

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 2020-000399

RECEIVED

Jan 11 2021

SC Court of Appeals

Terri Chappell, as Personal Representative of the Estate of CRAIG CHAPPELL, on behalf of himself and others similarly situated, Appellant,

v.

Ladles Soups – James Island LLC; Ladlessoups, LLC; Ladles Soups At Cane Bay LLC; Ladles Soups At Citadel Mall LLP; Ladles Soups Calhoun LLC; Ladles Soups Cane Bay LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston, LLC; Ladlessoups Fresh Fields, LLC; Ladles Soups @ Freshfields Village, LLC; Ladlesoups Mainstreet, LLC; Ladles Soups Moncks Corner LLC; Ladlessoups Mount Pleasant, LLC; Ladles Franchise Development, LLC; Ladles Franchising Inc.; Ladles Fort Mill, LLC; Ladles Knightsville LLC; Ladles West Ashley; Teri Owens; Sue Allen, Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke, Stan Sutton, Carol Sutton, Jason Dalter, Kellie Henderson; Jane Doe 1-25 (Unknown Operating Company and Management Company Owners); John Doe 25-40 (Management Personnel),

Of which Ladles Franchising Inc., Ladlesoups, LLC, Sue Allen, and Tracey Allen are the Respondents.

AMENDED RECORD ON APPEAL / VOLUME 1 OF 2

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the foregoing Record on Appeal contains all material proposed to be included by any of the parties and not any other material which is irrelevant to this appeal.

January 11, 2021

RECEIVED
Jan 11 2021
SC Court of Appeals

s/ David D. Ashley
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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-CP-10-00785

Jan 11 2021

SC Court of Appeals

Craig Chappell
PLAINTIFF(S)

Ladles Soups James Island LLC
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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: Upon review of the court file, the Plaintiffs, despite filing the present action as a "class action", never moved this court pursuant to SCRPC 23 to certify the class. Therefore, Defendant's Motion to Disallow the Class is DENIED as moot with leave to refile.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

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

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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2764

Judge Code

1/25/18

Date

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP1000785

Craig Chappell
PLAINTIFF(S)

Ladles Soups James Island LLC et al
DEFENDANT(S)

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.
- ☐ **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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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 to Intervene is denied. The Motion for Summary Judgment as to the LLCs is denied. Motion for Class certification is denied. Plaintiff's Motion to Amend is denied. Plaintiff's Motion to Compel discovery is granted. Jurisdiction will be retained over this case for discovery purposes. As to Plaintiff's Request to Admit is denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/06/2020 .

Stan Sutton
Teri Owens
Ladles Soups Cane Bay LLC
Ladles Soups Calhoun LLC
Ladles Soups at Citadel Mall LLP
Ladles Soups at Cane Bay LLC
Ladlessoups Mainstreet LLC
Ladles Soups James Island LLC
Ladlessoups Fresh Fields LLC
Doe, John 25-40
John 25-40 Doe
Doe, Jane 1-25
Jane 1-25 Doe
Jason Dalter

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Craig Chappell VS Ladles Soups James Island LLC , defendant, et al

Case Number: 2018CP1000785

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-01-06 14:49:42 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-CP-10-00785

Craig Chappell,

Ladles Soups - James Island, LLC, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Court

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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 Confession of Judgment
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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.

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.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRPC.

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

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

CASE NO.: 2018-CP-10-00785

CRAIG CHAPPELL, on behalf of himself and
others similarly situated,

Plaintiff(s),

**ORDER ON DEFENDANTS LADLES
SOUPS MOUNT PLEASANT, LLC, ERIK
DYKE AND JULIE DYKE
MOTION FOR SUMMARY
JUDGMENT**

v.

Ladles Soups – James Island LLC; Ladlessoups,
LLC; Ladles Soups At Cane Bay LLC; Ladles
Soups At Citadel Mall LLP; Ladles Soups
Calhoun LLC; Ladles Soups Cane Bay LLC;
Ladles Soups Coosaw LLC; Ladles Soups
Downtown Charleston, LLC; Ladlessoups
Fresh Fields, LLC; Ladles Soups @ Freshfields
Village, LLC; Ladlessoups Mainstreet, LLC;
Ladles Soups Moncks Corner LLC;
Ladlessoups Mount Pleasant, LLC; Ladles
Franchise Development, LLC; Ladles
Franchising Inc.; Ladles Fort Mill, LLC;
Ladles Knightsville LLC; Ladles West Ashley;
Teri Owens; Sue Allen, Tracy Allen, Steve
Traeger, Erik Dyke, Julie Dyke, Stan Sutton,
Carol Sutton, Jason Dalter, Kellie Henderson;
Jane Doe 1-25 (Unknown Operating Company
and Management Company Owners); John
Doe 25-40 (Management Personnel)

Defendants.

HEARING DATE:

October 29, 2019

PLAINTIFF’S COUNSEL:

Ben Le Clerq, Esq. and David D. Ashley, Esq.

DEFENDANT’S COUNSEL:

P. Brandt Shelbourne, Esq.

COURT REPORTER:

Joyce C. Rueger

This matter came before me on a Motion for Summary Judgment filed by Defendant
Ladles Soups Mount Pleasant, LLC and its members Julie Dyke and Erik Dyke. Present for the

hearing was P. Brandt Shelbourne, Esq for the Movants, and attorneys Ben Le Clerq, Esq. and David D. Ashley, Esq. for the Plaintiff. After hearing counsels' arguments and considering the memoranda of law and evidence presented and taken in light most favorable to the Plaintiff as the non-moving party, this Court is of the opinion that Defendants Ladles Soups Mt. Pleasant, LLC and its members Julie Dyke and Erik Dyke are entitled to summary judgment as to Plaintiff's filed causes of action.

Summary Judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001). "In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party." Id. "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." Lord v. D & J Enters., Inc., 407 S.C. 544, 553, 757 S.E.2d 695, 699 (2014). ("Once the moving party carries its initial burden, the opposing party must do more than rest upon the mere allegations or denials of his pleadings, but must, by affidavit or otherwise, set forth specific facts to show that there is a genuine issue for trial." (citing Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991))); Hall v. Fedor, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002) ("Our appellate courts have interpreted Rule 56(e) to mean materials used to support or refute a motion for summary judgment must be those which would be admissible in evidence.").

Plaintiff was an employee of Ladles Soups James Island. Plaintiff filed suit against the collective Defendants in this case to recover alleged misappropriated tips. Plaintiff's Complaint alleges a violation of the South Carolina Failure to Pay Wages Act and breach of contract and conversion. Plaintiff's Complaint proports to be brought on behalf of a class of employees of all Ladles Soups businesses, however as of the date of this hearing, no class status has been certified.

Plaintiff never worked for Ladles Soups Mt. Pleasant or for the Dykes. He has no contractual relationship with the Defendants, therefore, he has no standing to sue them. Ladles Soups Mt. Pleasant is South Carolina Limited Liability Company owned and operated by the Dykes. Both Plaintiff's employer Ladles Soups James Island and Ladles Soups Mt. Pleasant hold Ladles Soups franchises. However, Ladles Soups Mt. Pleasant is a completely separate and independent business from Ladles Soups James Island. Other than its Franchise Agreement with the overall Ladles Franchisor and its duties under that Agreement, it has no connection with the other Defendants. Plaintiff has not provided anything to show that the Agreement addresses how a Franchisee such as Ladles Mt. Pleasant is to handle tips. There is no credible evidence in the record that Ladles Mount Pleasant improperly or illegally handled its tips with regard to the Plaintiff or towards any employee for that matter.

Plaintiff, in his deposition at page 61, l. 22 – page 62, l. 6, testified as follows to the tips regarding the Defendants:

Q. As far as you know, Ladles Mount Pleasant was doing it right, as far as you know?

A. As far as I was told.

Q. Right. As far as you know?

A. Correct.

Q. And so any employees that worked for Ladles Mount Pleasant, as far as you know based on what you were told would have -- would not have any claims because they would have gotten their tips?

A. Absolutely.

Further, in his deposition Plaintiff conceded that he “didn’t want to include [Ladles Mt. Pleasant] period.” See Plaintiff’s deposition, page 60, l. 23.

There is nothing in the record to tie the Dykes individually or Ladles Mt. Pleasant to this suit. Plaintiff can point to nothing other than speculation. Plaintiff’s argument is solely that because the Ladles Soup business where Plaintiff worked allegedly failed to properly pay tips to Plaintiff, Plaintiff is entitled to sue Defendants Julie and Erik Dyke individually and their independent Ladles LLC for withholding tips. However, since this Plaintiff admits there is no evidence of wrong behavior, Defendants are entitled to summary judgment.

