, the FLSA, also, provides
21 for costs and attorneys fees. And should Your Honor grant
22 summary judgment, we will timely move for those.

23 And so Mr. Reckenbeil in his very first sentence to
24 his submission to the Court talks about how the FLSA is a
25 complicated, convoluted statute. And he's right. It

1 usually is. But this case, honestly, is really very
2 simple. Okay. They admit they violate the language of
3 203(M). And without 203(M), you don't get a tip credit.
4 And without a tip credit, the Plaintiff is entitled to her
5 minimum wage in full.

6 Thank you.

7 THE COURT: So what was she making?

8 MR. CABLE: I don't, actually, know. Mr. Reckenbeil
9 has put out this number of somewhere around -- along the
10 lines of \$16 an hour. I don't know if that's correct.

11 But there's a problem with that question. And that
12 is simply that all it means is they met factor number
13 four. They have to show that she made, at least, \$7.25 an
14 hour with tips. And the wage that was paid to her, she
15 did. That's great. You meet factor number four. That
16 has no bearing on factor number three, the fact that they
17 are taking tips from her.

18 THE COURT: So if she -- let's say they -- the
19 Defendant said, look, we're going to pay you \$7.24 an
20 hour. We're going to let you keep your tips, except for
21 this breakage fee and this -- well, just the breakage fee,
22 which she agreed to, didn't she?

23 MR. CABLE: Their story is that there was some sort
24 of meeting that says you can either get this breakage fee
25 or this two and a half percent. The Plaintiff doesn't

1 recall it that way. But that's not material because, like
2 I said, the Supreme Court has held you cannot waive your
3 rights under the FLSA. Even if she said yes, it doesn't
4 matter.

5 THE COURT: So they take out the one percent. And
6 your argument would be that because the one percent didn't
7 allow her to retain all her tips, it didn't meet factor
8 three that they're liable under the Fair Labor Standards
9 Act for the difference between what she was paid and the
10 minimum wage, plus liquidated damages and attorneys fees?

11 MR. CABLE: Yes, sir.

12 In that case, it'd be a penny per hour. But that's
13 not just my argument. It would be Exhibit E that I have
14 given to you which comes directly from the DOL and says
15 the exact same thing. In fact, they say even if you don't
16 take the tip credit, under the law, the tips -- their tips
17 are their tips, period. The Chisolm case that I've cited
18 to that is almost directly on point -- it's about a
19 breakage fee and everything. It says the exact same
20 thing. That is what the courts have held.

21 THE COURT: So it doesn't matter what she, actually,
22 got paid. The money in her pocket, the Court is going to
23 go back and give her the difference between the minimum
24 wage and the amount that she was paid in salary,
25 regardless of what profit she made?

1 MR. CABLE: That's correct. Yes, sir.

2 THE COURT: What's the rational for that?

3 MR. CABLE: Well -- and that's a fair point. And I,
4 actually, didn't know that when I first took this case. I
5 said, what's the big deal? What's the problem? The
6 rational is -- and you'll hear Mr. Reckenbeil talk about
7 this, I have no doubt, is he's going to say that they took
8 \$900 from her.

9 Well, the problem is that's looking at the issue
10 exactly backwards. Okay. What that says is they're
11 entitled to a tip credit. No question about it. And,
12 whoopsy daisy, we took more than that. But they're not
13 entitled to the tip credit. So they didn't take \$900 from
14 her. They took \$9,000 from her. And this tip credit is a
15 wonderful tool for employers to get away with paying a
16 lot, lot less than the minimum wage. These tips don't
17 come from the employer. They come from the employees.

18 My plaintiff -- or excuse me, my client was very good
19 at what she did. But that has no bearing on the fact that
20 the employers still must meet the very strict language of
21 the statute. It may seem a little over the top. It may
22 seem a little inequitable. But the law is very clear on
23 it. The courts have applied it that way. The DOL has
24 applied it that way.

25 THE COURT: So they were paying her the minimum

1 amount?

2 MR. CABLE: They were paying her the \$2.13, yes, sir.

3 THE COURT: Okay. Thank you, Mr. Cable.

4 MR. CABLE: Thank you.

5 THE COURT: Mr. Reckenbeil.

6 MR. RECKENBEIL: Thank you, Your Honor.

7 May it please the Court.

8 I'm happy to answer the Court's questions that were
9 being presented to Mr. Cable and then delve into some of
10 the issues. And I provided the Court the memorandum.
11 It's exactly the identical --

12 If I may approach.

13 THE COURT: Sure.

14 MR. RECKENBEIL: -- from the last hearing.

15 And just for purposes of the record, 59(E) requires
16 there to be a motion to amend or alter an order within 10
17 days. This, obviously, was a hearing decided by the Court
18 back in March of 2014. There was no filing of that. I
19 understand completely that there's -- was language in the
20 order about the fact that almost like a change in
21 circumstances that we could come back before the Court.
22 But I'm happy to address the factual and the meritorial
23 issues.