As to any claim that summary judgment is premature, this argument also has no merit. "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." David v. McLeod Reg'l Medical Center, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). While summary judgment "must not be granted until the opposing party has had a full and fair opportunity to complete discovery. Nonetheless, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is not merely engaged in a "fishing expedition."" Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (quoting Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (internal citation omitted). See also Guinan v. Tenet Healthsystems of Hilton Head, Inc., 677 S.E.2d 32, 383 S.C. 48 (Ct. App. 2009). “A party claiming summary judgment is premature because they have not been provided a full and fair opportunity to conduct discovery must advance a good reason why the time was insufficient under the facts of the case, and why

further discovery would uncover additional relevant evidence and create a genuine issue of material fact.” Guinan v. Tenet Healthsystems of Hilton Head, Inc., 383 S.C. at ___, 677 S.E.2d at 36 citing Dawkins, 354 S.C. at 71, 580 S.E.2d at 439-40. Plaintiff has not provided any support for such argument.

Plaintiff filed suit on February 14, 2018 against the Dykes and Ladles Mt. Pleasant. Defendants timely answered the Complaint on June 14, 2018 and filed the answer with the Clerk on June 20, 2018. Plaintiff did not serve any discovery on Defendants until May 24, 2019, over fifteen (15) months after he filed suit and eleven (11) months after Defendants answered Plaintiff’s Complaint. Plaintiff cannot now claim that he has not had ample opportunity for discovery. He has not enunciated any legitimate reason why in the eleven (11) months since Defendants answered the Complaint, he has not had time to complete or conduct adequate discovery or that any further discovery would uncover additional relevant evidence or create a genuine issue of material fact as to the suit between Plaintiff and these Defendants.

Based upon the absence of any material fact or inference arising therefrom that supports Plaintiff’s causes of action against Defendants Ladles Soups Mt. Pleasant, LLC and Julie Dyke and Erik Dyke, and based upon the fact that the Plaintiff has had adequate time to conduct discovery and has not provided any rationale why it has not had adequate time, nor argued what additional evidence would create a genuine issue of material fact between Plaintiff and these Defendants, the Defendants are entitled to Summary Judgment.

And it is so

ORDERED!

—

December __, 2019
Charleston, South Carolina

Bentley Price
Presiding Judge, Ninth Judicial Circuit



Charleston Common Pleas

Case Caption: Craig Chappell VS Ladles Soups James Island LLC , defendant, et al

Case Number: 2018CP1000785

Type: Order/Summary Judgment

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-01-06 14:52:04 page 8 of 8

STATE OF SOUTH CAROLINA,	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2018-CP-10-00785
	)	
CRAIG CHAPPELL, on behalf of himself and	)	
Others similarly situated,	)	
	)	
Plaintiff(s),	)	
v.	)	
	)	ORDER GRANTING SUMMARY JUDGMENT IN
	)	FAVOR OF DEFENDANTS LADLES FRANCHISING,
	)	INC., LADLESSOUPS, LLC, SUE ALLEN & TRACY
	)	ALLEN
Ladles Soup-James Island LLC; Ladlessoups,	)	
LLC; Ladles Soup At Cane Bay, LLC; Ladles	)	
Soups at Citadel Mall LLP; Ladles Soups	)	
Calhoun LLC; Ladles Soups Cane Bay LLC;	)	
Ladles Soups Coosaw LLC; Ladles Soups	)	
Downtown Charleston, LLC; Ladlessoups	)	
Fresh Fields LLC; Ladles Soups @ Freshfields	)	
Village, LLC; Ladlessoups Mainstreet, LLC;	)	
Ladles Soups Moncks Corner LLC; Ladles	)	
Franchise Development, LLC; Ladles Franchising,	)	
Inc.; Ladles Fort Mill, LLC; Ladles Knightsville	)	
LLC; Ladles West Ashley; Teri Owens; Sue Allen,	)	
Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke	)	
Stan Sutton, Carol Sutton, Jack Dalter, Kellie	)	
Henderson; Jane Doe 1-25 (Unknown Operating	)	
Company and Management Company Owners);	)	
John Doe 25-40 (Management Personnel).	)	
	)	
Defendants.	)	
	)	

Date of Hearing: January 6, 2020
Plaintiff's counsel: Benjamin LeClercq, Esq. & David Ashley, Esq.
Defendant's counsel: Kerry W. Koon, Esq. & M. Evan Lacke, Esq.
Court reporter: Joyce C. Rueger

STATEMENT OF THE CASE & BACKGROUND

The Plaintiff's allegations are that Defendants improperly retained credit card tips rather than passing them on to him and other employees.

This action was filed on February 14, 2018, and styled as a class action, however, no class has ever been certified and Plaintiff's belated Motion for Class Certification was denied by this Court's Order dated January 7, 2020.

A Motion to Intervene or in the Alternative to Amend the Complaint by successive proposed amendments was denied by Order dated January 7, 2020.

The causes of action pled by the Plaintiff are:

1. Violation of the South Carolina Wage Act, Section 41-10-10, et seq.;
2. Breach of Contract; and
3. Conversion.

The matter came before me on the above named Defendants' Motion for Summary Judgment on January 6, 2020, on which date counsel for all parties appeared.

The pleadings relevant to the motion are:

- 1.) The above named Defendant's Motion for Summary Judgment filed August 26, 2019, supported by deposition excerpts, the Affidavit of Sue Allen dated August 16, 2019, the Affidavit of Tracy Allen dated November 13, 2018, and the Affidavit of Sue Allen dated November 13, 2018;

2.) The moving Defendants' Supplemental Memorandum with certain additional deposition exhibits filed October 25, 2019;

3.) Plaintiff's Memorandum in Opposition to the moving Defendant's Motion for Summary Judgment filed December 31, 2019, attaching deposition exhibits, other pleadings and an affidavit from Lanie Charpia.

4.) The moving Defendants' Response to the Plaintiff's Memorandum in Opposition dated January 3, 2020, supported by additional deposition excerpts relevant to Plaintiff's opposition memorandum and exhibits.

Ladles Franchising, Inc. is a South Carolina Corporation which operates as a traditional franchisor and has contracted by written Franchise Agreements with the various restaurant entities named in the Complaint. The Franchise Agreement was entered into the record by both Plaintiff and moving Defendants (eg. Exhibit "A" to the Affidavit of Sue Allen of August 16, 2019). The Franchise Agreement is typical in that it provides for royalties to be paid by the franchisees, requires adherence to standards of restaurant appearance, hours of operation, menu, safety standards and procedures and other matters. The Franchise Agreement is totally devoid of any terms regarding the franchisees' employee compensation or tipping practices.

Ladlessoups, LLC is a dormant limited liability company whose sole member is Sue Allen and which formerly operated the West Ashley Ladles located on Bees Ferry Road. It was the initial Ladles restaurant. The West Ashley location was last operated by Ladlessoups, LLC in September 2017 (Affidavit of Sue Allen of August 16, 2019, page 2). Corey Paul purchased the West Ashley restaurant from Ladlessoups, LLC on September 1, 2017, and has since operated independently as CT Foods, LLC (Depo. of Corey Paul, page 95, lines 6-12, page 97, lines 16-25).

Sue Allen is the CEO of Ladles Franchising, Inc.

Tracy Allen is Sue Allen's husband and is the President of Ladles Franchising, Inc. Tracy Allen has never been an agent or officer of any of the Ladles Soups' franchisees named in the lawsuit (Affidavit of Sue Allen of August 16, 2019, page 2).

MOTION FOR SUMMARY JUDGMENT

The Defendants move for summary judgment on the ground that Plaintiff was never their employee, never had any other contractual relationship with any of them and they never came into possession of the credit card tips Plaintiff claims.

Plaintiff alleges that he was employed by the James Island location, owned by Ladles Soup-James Island, LLC which is located at 1175-A Folly Road, Charleston, South Carolina 29412 (Complaint, paragraph 4a and paragraph 14). Ladles Franchising, Inc. has never employed the Plaintiff (Sue Allen affidavit of August 16, 2019, page 2). The Plaintiff never received a paycheck from any Ladles related entity other than Ladles Soup- James Island, LLC (Chappell deposition, page 81, lines 16-21).

Other than his employer/ employee relationship with Ladles Soup-James Island, LLC Plaintiff has neither alleged, nor provided evidence of, any other contractual relationship with any Defendant.

Ladles Franchising, Inc. has never employed waiters, servers, cooks, cashiers, receptionists or other employees who might receive tips (Affidavit of Sue Allen of August 16, 2009, page 2).

It is elementary that a Plaintiff may not sue a business under Section 41-10-10, et seq. (Wage Statute) for which he has never worked. Section 41-10-80(C) governing civil actions for unpaid wages provides:

“(C) In case of any failure to pay wages due to an employee as required by Section 41-10-40 or 41-10-50 the employee may recover in a civil action in an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney’s fees as the Court may allow...”

It is obvious from this subsection that an employee may only recover for unpaid wages from his own employer, as there can be no unpaid wages due from a person or entity for whom one has provided no labor or services.

While there is no definition of “employee” in the statutory scheme, there is one for “employer” found in Section 41-10-10:

“(1) ‘Employer’ means every person, firm, partnership, association, corporation, receiver, or other officer of a court of this state, the state or any political subdivision thereof and any agent or officer of the above classes employing any person in this state.”

In *Lewis v. InfoSafe Corp.*, 320 S.C. 188, 463 S.E. 2nd 641 (Ct. App. 1995), the Court of Appeals interpreted the wage statute to impose liability on individual officers and agents who “knowingly permit **their corporation**” to violate the act. *Id.* at 463 S.E. 2nd 644 (Emphasis added). It is obvious that only officers and agents of the actual employer entity may be held liable under Section 40-10-10, et seq. None of the moving Defendants fit within the purview of officers and agents of “their corporation” as contemplated by *Dumas*. Any claims of officer and agent liability under the statute as interpreted by *Dumas* are necessarily limited to officers and agents of Ladles Soup -James Island, LLC, Plaintiff’s employer.

Teri Owens, a member of Ladles Soup-James Island, LLC, testified that she and her husband are the owners of Ladles Soup -James Island, LLC and that neither Suzie (Sue) Allen or Tracy Allen own any interest in Ladles Soup-James Island, LLC, and neither is a manager or agent of Ladles Soup-James Island, LLC (Owens’ deposition, page 69, lines 1-17). No evidence to the contrary has been offered.

Plaintiff has argued that paragraph 9 of the Franchise Agreement establishing a marketing fund to which the franchisees contribute, somehow establishes Ladles Franchising, Inc. as a general agent of the franchisees, sufficient to impose liability under Section 41-10-10 et seq. This argument is at best attenuated and far-fetched, especially in light of paragraph 5a of the Franchise Agreement which provides in pertinent part:

a. Independent Contractors.

It is understood and agreed that this Agreement does not create a fiduciary relationship between you and us, that we and you are and shall be independent contractors, and that **nothing in this agreement is intended to make either you or us a general or special agent, legal representative, joint venturor, partner or employee of the other for any purpose or to grant either you or us the right to direct or supervise the daily affairs of the other...** (Emphasis added).

Teri Owens confirmed that Ladles-Soup, James Island, LLC operates as an independent contractor separate and apart from Ladles Franchising, Inc. (Owens deposition, page 69, line 24 – page 70, line 15).

Neither may Plaintiff sue these Defendants for breach of contract since he has no contractual relationship with any of them.

As to Plaintiff's Third Cause of Action for Conversion, there is no evidence in the record that any of the moving Defendants ever came into possession of credit card tips that Plaintiff claims. Conversion is the illegal use, misuse or detention of another's chattel. *American Credit v. Nationwide Mutual*, 378 S.C. 623, 663 S.E. 2nd 492, 495 (2008). Without evidence of possession by these Defendants, conversion by them is impossible.

It was suggested that Ladles Franchising, Inc. may have charged its percentage royalty fee on gross receipts including credit card tips. The evidence demonstrates otherwise. Sue Allen testified in her deposition that although each store may have a different royalty percentage, the

percentage is calculated on "...their sales of their product, less any discounts that they wouldn't have received money for, less taxes, and less tips." (Sue Allen deposition, page 66, line 23 – page 67, line 3).

Teri Owens, the immediate employer, testified that Ladles-James Island, LLC does not pay the franchisor a percentage of tips (Owens' deposition page 33, lines 1-20).

Corey Paul in his disposition testified that Ladles Franchising, Inc. does not collect royalties based upon credit card tips (Corey Paul deposition, page 93, line 19 – page 94, line 8).

Thus, the record contains no evidence to support the allegation of conversion.

Absent an employer/employee relationship or other contractual relationship, Plaintiff has no standing to bring an action against these Defendants.

"Generally, a party must be a real party in interest to the litigation to have standing." *Sloan Friends of the Hunley*, 369 S.C. 20, 28, 630 S.E. 2nd 474 (2006). A real party in interest is "a party with a real material or substantial interest in the outcome of the litigation" *Id.* at 369 S.C. 28.

In *Bank of America, N.A. v. Draper*, 405 S.C. 214, 746 S.E. 2nd 478, the Court of Appeals, quoting for S.C. Jur. Action Section 23 (1991) stated:

"Rule 17(a) of the South Carolina Rules of Civil Procedure requires that every action be prosecuted 'in the name of the real party in interest'...the South Carolina Rule with respect to the real party in interest requirement is patterned after the comparable Federal Rule, which has been regarded as embodying the concept that an action shall be prosecuted 'in the name of the party who, by the substantive law, has the right sought to be enforced.' " *Id.* at 405 S.C. 214, 220.

and;

"It is the ownership of the right sought to be enforced which qualifies one as a real party in interest, rather than absolute ownership of specific property." *Id.*

Plaintiff here owns no rights which may be enforced against the moving Defendants and therefore he has no standing to sue them.

In addition to Rule 17(a) considerations, the Court of Appeals has held that in order for the Plaintiff to have standing there must be a justiciable case or controversy and, if not, the Court lacks subject matter jurisdiction. See Lennon v. South Carolina Coastal Council, 330 S.C. 414, 498 S.E. 2nd 906 (Ct. App. 1998), wherein the Court stated:

“Another point of departure is that standing acts as an element of the constitutional requirement that there be a ‘case or controversy’; when thus applied, it acts as a limitation on the subject matter jurisdiction of the federal courts. In this context, objections to standing, unlike 17(a) objections, cannot be waived and may be raised by a federal court.” “*sua sponte*” Id. at 330 S.C. 417 (Citation omitted)

and

“South Carolina courts, like the federal courts, require a justiciable case or controversy before any decision on the merits can be reached.” Id. at 330 S.C. 417-418

Plaintiff has argued that standing should be conferred because he has suffered an injury in that if customers knew that credit card tips were being retained by the restaurant they would be less likely to tip. There is nothing in the record to demonstrate this. There are no customer affidavits, depositions, or other evidence to support such a theory. The Plaintiff’s argument is based upon mere speculation and like the Plaintiff’s agency argument, is not supported by the record.

In Gibson v. Epting, 426 S.C. 346, 827 S.E. 2nd 178 (2019), the Court gave a very comprehensive statement of the necessity to cite actual evidence in order to avoid summary judgment, stating:

“The summary judgment standard governing Gibson’s claims requires her to produce only a “scintilla” of evidence to avoid judgment as a matter of law, but a scintilla is a perceptible amount. There still must be a verifiable spark, not something conjured by shadows. (Citations omitted) “Scintilla” means, according to 56 C.J. 863, ‘a gleam,’ ‘a glimmer,’ ‘a spark,’ ‘the least particle,’ ‘the smallest trace.’ (Citation omitted) (“[A] scintilla of evidence is any material evidence which, taken as true, would tend to establish the issue in the mind of a reasonable juror.”); (Citation omitted) (“A spark....a minute particle, an atom.”) (Citation omitted). (“When opposing a summary judgment motion, the nonmoving party must do more than ‘simply show that there is a metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial.’” (Citation omitted)); *Grimsey v. S.C. Law Enf’t Div.*, 415 S.C. 33, 42, 780 S.E. 2nd 897, 901 (2015) (affirming trial court’s grant of summary judgment and noting court of appeals improperly “cherry picked” an isolated portion of the record, placed it out of context, and “elevated what is, at best, a metaphysical doubt into a genuine issue of material fact”); *Main v. Corley*, 281 S.C. 525, 527, 316 S.E. 2nd 406, 407 (1984) (“The judge is not required to single out some one morsel of evidence and attach to it great significance when patently the evidence is introduced solely in a vain attempt to create an issue of fact that is not genuine.”); *Beale v. Hardy*, 769 F. 2d 213, 214 (4th Cir. 1985) (explaining that party opposing summary judgment ‘cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another’). *Id.* at 426 S.C. 352-353.