24 Your Honor, I think that --

25 THE COURT: I don't think that's what the order said.

1 I think it said further application -- further development
2 of the facts was necessary.

3 MR. RECKENBEIL: And I don't think the facts have
4 changed, Your Honor. I think it's exactly the same thing.

5 THE COURT: What about the requests to admit?

6 MR. RECKENBEIL: Well, Your Honor, we're -- you're
7 pigeon holed in a request to admit to answer the question.
8 You can't explain. And so we feel that our answers have
9 been explained throughout the course of discovery in
10 interrogatory responses, as well as our production of
11 documents to demonstrate the full answers.

12 So when there's a request to admit, you know,
13 usually, I'm on that side of the aisle. I can't stand it
14 when they say, well, okay, you know, I'm not going to
15 admit or I'm not going to deny. I'm going to admit your
16 question if your question is asking a certain thing. But
17 it doesn't mean that, ultimately, I'm admitting that my
18 client is liable under the law. So --

19 THE COURT: That's the FBI response. We can neither
20 confirm nor deny.

21 MR. RECKENBEIL: Well, no, I -- that's what I don't
22 like. That's where I'm saying, hey, I'm going to be
23 straight up. I'm going to tell you, yeah, this is an
24 issue or this is not an issue. But I can't stand that I
25 can't confirm or deny. I think that's -- you know,

1 it's -- drives -- that makes us come before the Court for
2 motion to compels. And that's -- you know, we shouldn't
3 have to tell people that, hey -- how to answer a question
4 properly.

5 But I think that the Court's analysis has to go one
6 step further. And I think the Court's question was very
7 pertinent to Mr. Cable. And his response, I think, is the
8 key to this case. He doesn't know what his client was
9 making, but we do.

10 So two tabs that I've submitted to the Court is to
11 show the yellow, which is an overall summary, and then the
12 blue is her biweekly paychecks, Your Honor, \$16.28. That
13 is what she was paid per hour averaging out every hour she
14 worked for the course of period of time that she was
15 employed by us.

16 So there's no argument that the Plaintiff can make.
17 There's no documents that the Plaintiff can bring.
18 There's nothing that the Plaintiff can show that ever she
19 was paid lower than \$7.25 an hour. And that's the essence
20 of the Fair Labor Standards. That's -- the Court's
21 question, I think, is where we have to go with the FLSA.
22 Because the FLSA controls overtime and minimum wage. And
23 then it lists out a lot of regulations that we have to
24 follow.

25 But, ultimately, the tip credit is getting to the

1 overall purpose. Is the employer paying somebody less
2 than \$7.25? If so, less, we're going to violate you. But
3 if you're not, then, really, how does Congress have
4 jurisdiction over a case? You don't.

5 While you set up these guidelines and these tip
6 credits, at the end of the day, we questioned whether or
7 not it was a breakage fee. We did have a meeting. And we
8 said we're going to give you a choice. We've got to pay
9 Visa and Master Card 2.5 percent. We pay them monthly.
10 You get a paycheck from us biweekly every two weeks, which
11 is in compliance with our laws.

12 We're going to say give us one percent back each day
13 of your cash tips, or at the end of the biweekly, we're
14 going to take 2.5 percent out of your credit card tips.
15 So one is less than 2.5. So while I said cash tips, Your
16 Honor, the only thing that was taken out at each end of
17 the night was one percent of the credit card sales that
18 each waiter and waitress did. So it is exactly -- it's
19 exactly on point in the sense that one is less than 2.5.
20 So there's no way logically you can say that her
21 deductions are greater than what it would be for the
22 credit card servicing fees.

23 Your Honor, we have provided her paycheck stubs for
24 the entire time that she worked there. And it shows not
25 one time during a two-week period or in a week period that

1 she was ever paid lower than \$7.25 an hour, if you average
2 it out. So we feel that there is really no ability for
3 the Plaintiff to collect under these statutes.

4 Because even if you were to say, all right, the tip
5 credit thing may have not been exactly followed on point,
6 even though we think it was because it was called a
7 turn-in, as opposed to a breakage fee, they don't get
8 below minimum wage. They can't prove it, Judge. And
9 that's the purpose of the Fair Labor Standards Act. Back
10 in the 30s, it was created for uniform issue for the
11 United States to make sure that we follow certain wage and
12 hour laws. And we want to make sure that Congress'
13 purpose is set forth and put forward to the citizens.
14 \$7.25, unfortunately, is what the Congress of the Unites
15 States says is minimum wage. It should be higher, but
16 that's just my opinion.