Here, Plaintiff has failed to demonstrate any genuine issue for trial. Plaintiff’s arguments are based upon mere speculation or metaphysical doubts, such that the moving Defendants are entitled to summary judgment as a matter of law.

Much has been argued about a supposed group wide policy of retaining credit cards tips, however the evidence shows that compensation of employees and tipping procedures are exclusively a matter for the individual franchisees, without control by these Defendants. In Plaintiff’s own deposition he acknowledged that he knows of no other practice regarding tips other than that of his own James Island location (Chappell deposition, page 45, lines 1-13, page 46, line 19 – page 47, line 4). He further stated that his knowledge of any group wide policy

would be based solely on speculation (Chappell deposition page 77, lines 6-12). He acknowledged that he knows nothing about any policy promulgated by Sue Allen or Tracy Allen (Chappell deposition, page 78, lines 5-23) and that anything he knew about the ownership of other locations was purely speculation (Chappell deposition, page 86, lines 9-21).

Sue Allen unequivocally states that Ladles Franchising, Inc. has no policy concerning the handling of tips by individual franchisees (Sue Allen Affidavit of August 16, 2019, page 2, Sue Allen deposition, page 85, lines 8-25).

Corey Paul (Paul deposition, page 98, lines 1-15), Terri Owens (Owens deposition, page 70, lines 6 - page 71, line 7) and Julie Dyke (Dyke deposition, page 51, lines 7-19) have all verified that there is no such policy imposed by the franchisor.

Further, I have previously granted summary judgment in favor of Ladles Franchising Mt. Pleasant, in part because it has a practice of paying out credit cards tips to the hourly employees on a monthly basis (Dyke deposition, page 24, line 23 – page 25, line 13). This fact alone negates the Plaintiff's claim of a group wide policy of retaining credit card tips.

Other legal principles guiding the Court's grant of summary judgment in this case are found in Osborne v. Adams, 346 S.C. 4, 7, 550 S.E. 2nd 319, 321 – "...summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law" and "in determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party" Id.

As to the Plaintiff's contention that summary judgment is premature because of discovery issues, I note that, the Plaintiff did not serve discovery until May 24, 2019, over fifteen (15) months after the filing of suit. At the motion hearing, Plaintiff stated that the only deficiency he

was claiming as to the moving Defendants was their objection to his interrogatory number 11 requesting the amounts paid by the franchisees to the franchisor over a certain period of time. Although I ordered that this interrogatory be answered, the issue could have no bearing upon this motion. In *Guinan v. Tenet Health Systems of Hilton Head, Inc.*, 383 S.C. 48, 54-55, 677 S.E. 2nd 32 (Ct. App. 2009), the Court of Appeals stated:

“In *Dawkins v. Fields*, 354 S.C. 58, 71, 580 S.E. 2nd 433, 439-40 (2003) our Supreme Court rejected Dawkins ‘argument’ that summary judgment was premature because they did not have a full and fair opportunity for discovery.” “A party claiming summary judgment is premature because they have not been provided a full and fair opportunity to conduct discovery must advance a good reason why the time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact.” *Id.* at 354 S.C. 71, 580 S.E. 2nd 439-40.

The Plaintiff has advanced no argument that further discovery could possibly lead to additional evidence relevant to this motion, as the critical facts are un-contradicted.

Based upon the failure of the Plaintiff to cite any facts in the record creating a genuine issue for trial and after a careful review of the Motion for Summary Judgment and supporting documentation as well as Plaintiff’s Opposition and supporting documentation, and viewing the record in the light most favorable to the non-moving party, the motion for summary judgment of Ladles Franchising, Inc., Ladlessoups, LLC, Sue Allen and Tracy Allen, is hereby **GRANTED**.

AND IT IS SO ORDERED!

Honorable Bentley D. Price
Court of Common Pleas
Ninth Judicial Circuit

Charleston, South Carolina
_____, 2020.



Charleston Common Pleas

Case Caption: Craig Chappell VS Ladles Soups James Island LLC , defendant, et al
Case Number: 2018CP1000785
Type: Order/Summary Judgment

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-01-30 12:46:54 page 12 of 12

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CRAIG CHAPPELL, on behalf of himself and
others similarly situated,

Plaintiff(s),

v.

Ladles Soups – James Island LLC; Ladlessoups,
LLC; Ladles Soups At Cane Bay LLC; Ladles
Soups At Citadel Mall LLP; Ladles Soups
Calhoun LLC; Ladles Soups Cane Bay LLC;
Ladles Soups Coosaw LLC; Ladles Soups
Downtown Charleston, LLC; Ladlessoups
Fresh Fields, LLC; Ladles Soups @ Freshfields
Village, LLC; Ladlessoups Mainstreet, LLC;
Ladles Soups Moncks Corner LLC;
Ladlessoups Mount Pleasant, LLC; Ladles
Franchise Development, LLC; Ladles
Franchising Inc.; Ladles Fort Mill, LLC;
Ladles Knightsville LLC; Ladles West Ashley;
Teri Owens; Sue Allen, Tracy Allen, Steve
Traeger, Erik Dyke, Julie Dyke, Stan Sutton,
Carol Sutton, Jason Dalter, Kellie Henderson;
Jane Doe 1-25 (Unknown Operating Company
and Management Company Owners); John
Doe 25-40 (Management Personnel)

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.:

VERIFIED COMPLAINT TO RECOVER
MISAPPROPRIATED TIPS

(Class Action)

(Jury Trial Demanded)

FILED
2018 FEB 14 AM 10:07
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW PLAINTIFF, CRAIG CHAPPELL, ("Plaintiff"), individually, and on
behalf of all others similarly situated, complaining of the Defendants named herein, and
respectfully alleges and would show the Court as follows:

PARTIES, JURISDICTION & VENUE

1. Plaintiff CRAIG CHAPPELL is and at all times relevant herein was an individual resident of the City of Charleston, in Charleston County.

2. Plaintiff and proposed class member Plaintiffs are hourly paid employees who worked for Defendants within the last three (3) years at Defendants' Ladles restaurants as cooks, servers, wait staff, hostesses and other restaurant service type employees (hereinafter "servers" or "Class Members"), who were unlawfully deprived of payment of tips by Defendants' illegal and unlawful actions, and who respectfully seek relief under the South Carolina Payment of Wages Act, S.C. Code § 41-10-10 et seq. ("Wages Act") and other applicable law.

3. Plaintiff files this Complaint against Defendants, who generally fall in several categories: a) Company/Corporate Restaurant Defendants that own or run Ladles Soups restaurants, some of which may be franchises; b) Individual Owners of Ladles Company/Corporate entities and/or franchises with supervision, control and/or direction of employee compensation; c) High level management/officers/employees of "a" with supervision, control and/or direction of employee compensation; d) "Jane Doe" and "John Doe" Defendants, indicating Defendants for whom Plaintiff has not yet been able to determine the identity without the aid of discovery.