17 But with that fact, the Plaintiff has to come into a
18 courtroom and show whatever the Defendant was doing
19 however they arrived at paying her her hourly wage, it's
20 lower than minimum wage and, thus, that's a violation.
21 That's how the Plaintiff's win on an FLSA case. They
22 can't do it, Judge. \$16.28 an hour is what she was paid.
23 That's just with the credit card tips, Your Honor, as we
24 have set forth in the other hearing. We didn't even count
25 the fact of her cash tips that she pocketed. So \$16.28 an

1 hour is what she was paid per hour averaging over the span
2 of her employment with us. And that's just not a
3 violation of FLSA.

4 So, Your Honor, we're happy to answer any other
5 questions. But this needs to go to a jury. And there's
6 some question of fact about the turn-in situation. But if
7 she understood the meeting to say one thing and my clients
8 say another, well, we disclosed that in discovery. Then a
9 jury has got to make a determination.

10 THE COURT: Well, the FLSA, Mr. Reckenbeil, can
11 sometimes contain strange provisions. So do you have any
12 authority that would support your position as far as
13 whether the amount of wages that the employee effectively
14 received would defeat an FLSA claim under this tip-credit
15 scheme?

16 MR. RECKENBEIL: Yes, Your Honor.

17 We've provided the Department of Labor fact sheet,
18 which is, I thin, controlling that it sets forth answers
19 to very general questions. And the service charges that
20 were paid directly to this Plaintiff are not deemed wages
21 by the Department of Labor. Thus, those payments to the
22 Plaintiff can be counted to determine whether or not that
23 they are paid below \$7.25 or above. And that's -- so, as
24 I said last time serendipitously, my clients, I think,
25 escape liability because of that fact alone. When you are

1 paying somebody over \$7.25 per hour, that's what the law
2 says to do. And that's where, you know, the Department of
3 Labor -- and it's tab six, Your Honor, in the back of our
4 memorandum, the fact sheet. And it's in there.

5 So --

6 THE COURT: Yes. I remember it from the last time.

7 MR. RECKENBEIL: So, Your Honor, that's where we get
8 it. So 3M of that section of what Mr. Cable has been
9 bringing out only goes to show the fact that you get a tip
10 credit if you do it a certain way. I think we've complied
11 with that, because of the fact that you've got a two-week
12 pay period. And, thus, you look at the end of the pay
13 period, as opposed to each -- in fact, every day. Because
14 40 hours is minimum -- is the determination. You don't
15 get 40 hours each day. You have to add those up.

16 So it would just have a reasonable conclusion that
17 the Fair Labor Standards Act looks at the end of the pay
18 period. So at the end of the pay period, it then -- you
19 equal it up and say, okay, did you work a certain amount
20 of hours? Okay. What were you paid for those hours? If
21 you were paid below \$7.25 an hour, then we've got an
22 issue. Well, that never happened.

23 THE COURT: Well, this sheet says, The FLSA prohibits
24 any arrangement between the employer and the tipped
25 employee whereby any part of the tip received becomes the

1 property of the employer.

2 MR. RECKENBEIL: And I would agree with that, Your
3 Honor. I would agree with that premises. But it goes one
4 step further. Property of the employee and employer
5 doesn't become effective until the end of the pay period.

6 Because, like I said, we've got the ability to -- the
7 caveat is that we're saying a service charge can be
8 deducted. Congress said that if you've got a credit card
9 company that's charging you a couple percentage points,
10 then you can take that. Well, we are saying that that's
11 what we're taking. They just might not have deemed it
12 right, because it's called a turn-in fee.

13 Your Honor, we have a -- we provided -- and only my
14 clients -- and, you know, Addy, I love him to death. But
15 he's got a sign that he put above the trash bin. And we
16 provided that as Exhibit 3. And it says, Turn-in fee,
17 that we're going to have to increase your turn-in fee if
18 you're too dumb, basically, to throw away utensils.

19 So I don't think that the Plaintiff can prevail on
20 semantics on -- because the turn-in is allowed under the
21 law when it comes to the credit card issue. The meeting
22 that took place discussed that.

23 THE COURT: Well, where do they get this credit card
24 exception? Is this just something some bureaucrat made
25 up, or is it, actually, in the statute?

1 MR. RECKENBEIL: It's -- Your Honor, it's, actually,
2 amended into the statute. And, again, it --

3 THE COURT: Where?

4 MR. RECKENBEIL: It's -- I provided it in the fact
5 sheet that we have provided from the Department of Labor.
6 It's -- it goes exactly -- it talks -- it's on Exhibit 6,
7 Your Honor, the fact sheet credit cards. And it says that
8 an employer -- you know, where a credit card company
9 charges an employer three percent on all sales.

10 THE COURT: Well, I know. I saw that. I'm talking
11 about where do they tie that to the statute?

12 MR. RECKENBEIL: I --

13 THE COURT: The statute, you know, that's what the
14 law is --

15 MR. RECKENBEIL: I agree.

16 THE COURT: -- not what somebody sitting at some desk
17 in Washington says.

18 MR. RECKENBEIL: And the Department of Labor came out
19 with this back in 2012 when it was talking about 29 CFR
20 531.52. And it's discussing about the fact of Section 3M
21 about tip pooling, tip credits. And it talks about the
22 fact of these credit card situations.

23 So it's way intertwined into the statute of this.
24 And so -- and I agree, Your Honor, that it's -- I think
25 the overall purpose has to be achieved and looked at. And

1 that is to make sure that the minimum wage is paid.

2 THE COURT: Well, so it's 90 CFR what now?

3 MR. RECKENBEIL: 29 CFR 531.52.

4 THE COURT: Has there been any kind of court case
5 that said this interpretation of the statute is correct or
6 permissible?

7 MR. RECKENBEIL: Well, it's got -- Mr. Cable is going
8 all the way to the Sixth Circuit. The Ninth Circuit had a
9 decision in Woody Woo is the name of the case. And it
10 talks about a case of Jackson Terminal.

11 But, Your Honor, no, that's why this is such a -- I
12 mean, there has been really nothing on point that we feel.

13 THE COURT: But aren't you trying to stretch this
14 exception, even if it exists?

15 MR. RECKENBEIL: I don't believe so, Your Honor.

16 THE COURT: Well, how is a turn-in fee equivalent to
17 a credit card fee?

18 MR. RECKENBEIL: Because you would take 2.5 percent
19 of any credit card transaction that the employee is
20 producing. In other words, if somebody is sitting there
21 at their table and they use a credit card to pay, well,
22 the employer gets dinged by MasterCard a certain
23 percentage.

24 So it just makes logical sense that if you are truly
25 working based upon the customer -- right -- because you

1 are serving a customer that is coming to the restaurant.
2 So the waiter or waitress is serving the customer. Then
3 you reap the rewards or the benefits of what that customer
4 provides to the restaurant. If that customer provides a
5 credit card transaction, they're only providing to the
6 restaurant a certain percentage of that credit card
7 transaction.

8 Because, ultimately, the credit card companies are
9 saying, employer, we're going to have to ding you three
10 percent. So it just makes logical sense, Your Honor,
11 for -- if food -- if the bill is a hundred dollars and
12 they use a credit card, well, the employer is only
13 receiving 97 of that. Because they've got to pay
14 MasterCard three bucks.

15 THE COURT: Well, I understand that. But that's not
16 what they're doing here. They're saying we could do this,
17 but we're not going to do it. But, instead, we're going
18 to take one percent, which he says is illegal.

19 MR. RECKENBEIL: And I just -- I don't see it. I
20 don't see it being illegal because of the way the ultimate
21 facts panned out in this case. You're taking one percent
22 each night. But, at the end of the pay period, you could
23 have taken 2.5 percent of every transaction.

24 So you're taking the -- you're taking from the same
25 thing. You're taking from credit card tips. You're

1 taking the one percent from the credit card tips each
2 night. Or you've got 10 days that you work, you could
3 take 2.5 percent from the credit card tips from 10 days.
4 So, Your Honor, I can't see how it would be more. It's
5 going to be less.

6 THE COURT: Okay. Thank you.

7 MR. RECKENBEIL: Thank you, Judge.

8 MR. CABLE: Just very briefly. Just a couple of
9 things I want to point out. Mr. Reckenbeil -- again, to
10 his credit, the FLSA can be very convoluted. He is,
11 actually, conflating two things here. If you look at his
12 tab six, it's my Exhibit E, the DL fact sheet, if you look
13 on Page 2 of 4, he's conflating this issue of service
14 charges and credit cards. Service charges are those
15 things -- for instance, if you have a big party, 10 people
16 or so, that's what a service charge is. That's different
17 than the credit card issue.

18 The credit card issue is, actually, a
19 judicially-recognized exception. It's different than the
20 service charges that Mr. Reckenbeil is talking about that
21 do fall under the regs. Okay. Those are different
22 things.

23 Another thing is Mr. Reckenbeil is -- it appears is
24 trying to create an issue of fact for the first time here
25 today about the amount that was taken as this turn-in fee.

1 Heretofore, it has always been one percent net sales.
2 That's what he says in his request to admit. Now, he's
3 saying it's one percent of the credit card fees. You
4 can't create an issue of fact here at the hearing that you
5 have always disavowed before that. He's totally changing
6 his story here.

7 And the problem is you've got to get through two stop
8 signs before you even get to this. Okay. The turn-in fee
9 has always been one percent of the net sales for the
10 night. If you look at his request to admit, you look at
11 his interrogatory answers, it's always been that. We've
12 got to get through two stop signs to even get there. But
13 now that we are getting there, he's trying to change his
14 story.