4. Operating Company Defendants. Plaintiff has identified the following companies and/or corporations which, upon information and belief, currently or previously own and/or operate Ladles restaurants (sometimes referred to collectively as "Operating Company Defendants"):

a. Ladles Soups – James Island LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 1175A Folly Road Charleston, SC 29412.

b. Ladlessoups, LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 3125 Bees Ferry Road, Charleston, SC 29414.

c. Ladles Soups At Cane Bay LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which had its principal place of business (but is now closed) as a Ladles restaurant located at 1724 State Road, Summerville, SC 29483. It was formed May 9, 2013.

d. Ladles Soups At Citadel Mall LLP, which upon information and belief is a company organized and dissolved under the laws of South Carolina, and which had its principal place of business as a Ladles restaurant located on Sam Rittenberg Blvd., just south of the Citadel Mall, Charleston, SC 29412.

e. Ladles Soups Calhoun LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which had its principal place of business as a Ladles restaurant located at 141 Calhoun Street, Charleston, SC 29401, and/or 68 Cannon Street, Charleston, SC 29401.

f. Ladles Soups Cane Bay LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which had its principal place of business (but is now closed) as a Ladles restaurant located at 1724 State Road, Summerville, SC 29483. It was formed January 26, 2015.

g. Ladles Soups Coosaw LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 8600 Dorchester Road Ste. 101, North Charleston, SC 29420.

h. Ladles Soups Downtown Charleston, LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 68 Cannon Street, Charleston, SC 29403.

i. Ladlessoups Fresh Fields, LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 190 Gardeners Circle, Johns Island, SC 29455.

j. Ladles Soups @ Freshfields Village, LLC, which upon information and belief is a company organized and dissolved under the laws of South Carolina, and which had its principal place of business located at 190 Gardeners Circle, Johns Island, SC 29455.

k. Ladlessoups Mainstreet, LLC, which upon information and belief is a company organized and dissolved under the laws of South Carolina, and which had its principal place of business as a Ladles restaurant located at 100 W. Richardson Ave., Summerville, SC 29483.

l. Ladles Soups Moncks Corner LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 636 Rembert C. Dennis Blvd., Moncks Corner, SC 29461.

m. Ladlessoups Mount Pleasant, LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 1164 Basketweave Drive, Mount Pleasant, SC 29466.

n. Ladles Fort Mill, LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 526 Mercantile Place, Fort Mill, SC 29715.

o. Ladles Knightsville LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 1585 Central Avenue, Summerville, SC.

p. Ladles West Ashley, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 3125 Bees Ferry Road, Charleston, SC 29414.

5. Management Company Defendants. Plaintiff has identified the following companies and/or corporations, which, upon information and belief, developed and/or required tipping policies upon information and belief common to all Ladles restaurants described more fully herein (such parties sometimes referred to herein as "Management Company Defendants").

a. Ladles Franchise Development, LLC, is a South Carolina company licensed to conduct and in upon information and belief in fact conducting business in the State of South Carolina, and at all material times during Plaintiffs' employment, acting as an employer under applicable law.

b. Ladles Franchising Inc. is a South Carolina corporation licensed to conduct and in upon information and belief in fact conducting business in the State of South Carolina, and at all material times during Plaintiffs' employment, acting as an employer under applicable law.

6. Individual Defendants. Plaintiff has identified the following individuals (sometimes referred to collectively herein as "Individual Defendants"), who, upon information and belief, are individual owners of the Operating Company Defendants, the Management Company Defendants,

and/or individuals: i) with supervisory, management, and/or other responsibility for employee compensation, including payment or non-payment of tips to employees; ii) that knowingly permitted or allowed the actions complained of herein, iii) that are agents and/or officers of the Operating Company Defendants and/or the Management Company Defendants of herein, iv) that actively participated in the unlawful action complained of herein, v) that had the actual power to prevent or allow the unlawful action complained of herein, or vi) that are employers of Plaintiff Class Members under applicable law.

a. Susan "Suzie" Allen, who upon information and belief resides and/or conducts business at the address of 2345 Brevard Road, Charleston, SC 29414, and is a founder of the Lades soup restaurant concept, an originator and/or architect of the unlawful actions complained of herein and an owner of one or more Operating Company Defendants and/or Management Company Defendants;

b. Teri Owens, Manager of Ladles Soups – James Island LLC.

c. Tracy Allen, who upon information and belief resides and/or conducts business at the address of 2345 Brevard Road, Charleston, SC 29414, and is a founder of the Lades soup restaurant concept, an originator and/or architect of the unlawful actions complained of herein and an owner of one or more Operating Company Defendants and/or Management Company Defendants;

d. Steve Traeger, Owner of Franchise Development, Ladles Soups Franchising, LLC.

e. Erik Dyke, Owner of Ladlessoups Mount Pleasant, LLC.

f. Julie Dyke, Owner of Ladlessoups Mount Pleasant, LLC.

g. Stan Sutton, Owner of Ladlessoups Fresh Fields, LLC and Ladles Soups @ Freshfields Village, LLC.

h. Carol Sutton, Owner of Ladlessoups Fresh Fields, LLC and Ladles Soups @ Freshfields Village, LLC.

i. Jason Dalter, Owner of Ladlessoups Mainstreet, LLC.

j. Kellie Henderson, Owner of Ladles Soups Coosaw LLC.

7. Jane Doe 1-25 (Operating Company and Management Company Owners) (hereinafter "Jane Doe 1-25 Defendants"), are Operating Company and/or Management Company owners, members, and/or franchisees, whose identities are unknown at this time: i) with supervisory, management, and/or other responsibility for employee compensation, including payment or non-payment of tips to employees; ii) that knowingly permitted or allowed the actions complained of herein, iii) that are agents and/or officers of the Operating Company Defendants and/or the Management Company Defendants herein, iv) that actively participated in the unlawful action complained of herein, v) that had the actual power to prevent or allow the unlawful action complained of herein, or vi) that are employers of Plaintiff Class Members under applicable law.

8. John Doe 25-40 (Management Personnel) (hereinafter "John Doe 25-40 Defendants"), are management officers and/or employees of Operating Company and/or Management Company Defendants, whose identities are unknown at this time: i) with supervisory, management, and/or other responsibility for employee compensation, including payment or non-payment of tips to employees; ii) that knowingly permitted or allowed the actions complained of herein, iii) that are agents and/or officers of the Operating Company Defendants and/or the Management Company Defendants of herein, iv) that actively participated in the unlawful action

complained of herein, v) that had the actual power to prevent or allow the unlawful action complained of herein, or vi) that are employers of Plaintiff Class Members under applicable law.

NATURE OF CASE

9. Defendants' conduct as alleged herein is in violation of the Wages Act, and other applicable law relating to *inter alia* breach of contract and conversion.

10. This action is to recover from Defendants damages and reasonable attorneys' fees and costs. This action is intended to include each and every hourly paid employee who worked for Defendants at any time within the past three (3) years.

11. This Court has jurisdiction and venue over this Complaint as certain Defendants' principal addresses and places of business are in Charleston County, South Carolina, and since actions giving rise to this Complaint occurred in Charleston County, South Carolina.

GENERAL FACTUAL ALLEGATIONS

12. Plaintiff and the Class Members were paid an hourly wage, plus tips.

13. However, though Plaintiff and the Class Members worked for and earned cash tips as well as tips paid by credit card, Defendants' company wide policy, upon information and belief, was and has been at all times relevant herein, to allow Plaintiff and Class Members to retain some cash tips, but for Defendants to retain the credit card tips which rightly belong to Plaintiff and the Class Members.

14. For example, at Plaintiff Craig Chappell's location, Ladles Soups—James Island, LLC ("Ladles James Island"), the employer's practice was to distribute cash tips to all employees, but to retain tips charged on credit cards.

15. At the original location in West Ashley (business name Ladlessoups, LLC) ("Ladles West Ashley") at 3125 Bees Ferry Road, the employer's practice was upon information

and belief to distribute a day's cash tips amongst all employees working that day, but retain tips charged by customers to credit cards.

16. The policy at Ladles West Ashley was promulgated by the store owner who is, on information and belief, a founder of Ladles restaurant concept, Defendant Sue Allen.

17. Sue Allen is the registered agent for Ladles West Ashley according to the S.C. Secretary of State website.

18. At all material times, Operating Company Defendants and Management Company Defendants were enterprises subject to the Wages Act and other applicable common law of South Carolina.

19. Defendants are in the business of providing food and drinks to the general public.

20. Defendants employed Plaintiff and the Class Members in the last three (3) years.

21. Defendants controlled and/or were responsible for the work of Plaintiff and the Class Members.

22. Plaintiff and the Class Members perform a specific job, i.e., ensuring that all food and products are consistently prepared and served according to the restaurant's policies, and controlling cash and other receipts by adhering to cash handling and reconciliation procedures in accordance with restaurant policies and procedures, which was/is an integral part of the restaurant business of Defendants.

23. Plaintiff and the Class Members worked for and earned tips in addition to their hourly wage, and such tips constitute an important part of Plaintiff and the Class Members' total wages and compensation. Plaintiffs are entitled to all tips they earn, under applicable law, including contract law.

24. The majority of the tips were paid by credit cards, and upon information and belief, only a small minority of tips were paid by Defendants' customers in cash.

25. Defendants' customers reasonably understood and expected that by paying tips via credit card, that Plaintiff and other Class Members would receive those tips.

26. Plaintiff and the Class Members worked for, earned and in fact received cash tips during each shift.

27. However, by contrast Defendants illegally failed to pay Plaintiff and the Class Members the credit card charge tips, and instead retained them for the benefit of Defendants.