15 And then, finally, I appreciate what Mr. Reckenbeil
16 says as far as in the spirit of the FLSA, and she needs to
17 make minimum wage, and so on and so forth. I appreciate
18 what he's saying. But the employers didn't pay her
19 minimum wage. They paid here \$2.13 an hour. She was good
20 at her job and customers gave her more than that. That's
21 wonderful. That is relevant to factor number four. It
22 has no bearing on factor number three. I appreciate the
23 spirit of what Mr. Reckenbeil is trying to argue, but it
24 is in direct contravention of the statute.

25 THE COURT: Have y'all mediated this thing yet?

1 MR. CABLE: We have.

2 MR. RECKENBEIL: We have, Your Honor.

3 THE COURT: What happened? I mean, obviously,
4 nothing.

5 MR. CABLE: It did not last very long.

6 MR. RECKENBEIL: It didn't last -- we -- Your Honor,
7 it has been the Defense's position that if, in fact -- you
8 know, the Plaintiff would have been owed that 900 and some
9 odd dollars. Because that was the money that was taken.

10 The only evidence in the record is that it was just
11 under a thousand dollars was the amount that was one
12 percent taken from the Plaintiff over the course of the
13 period of her employment. So we don't -- but that doesn't
14 equate to the amount of monies that she was paid. It --
15 there -- I don't even know, Your Honor, if we -- the tip
16 credit is even an issue but for the turn-in fee. And
17 that's the issue.

18 I think the issue is the turn-in fee. Whether or not
19 that we get the turn-in fee analysis to look at the full
20 10 days, or look at the one day, or whether or not the
21 payment of more than minimum wage cancels out the one
22 percent turn in. And I think that the one percent is
23 cancelled out based upon the allowance of the credit card
24 deductions that could have been taken but in a meeting
25 were decided that they'd rather do it the one percent each

1 day, as opposed to the 2.5 percent at the end of the pay
2 period, which would have been 10 days.

3 THE COURT: Well, unless you can equate your turn-in
4 fee to the credit card exception, don't you lose?

5 MR. RECKENBEIL: I would -- yes, sir. I would agree
6 with that.

7 But it was directly discussed with that -- in that
8 meeting. So, you know, Visa and MasterCard, you know,
9 they're hitting -- they're at four percent now. They're
10 at 4.5 percent sometimes.

11 So I would agree, Your Honor, that -- I think we have
12 to -- we have to take the facts and look at all the
13 exceptions, and look at the analysis of what, actually,
14 turned out and how it played out. And I do think that it
15 turned out in their favor because of the one percent not
16 exceeding the 2.5 percent that would have been taken at
17 the end of the pay period. All you have to do is you've
18 got to talk to the employee about it. And that's where I
19 think the question of fact is.

20 So in a trial which, you know, you never can predict
21 anything. But, in trial, if my clients get up on the
22 stand and they say, yeah, we never talked about the credit
23 card issue with the employee, then, yeah, that's not
24 applicable. But the evidence that we have provided and
25 the response to interrogatories and the other things is

1 that it was talked about in this meeting, you know. You
2 put these standards out there.

3 You've got two gentlemen that have been successful in
4 a business, you know, not born in the United States. It's
5 a matter of semantics. And that's why I use that phrase.
6 But I think it's pertinent because if you call it one
7 thing, it's completely illegal. But if you call it
8 another one, then we've got to look at the analysis of
9 whether or not you're exceeding the allowance of the three
10 percent credit card.

11 So that's where I think there are so many factual
12 issues that could play out as to what took place at that
13 meeting, was it discussed, and then did that, in fact,
14 exceed the allowance. And I don't think it did, Judge.

15 THE COURT: Well, it sounds like a wonderful example
16 of democracy. But it, also, might sound like the FLSA
17 doesn't really care much about that. Because you can't
18 waive your rights under the statute supposedly because the
19 employer might coerce the employees, I suspect.

20 MR. RECKENBEIL: And while, Your Honor, I would agree
21 that you -- under FMLA -- under FLSA, you cannot waive
22 those, you can't. But I think that the FLSA analysis, it
23 comes at the end of the pay period because Congress said
24 it's 40 hours minimum wage, 40 hours overtime. So you
25 have to look at the analysis at the end of the pay period.

1 Were they paid more than was deducted? That's what I
2 think the analysis --

3 THE COURT: Well, what case says that?

4 MR. RECKENBEIL: I don't think any case says it.
5 Because it's just -- I think it's so clear what the intent
6 of what the FLSA was is that we've got 40 hours per week.
7 That determines our American work week as to whether or
8 not you're going to be paid overtime or whether or not --
9 and then, also, it says \$7.25 an hour.