28. All tips are the property of the servers and other employees such as Plaintiff and the Class Members.

29. As a result of these common policies, Plaintiff and the Class Members are entitled to repayment of all tips that were illegally retained by Defendants.

30. During their employment, Plaintiff or one or more of the Class Members complained about the illegal practices to Defendants' management, and Defendants took no action to stop the illegal practices.

31. On or about Friday, May 6, 2016, Plaintiff or one or more of the Class Members discovered that the owner of Defendant Ladles James Island was not paying employees charged tips, by virtue of discovering a handwritten ledger kept at the James Island restaurant. Plaintiff subsequently learned that such policy is a Ladles "group-wide" policy.

32. At Ladles James Island on or about Saturday, May 7, 2016, Plaintiff Chappell confronted his manager, Teri Owens, who upon information and belief is an owner of Ladles James Island, telling her he thought it was wrong for employer to pay employees only cash tips but retain charged tips.

33. Defendant Ladles James Island immediately terminated Mr. Chappell when he complained about Defendants' retention of employee tips, in retaliation for Mr. Chappell's attempting to claim tips that are and were rightfully his (and that of other similarly situated Class Members), such rights to the same being guaranteed to Mr. Chappell and Class Members by applicable law.

34. The additional persons who are Class Member plaintiffs in this action are employees with positions similarly situated to Plaintiff and who have suffered from the same pay practices of unlawfully misappropriated, converted tips.

CLASS ACTION ALLEGATIONS

35. Pursuant to the common law of South Carolina and SCRCP 23, Plaintiff brings this action both individually and as a proposed class action against Defendants on behalf of himself and all other similarly situated persons and entities, who were employed by Defendants and were paid an hourly wage plus tips.

36. The class of similarly situated employees or potential Class Members sought to be certified under SCRCP 23 is defined as:

All employees who worked for Defendants in Ladles restaurant locations, and were paid an hourly wage plus tips, during the three (3) years preceding this lawsuit.

The claims under the Payment of Wages Act may be prosecuted on behalf of similarly situated Plaintiffs unless they opt out.

37. *Numerosity.* The class is upon information and belief composed of in excess of seventy-five persons geographically dispersed throughout the state of South Carolina and in other states, the joinder of whom in one action is impractical. In particular, service in the food

and beverage industry is transient by nature; restaurants require numerous employees, and Defendants are likely the sole source of contact information for members of the Plaintiff class.

38. *Commonality.* Questions of law and fact common to the class exist as to all members of the class and predominate over any questions affecting only individual members of the class. These common legal and factual issues include the following:

- a. Whether Class Members worked as service employees in Ladles restaurants;
- b. Whether Class Members were paid on an hourly basis plus tips;
- c. Whether Defendants illegally refused to pay Plaintiff and Class Members credit card tips they earned, instead unlawfully retaining and converting the same;
- d. Whether Defendants have acted or refuse to act on grounds generally applicable to the class;
- e. Whether Plaintiffs and the Class Members are entitled to damages, prejudgment interest, attorney's fees and costs from Defendants.

39. *Typicality.* Plaintiff Chappell's claims are typical of the claims of the members of the class, as all such claims arise out of Defendants' wrongful conduct in illegally refusing to pay their hourly employees tips earned by them and paid by Defendants' customers via credit card, and instead wrongfully, deliberately and deceitfully withholding them. It would be difficult to meaningfully distinguish the claims of Plaintiff Class Members *inter se*.

40. *Adequate Representation.* Plaintiff Chappell will fairly and adequately protect the interests of the members of the class and has no interests antagonistic to those of the class. Plaintiff has retained counsel experienced in the prosecution of employment claims and complex litigation, including collective actions.

41. *Predominance and Superiority.* Because Defendants' treatment of Plaintiff Class Members is narrowly focused on a single specific issue—Defendants' unlawful misappropriation and conversion of charged tips--this class action is appropriate for certification because questions of law and fact common to the members of the class predominate over questions affecting only individual members. For the same reason, the class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the class is impractical. Should individual members of the class be required to bring separate actions, this court would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties in the court system, this class-action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single Court.

42. *Defendants have acted on grounds generally applicable to the class.* Class certification is appropriate under South Carolina law because Defendants engaged in a uniform and common practice—they misappropriated and unlawfully converted charged tips which rightfully belong to Plaintiff Class Members. In doing so, Defendants acted in a manner consistently vis-à-vis Plaintiff Class Members. All Class Members have the same legal right and interest in redress for damages associated with the illegal retention of credit card tips paid by Defendants' customers, which rightly belong to Plaintiff and the other Class Members.

43. Plaintiff envisions no unusual difficulty in the management of this action as a class action.

44. Per SCRCP 23(a), each plaintiff's damages exceeds \$100.

45. The amount of money at stake for each class member is not sufficient for each member to hire their own counsel and bring their own action, which constitutes additional grounds making the class action appropriate here.

COUNT I

(Class Action – Nonpayment of wages under S.C. Code § 41-10-40)

46. Plaintiff realleges and reincorporates all previous allegations as if fully incorporated herein.

47. Plaintiff and Class Members seek damages under the Wages Act as a class action.

48. Tips are wages under the act because, per S.C. Code § 41-10-10(2), they are amounts at which Plaintiffs' labor rendered is recompensed, and because it was both the policy of Defendants, and a term of Plaintiffs' employment agreements with Defendants, to pay Plaintiffs the tips customers gave them—especially evidenced by the Defendants' practice of letting Plaintiffs keep their cash tips.

49. Each tip was the property of each Plaintiff to whom a customer had given the tip, and such tips constitute wages and remain due and owing to the Plaintiffs under the Wages Act.

50. Defendants were not permitted to divert or withhold tips because upon information and belief they failed to give written notice to Plaintiffs of the amounts and terms of deductions, as required by S.C. Code § 41-10-30(A).

51. Defendants upon information and belief failed to give employees itemized statements showing the retention or diversion of credit card tips for each pay period, as required by S.C. Code § 41-10-31(C).

52. Operating Company Defendants and Management Defendants were responsible for paying Plaintiffs. Moreover, Individual Defendants, Jane Doe 1-25 Defendants and John Doe 25-40 Defendants i) with supervisory, management, and/or other responsibility for employee

compensation, including payment or non-payment of tips to employees; ii) that knowingly permitted or allowed the actions complained of herein, iii) that are agents and/or officers of the Operating Company Defendants and/or the Management Company Defendants herein, iv) that actively participated in the unlawful action complained of herein, v) that had the actual power to prevent or allow the unlawful action complained of herein, or vi) that are employers of Plaintiff Class Members under applicable law, were similarly responsible for paying Class Members.

53. The Ladles West Ashley policy was promulgated upon information and belief by the store owner, founder Sue Allen, to store employees via the store's manager. As such, Sue Allen knowingly permitted the tip policy, actively participated in it, and had actual power to pay employees, since she decided what the terms of their tip compensation were.

54. This pattern has upon information and belief been repeated for all other Ladles locations: the owner was instructed by Ladles franchisor(s) regarding common compensation practices, and would thereafter promulgate the tip policies through the location manager. As such, each location's owner and manager knowingly permitted the tip policy, actively participated in it, and had actual power to pay employees, since they decided what the terms of their tip compensation were and executed the same daily.

55. Plaintiffs' damages are *inter alia* triple the amount of all tips not paid to them over the past three years, plus interest.

56. Defendants also should be required to pay Plaintiffs' costs and reasonable attorneys' fees for this claim.

COUNT II **(Class Action – Breach of Contract)**

57. Plaintiffs reallege and reincorporate all previous allegations as if fully incorporated herein.

58. Defendants had upon information and belief common hiring policies for Plaintiff Class Members.

59. Plaintiff Class Members each had an employment agreement with their respective Defendant Ladles restaurant locations, with upon information and belief identical terms.

60. Under said agreement, each Defendant was to pay its respective Plaintiffs wages consisting of an hourly wage plus their cash and charged tips.

61. Defendants breached their obligation to pay Plaintiffs charged tips.

62. Defendants' breaches proximately caused Plaintiffs to lose wages they were due.

63. Plaintiffs' damages consist in the charged tips Defendants failed to pay.

COUNT III
(Class Action – Conversion)

64. Plaintiffs reallege and reincorporate all previous allegations as if fully incorporated herein.

65. As earners of charged tips, Plaintiffs had an interest in the tips Defendants withheld.

66. Defendants converted Plaintiffs' charged tips and retained them for their own gain.

67. Defendants did so without Plaintiffs' permission.

68. Plaintiffs' damages consist of the amounts of charged tips Defendants withheld plus interest from the dates of conversion.