10 So, again, the Plaintiff has not brought any sort of
11 evidence to demonstrate that that one percent brought her
12 below any sort of minimum wage requirement. So if she --
13 say, she worked eight hours per day, everything we've
14 provided in the record is a question of fact as to the
15 fact that she was paid \$16.28 an hour.

16 So that then brings us back to the -- just the one
17 question is that is that ability to deduct that one
18 percent allowable? I -- it is allowable. But then there
19 has to be an analysis as to is it a credit card deduction,
20 or is it not? The question of fact is turn-in fee. It's
21 labeled turn-in fee.

22 So that's where, I think, we've got to go and say,
23 okay, Plaintiff, Defendant, sit on that witness stand and
24 tell us what happened at that meeting. Was it discussed?
25 Because that's where these memos that keep coming out from

1 the Department of Labor to try to clarify things -- which
2 I'm happy to pass up to Your Honor. It talks about it.
3 It's like, well, this is where we've got to go.

4 THE COURT: Well, it seems to me that maybe y'all
5 ought to mediate it again.

6 Because you might be right that --

7 MR. RECKENBEIL: Well, they took away a good
8 mediator, unfortunately. Because now he's joined forces
9 with you all, Tom Stephenson.

10 MR. CABLE: Yeah. He's --

11 MR. RECKENBEIL: So Tom was going to be the mediator.
12 But we were in a case, Tom and I, that I couldn't use him.
13 And we were going to use him. But -- so now we -- so now
14 our resources are shrinking as to people who really
15 understand this stuff. So I'm glad to -- and I'm glad to
16 most likely either go to Ford & Harrison up in
17 Spartanburg --

18 MR. CABLE: Can I just say Tom Stephenson would have
19 been the mediator that agrees with me?

20 MR. RECKENBEIL: Well, then I would love to hear
21 Tom's analysis on it. But I can't get away from the fact
22 that the FLSA says pay \$7.25 an hour. We paid our \$16.28
23 an hour. So I can't escape that.

24 THE COURT: What does he say about the jury appeal of
25 your client coming in here asking for liquidated damages

1 and attorneys fees on something where she, actually, made
2 over twice the minimum wage?

3 MR. CABLE: That's why Mr. Reckenbeil keeps trying to
4 find an issue of fact. But the fact is there's --
5 everyone agrees what happened. Whether you call it an
6 attorney fee, a breakage fee, whatever you want to call
7 it, the fee happened. It's not an issue of fact based
8 on -- the only thing that's left is for the judge to
9 determine whether or not what happened is legal. And
10 203 (M) says verbatim they must keep all their tips. She
11 didn't.

12 THE COURT: Well, okay. I understand the issues. It
13 just seems to me that y'all ought to be able to work it
14 out, I mean, unless you want to go all the way to the U.S.
15 Supreme Court and make some big stand on the FLSA on a
16 woman who's, evidently, not lost one penny on this.

17 MR. RECKENBEIL: If I can make a suggestion, Your
18 Honor. And I hear and I appreciate the Court's guidance.

19 Can we stay this Court's ruling on this matter for
20 60 days pending us trying to mediate this case again?
21 Because I do think that this brings a lot of clarity to
22 some issues that I think might be beneficial to go to
23 mediation.

24 THE COURT: When did y'all file it?

25 MR. RECKENBEIL: We were --

1 MR. CABLE: I don't know the answer to that. It's a
2 2013 case. That's the best I can tell you with what I
3 have in front of me.

4 THE COURT: Okay.

5 MR. RECKENBEIL: Well, you know, I respect the heck
6 out of the opposing counsel. And we have been working on
7 this case very diligently, Your Honor. This is not one
8 that's been sitting around. It's just the complex -- and
9 so if the Court is okay with that -- and if you need us to
10 send -- to submit a joint consent order on a -- asking for
11 60 additional days, I'd be happy to.

12 THE COURT: Yes. We'll just say mediate it by
13 October 1st.

14 Does that give you enough time to do it?

15 MR. RECKENBEIL: Yes, sir, Your Honor.

16 MR. CABLE: Sure.

17 I believe this is, actually, up on the trial docket
18 potentially sometime in September. So we'll need to do
19 something about that. But, otherwise, I'm happy to --

20 THE COURT: Okay. Well, just tell Lyndall that I
21 ordered it be mediated by October 1st. So that will
22 continue any trial date.

23 And, in the meantime, if y'all have got any further
24 case law, I'd be interested in seeing it --

25 MR. RECKENBEIL: Yes, Your Honor.

1 THE COURT: -- on these issues.

2 MR. RECKENBEIL: Thank you very much, Judge.

3 MR. CABLE: Thank you.

4 THE COURT: Thank y'all.

5 I appreciate your arguments.

6 *****END OF TRANSCRIPT OF RECORD*****
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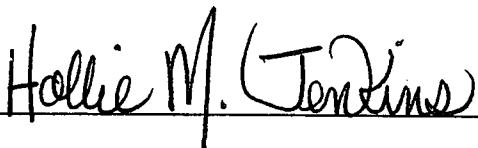
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 11th day of August, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 20, 2014



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

WITNESSES

(No Witnesses were called by either party.)

ARGUMENTS OF COUNSEL

Mr. Murphy..... 3
Mr. Reckenbeil..... 4

EXHIBITS

Plaintiffs' Exhibits: **Marked:** **Received:**

(None)

Defendant's Exhibits: **Marked:** **Received:**

(None)

Reporter's Certification..... 5

REPORTER'S NOTES: This transcript contains quoted material. Such material is reproduced as read or quoted by the speaker.

REPORTER'S NOTES: Some of the names in this transcript are spelled phonetically.

PAMELA FAUCETTE, CVR - 864-574-9534 or 336-260-2864

000327

December 4, 2014

11:28 P.m.

(Off-the-Record Comments)

THE COURT: My understanding — It's my understanding, gentlemen, that you all have a consent order which you all are going to place the matter on the record; is that correct?

MR. MURPHY: Correct, Your Honor.

THE COURT: Okay. Well, who wants to have the —

MR. MURPHY: And, Your Honor, just — just by way of background, Brian Murphy for the Plaintiff, Laurin Stinson.

This is a — a case in which Judge Hill already entered judgment as to liability and the amount of damages we sought. The only issue that was left open was attorney's fees and costs. We filed a motion with affidavits.

Mr. Reckenbeil, as I understand, consents to that, with the understanding — and if we can incorporate this into the proposed order — that, by agreeing that everything is fair and reasonable under the circumstances, he still gets to argue — take his arguments further on appeal and argue later that, if he's successful, that ought to be factored in later to reducing any reward we get.

THE COURT: In other words, if he — if he's successful in challenging liability, then, he can come back and argue the attorney's fees; is the what you're saying?

MR. MURPHY: He can — he can make the argument. He's — he's — what he is doing is he is saying, given the — there's one factor that you look at in the analysis, which is the results obtained.

We received a 100% recovery. He doesn't contest that we have; he

1 contests we should have. So he may want to later come back and say, "Well,
2 now, that I took it down to the next percentage, I think you ought to revisit
3 that ---

4 **THE COURT:** Right.

5 **MR. MURPHY:** --- and cut the attorney's fees." We think that's a
6 --- you know, we understand that position. And we --- we drafted this so he
7 reserved that right and will be eligible to do that.

8 **THE COURT:** That's a smart way out. Do you agree with that?

9 **MR. RECKENBEIL:** Yes, Your Honor. John Reckenbeil for the
10 Defendants; absolutely. Mr. Murphy and I have talked about this and I would
11 agree that whole saying under Section 215, 216 gives the prevailing party
12 attorney's fees.

13 And they are prevailing. We obviously had just one issue that we
14 brought up an appeal. And we would like to revisit it with the attorney's fees,
15 if, in fact, we're successful in --- in the court case.

16 **THE COURT:** So that would be the factor?

17 **MR. RECKENBEIL:** Right.

18 **THE COURT:** If it is changed in any manner, you'd bring it back
19 before the Circuit Court to make that termination?

20 **MR. MURPHY:** Yes, sir

21 **MR. RECKENBEIL:** Yes sir, yeah. Yes, sir, because I think that
22 would then be --- a remittitur would, then, be issued. And, when it's remitted
23 back here, to determine the liability aspect and also the damages aspect,
24 then, I think we would revisit the attorney fee aspect.

25 **THE COURT:** Okay. I've signed the order, gentlemen.

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MR. RECKENBEIL: Thanks very much.

THE COURT: And I appreciate you all doing that here.

MR. RECKENBEIL: Thank you, Your Honor.

MR. MURPHY: Thank you for your time, Your Honor.

THE COURT: Yes, sir.

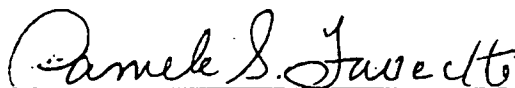
(WHEREUPON, the proceeding concluded at 11:35 a.m.)

REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 4, were transcribed by me and represent a true and accurate transcript of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

January 8, 2015



Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

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Law Office of John G. Reckenbeil

Lawrence E. McNair, III
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November 14, 2014

ATTN: Files and Records
Greenville County Court of Common Pleas
305 E. North Street
Greenville, SC 29601

RE: Laurin Stinson v. Hans & Franz, et al.
Case No.: 2013-CP-23-03057

To Whom It May Concern:

Please find enclosed an original and two copies of a Notice of Appeal for filing in regards to the above referenced case. I ask that you please file the original and return the copies to me in the self-addressed, stamped envelope provided for your convenience. I have hereby served opposing counsel of the same.

Should you have any questions or concerns, please feel free to contact my office.

Yours very truly,


John G. Reckenbeil

JGR/kae

Enclosure

CC: C. Alexander Cable ✓
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Greenville, SC 29601

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S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

215 Magnolia Street (29306) • P.O. Box 1633 • Spartanburg, SC 29304
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Common Pleas Court
D. Garrison Hill, Circuit Court Judge

Case No.: 2013-CP-23-03057

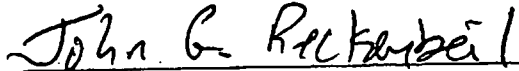
Laurin Stinson.....Respondent,

vs.

Hans & Franz, LLC d/b/a Hans & Franz Biergarten, Addys Dutch Café and Restaurant, Addy Sulley,
and Juergen Haubach.....Appellants.

NOTICE OF APPEAL

Hans & Franz, LLC d/b/a Hans & Franz Biergarten, Addys Dutch Café and Restaurant, Addy Sulley, and Juergen Haubach appeal in accordance with SCRAP 203(d)(1)(ii) the Judgment of the Honorable D. Garrison Hill dated October 17, 2014. Appellants received written notice of entry of this Judgment on October 20, 2014 but never received the formal Order signed by Judge Hill.



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November 14, 2014

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Attorney for Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2013CP2303057

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMEA
2014 OCT 17 PM 4 05

Laurin Stinson vs. Hans & Franz LLC

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCp; ☐ Rule 41(a), SCRCp (Vol. Nonsuit); ☐ Rule 43(k), SCRCp (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCp; ☐ Bankruptcy: _____
- ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court

NOTICE

This is a notice to you that an Order Granting Plaintiff's Motion For Partial Summary Judgment And Entry Of Judgment in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to bk Lukas@greenvillecounty.org. If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

Brian Patrick Murphy Stephenson & Murphy, LLC
207 Whitsett Street Greenville, SC 29601-3117

John G. Reckenbeil PO Box 1633 Spartanburg, SC
29304

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

FORM 4

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2303057

Laurin Stinson
PAUL B. WICKENSIMER

2014 OCT 3 PM 3 17

Hans & Franz LLC
Addys Dutch Cafe And
Restaurant
Jurgen Haubach

Hans & Franz
Biergarten
Addy Sulley

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion for Partial Summary Judgment is granted. Mr. Charles A. Cable, Esq. is requested to submit a proposed order to the Court by October 15, 2014.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge

may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Ham / -

Circuit Court Judge

2138

Judge Code

10/1/2014

Date

For Clerk of Court Office Use Only

10-3-14
This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on, to attorneys of record or to parties (when appearing pro se) as follows:

Charles Alexander Cable 207 Whitsett Street Greenville, SC
29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

John G. Reckenbeil Law Office Of John G. Reckenbeil, LLC
P.O. Box 1633 Spartanburg, SC 29304

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Common Pleas Court
D. Garrison Hill, Circuit Court Judge

Case No.: 2013-CP-23-03057

Laurin Stinson.....Respondent,

vs.

Hans & Franz, LLC d/b/a Hans & Franz Biergarten, Addys Dutch Café and Restaurant, Addy Sulley,
and Juergen Haubach.....Appellants.

PROOF OF SERVICE

I, John G. Reckenbeil, certify that I have served the Notice of Appeal on all Counsel of Record by depositing a copy of it in the United States Mail on November 14, 2014, addressed to the Respondent's attorney, C. Alexander Cable, 207 Whitsett Street, Greenville, South Carolina 29601.



John G. Reckenbeil
215 Magnolia Street (29306)
Post Office Box 1633
Spartanburg, SC 29304
(864) 582-5472
Fax (864) 582-7280
Attorney for Appellants

November 14, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Common Pleas Court
D. Garrison Hill, Circuit Court Judge

Case No.: 2014-002464

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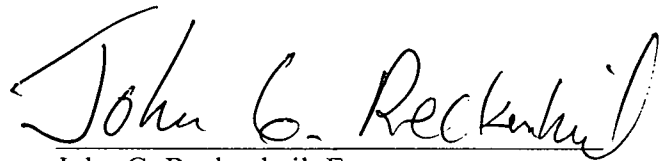
Laurin Stinson.....Respondent,

vs.

Hans & Franz, LLC d/b/a Hans & Franz Biergarten, Addys Dutch Café and Restaurant, Addy
Sulley, and Juergen Haubach.....Appellants.

CERTIFICATE OF COUNSEL

I, John G. Reckenbeil, certify that the Record on Appeal contains all materials proposed
to be included by any of the parties, and not any other materials.



John G. Reckenbeil, Esq.
215 Magnolia Street (29306)
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(864) 582-5472
Fax (864) 582-7280
Attorney for Appellants

Dated: March 17, 2015
Spartanburg, South Carolina