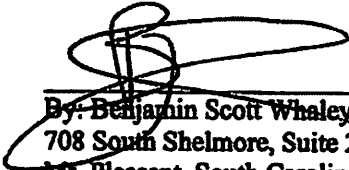
WHEREFORE, Plaintiff, CRAIG CHAPPELL, on behalf of himself and Class Members, demands judgment against Defendants for unpaid tips, treble damages where applicable under applicable law, punitive damages, consequential damages, reasonable attorneys' fees and costs incurred in this action, and any and all further relief this Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff on behalf of himself and Class Members hereby demands a trial by jury.

Respectfully submitted, this 14th day of February, 2018.

Le Clercq Law Firm, P.C.

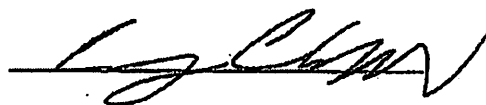


By: Benjamin Scott Whaley Le Clercq
708 South Shelmore, Suite 202
Mt. Pleasant, South Carolina 29464
Phone: 843 722-3523
Email: Ben@LeClercqLaw.com
South Carolina Bar No. 65754

VERIFICATION

I, Craig Chappell hereby consent to be party plaintiff in this action, and hereby declare under penalty of perjury, that I have reviewed all of the allegations contained in the Complaint, and that these allegations are true and correct to the best of my knowledge, understanding and belief.

Date: February 2, 2018

A handwritten signature in black ink, appearing to read "Craig Chappell", written over a horizontal line.

STATE OF SOUTH CAROLINA,) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
CASE NO. 2018-CP-10-00785

CRAIG CHAPPELL, on behalf of himself and
Others similiarly situated,

Plaintiff(s),

v.

Ladles Soup-James Island LLC; Ladlessoups,
LLC; Ladles Soup At Cane Bay, LLC; Ladles
Soups at Citadel Mall LLP; Ladles Soups
Calhoun LLC; Ladles Soups Cane Bay LLC;
Ladles Soups Coosaw LLC; Ladles Soups
Downtown Charleston, LLC; Ladlessoups
Fresh Fields LLC; Ladles Soups @ Freshfields
Village, LLC; Ladlessoups Mainstreet, LLC;
Ladles Soups Moncks Corner LLC; Ladles
Franchise Development, LLC; Ladles Franchising,
Inc.; Ladles Fort Mill, LLC; Ladles Knightsville
LLC; Ladles West Ashley; Teri Owens; Sue Allen,
Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke
Stan Sutton, Carol Sutton, Jack Dalter, Kellie
Henderson; Jane Doe 1-25 (Unknown Operating
Company and Management Company Owners);
John Doe 25-40 (Management Personnel).

Defendants.

ANSWER OF DEFENDANTS:
LADLES FRANCHISING, INC.;
LADLESSOUPS, LLC; SUZIE ALLEN;
AND TRACY ALLEN

Jury Trial Demanded

FILED
2018 AUG -1 PM 1:17
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

TO: Benjamin Le Clerq, Attorney for the Plaintiff(s):

NOW COMES Ladles Franchising, Inc., Ladlessoups, LLC, Suzie Allen, and Tracy Allen
(hereinafter the “Defendants”) by and through their attorneys, Kerry Koon and M. Evan Lacke,
answering the Plaintiff’s Complaint as follows:

FOR AND AS A FIRST DEFENSE
(General Denial)

1. Defendants deny each and every allegation of the Complaint not hereinafter specifically admitted.
2. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.
3. Defendants lack sufficient information to admit the allegations contained in paragraph 1, and therefore deny the same and demand strict proof thereof.
4. Defendants lack sufficient information to admit the allegations contained in paragraph 2, and therefore deny the same and demand strict proof thereof.
5. Paragraph 3 states a legal conclusion to which no response is required. To the extent that the Defendants are required to respond to the allegations, the allegations are denied.
6. Defendants lack sufficient information to admit the allegations contained in paragraph 4, and therefore deny the same and demand strict proof thereof.
7. Defendants admit the allegations contained in paragraph 5.b. only to the extent that Ladles Franchising, Inc. is a South Carolina corporation licensed to conduct and conducting business in the State of South Carolina. Defendants lack sufficient information to admit the remaining allegations contained in paragraph 5, and therefore deny the same and demand strict proof thereof.
8. Defendants admit the allegations contained in paragraph 6.a. and 6.c. only to the extent that Susan “Suzie” Allen and Tracy Allen are founders of the Ladles soup restaurant concept. Defendants lack sufficient information to admit the remaining allegations contained in paragraph 6, and therefore deny the same and demand strict proof thereof.
9. Defendants lack sufficient information to admit the allegations contained in paragraphs 7 and 8, and therefore deny the same and demand strict proof thereof.
10. Defendants deny the allegations in paragraph 9.
11. Paragraph 10 states a legal conclusion to which no response is required. To the extent that the Defendants are required to respond to the allegations, the allegations are denied.

12. Defendants deny the allegations in paragraph 11.
13. Defendants lack sufficient information to admit the allegations contained in paragraphs 12 through 15, and therefore deny the same and demand strict proof thereof.
14. Defendants deny the allegations in paragraphs 16 through 24.
15. Defendants lack sufficient information to admit the allegations contained in paragraphs 25 and 26, and therefore deny the same and demand strict proof thereof.
16. Defendants deny the allegations in paragraph 27.
17. Defendants lack sufficient information to admit the allegations contained in paragraph 28, and therefore deny the same and demand strict proof thereof.
18. Defendants deny the allegations in paragraph 29 through 31.
19. Defendants lack sufficient information to admit the allegations contained in paragraphs 32 through 34, and therefore deny the same and demand strict proof thereof.
20. Paragraph 35 states a legal conclusion to which no response is required. To the extent that the Defendants are required to respond to the allegations therein, the allegations are denied.
21. Defendants deny the allegations in paragraph 36 through 45.
22. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.
23. Paragraphs 46 and 47 state legal conclusions to which no response is required. To the extent that the Defendants are required to respond to the allegations therein, the allegations are denied.
24. Defendants deny the allegations in paragraph 48 through 56.
25. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.
26. Paragraph 57 states a legal conclusion to which no response is required. To the extent that the Defendants are required to respond to the allegations therein, the allegations are denied.
27. Defendants deny the allegations in paragraph 58 through 63.

28. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

29. Paragraph 64 states a legal conclusion to which no response is required. To the extent that the Defendants are required to respond to the allegations therein, the allegations are denied.

30. Defendants deny the allegations in paragraph 65 through 68.

FOR A SECOND DEFENSE

(Failure to State a Claim pursuant to SCRPC Rule 12(b)(6))

31. Plaintiff has failed to state facts sufficient to constitute a cause of action against Defendants upon which relief can be granted and the Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

32. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR A THIRD AFFIRMATIVE DEFENSE

(Waiver/Estoppel/Laches)

33. The Plaintiff's claims are barred by the equitable doctrines of waiver and/or estoppel and/or laches. Thus the Plaintiff's causes of action should be dismissed.

34. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR A FOURTH DEFENSE

(Failure to Meet the Burdens of SCRPC Rule 23)

35. The Plaintiff's claims fail to meet the burdens of South Carolina Rules of Civil Procedure Rule 23 as required for class actions. Thus the Plaintiff's causes of action should be dismissed.

36. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR A FIFTH DEFENSE
(Judgment on the Pleadings Pursuant to SCRPC Rule 12(c))

37. Defendants are entitled to judgment on the pleadings pursuant to South Rules of Civil Procedure Rule 12(c).

38. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR A SIXTH DEFENSE
(Condonation)

39. Plaintiff's claims may be barred by the doctrine of condonation.

40. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR A SEVENTH AFFIRMATIVE DEFENSE
(Failure to Join Proper Parties)

41. Without admitting liability or that Plaintiff has suffered damages, to the extent Plaintiff has suffered damages, Plaintiff has improperly joined unnecessary defendants and should promptly amend the pleadings to reflect the same.

42. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR A EIGHTH DEFENSE
(Illegality/Unconscionability)

43. Plaintiff may be barred from enforcing the terms of the alleged contract by the doctrines of illegality and/or unconscionability.

44. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR AN NINTH DEFENSE
(Mistake and Misrepresentation)

45. Plaintiff may be barred from enforcing the terms of the alleged contract by the doctrines of mistake and misrepresentation.

46. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR A TENTH DEFENSE
(Breach of Alleged Contract)

47. Plaintiff's claims are barred because Plaintiff breached the terms of the alleged contract.

48. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR A ELEVENTH DEFENSE
(Failure to Mitigate Damages)

49. To the extent Plaintiff has failed to mitigate its damages, Plaintiff's recovery is barred.

50. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR AN TWELFTH AFFIRMATIVE DEFENSE
(Unclean Hands)

51. The Plaintiff does not have clean hands with regard to the allegations in Plaintiff's Complaint. The Defendants plead the doctrine of unclean hands as a complete bar to his action.

52. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR A THIRTEENTH DEFENSE
(No Contract)

53. Plaintiff's claims fail because they are based on an alleged contract that does not exist.

54. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR A FOURTEENTH AFFIRMATIVE DEFENSE
(Statute of Limitations)

55. Defendants are informed and believe that the Plaintiff has failed to commence this action within the time as required by the applicable Statute of Limitations and that such failure to commence the action within the statutory defined time limit constitutes a bar and complete defense to all claims against these Defendants.

56. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR A FIFTEENTH DEFENSE
(Non-Waiver)

57. Defendants hereby expressly reserve their right to assert any other affirmative defenses, counterclaims, or crossclaims which they may discover through discovery or otherwise.

FOR A SIXTEENTH DEFENSE
(Alleged Damages not caused by Defendants)

58. To the extent that Plaintiff suffered any damages alleged, such damages were not caused by Defendants but by the acts or omissions of Plaintiffs and/or others.

59. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR A SEVENTEENTH DEFENSE
(Failure to State a Claim for Award of Attorneys Fees)

60. Plaintiff has failed to state a claim against Defendants upon which attorneys fees can be awarded.

FOR AN EIGHTEENTH DEFENSE
(Laches)

61. Defendants allege that Plaintiff waited an unreasonable period of time before asserting his claims, and is therefore barred from asserting such claims under the Doctrine of Laches.

62. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR A NINETEENTH DEFENSE
(Payment/Release)

63. Plaintiff's complaint is barred by payment/release and should therefore be dismissed with prejudice.

64. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR A TWENTIETH DEFENSE
(Complete Performance)

65. Without admitting liability or that Plaintiff suffered damages, Defendants, to the extent required, did appropriately, completely, and fully perform and discharge any and all legal obligations and duties, if any, arising out of the matters alleged in the complaint and the contract underlying this action.

66. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR A TWENTY-FIRST DEFENSE
(Consent)

67. Without admitting liability or that Plaintiff suffered damages, Defendants allege that the conduct now complained of was permitted and agreed to by the Plaintiff.

68. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR A TWENTY-SECOND DEFENSE
(Abandonment)

69. Without admitting liability or that Plaintiff suffered damages, Defendants allege that Plaintiff abandoned the credit card tips.

70. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR A TWENTY-THIRD DEFENSE
(Gratuity)

71. Without admitting liability or that Plaintiff suffered damages, to the extent that Plaintiff has suffered damages, Plaintiff's claim for credit card tips were in fact gratuities of the restaurant.

72. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR A TWENTY-FOURTH DEFENSE
(Tip Pooling)

73. Without admitting liability or that Plaintiff suffered damages, to the extent that Plaintiff has suffered damages, the Fair Labor Standards Act authorized a tip pooling agreement that the employees agreed to.

74. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR A TWENTY-FIFTH DEFENSE
(Individual Issues Preclude Class Certification)

75. Defendants are entitled to the Court denying Plaintiff's request for class certification on the grounds that none of Defendant's employees have suffered damages and that precludes class certification.

76. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR A TWENTY-SIXTH DEFENSE: BY WAY OF COUNTERCLAIM
(South Carolina Frivolous Proceedings Act)

77. The claims asserted by Plaintiff are not supported by law or fact and no reasonable attorney would believe, under the same facts, that the claims are warranted by existing law.

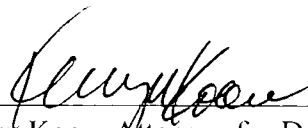
78. By filing this proceeding against Defendants, the Plaintiff intended to merely harass and injure the Defendants.

79. Therefore, the Plaintiff is barred from asserting the claims under Rule 11 of the South Carolina Rules of Civil Procedure and the South Carolina Frivolous Proceedings Sanctions Act.

80. As a result, Plaintiff's claims should be dismissed with prejudice and Defendants are entitled to attorney's fees and costs of defending this action.

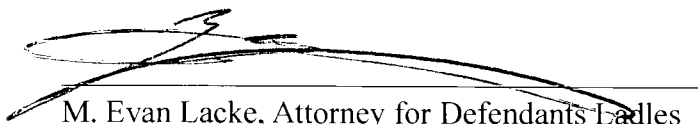
WHEREFORE, Defendants, having fully answered the Complaint of Plaintiff and demanded a jury trial, respectfully requests that this Court:

1. Grant Defendant's Motion to Dismiss and Counterclaim;
2. Award Defendants attorney's fees and costs of defending this action; and
3. Award Defendants such other and further relief as is just and proper.



Kerry Koon, Attorney for Defendants Ladles
Franchising, Inc., Ladlessoups, LLC, Suzie Allen,
and Tracy Allen
147 Wappoo Creek Drive, Ste. 203
Charleston, South Carolina 29412
Phone: (843) 795-7000
Fax: (843) 762-5276

LACKE LAW FIRM, LLC



M. Evan Lacke, Attorney for Defendants Ladles
Franchising, Inc., Ladlessoups, LLC, Suzie Allen,
and Tracy Allen
147 Wappoo Creek Drive, Ste. 204
Charleston, South Carolina 29412

Phone: (843) 327-1523

Fax: (843) 795-3990

July 31, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA,)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON)

CASE NO. 2018-CP-10-00785

CRAIG CHAPPELL, on behalf of himself and)

Others similarly situated,)

Plaintiff(s),)

v.)

CERTIFICATE OF SERVICE

Ladles Soup-James Island LLC; Ladlessoups,)

LLC; Ladles Soup At Cane Bay, LLC; Ladles)

Soups at Citadel Mall LLP; Ladles Soups)

Calhoun LLC; Ladles Soups Cane Bay LLC;)

Ladles Soups Coosaw LLC; Ladles Soups)

Downtown Charleston, LLC; Ladlessoups)

Fresh Fields LLC; Ladles Soups @ Freshfields)

Village, LLC; Ladlessoups Mainstreet, LLC;)

Ladles Soups Moncks Corner LLC; Ladles)

Franchise Development, LLC; Ladles Franchising,)

Inc.; Ladles Fort Mill, LLC; Ladles Knightsville)

LLC; Ladles West Ashley; Teri Owens; Sue Allen,)

Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke)

Stan Sutton, Carol Sutton, Jack Dalter, Kellie)

Henderson; Jane Doe 1-25 (Unknown Operating)

Company and Management Company Owners);)

John Doe 25-40 (Management Personnel).)

Defendants.)

FILED
2018 AUG -1 PM 1:17
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

I, Megan Mitchum, an employee of Kerry W. Koon, Esq., hereby certify that on July 31, 2018, I served a copy of the Answer of Defendants Ladles Franchising, Inc., Ladlessoups, LLC,

Suzie Allen and Tracy Allen, in the above captioned case, by depositing the same in the U.S.

Mail, addressed to the following:

Benjamin LeClercq, Esq.
708 S. Shelmore Blvd., Ste. 202
Mt. Pleasant, SC 29464

Peter B. Shelbourne, Esq.
131 E. Richardson Avenue
Summerville, SC 29483

Paul B. Ferrara, III, Esq.
2300 Otranto Road
North Charleston, SC 29406

Nadia S. Baig, Esq.
2300 Otranto Road
North Charleston, SC 29406



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON)

CASE NO.: 2018-CP-10-00785

CRAIG CHAPPELL, on behalf of himself
and other similarly situated

MOTION AND ORDER INFORMATION

Plaintiff,)

FORM AND COVERSHEET

vs.)

Ladles Soup – James Island LLC, et al.)

Defendant.)

Plaintiff's Attorney:
Benjamin Le Clercq, Bar No. _____
Address:
708 South Shelmore Blvd., #202, Mount
Pleasant, SC 29464
Phone: 843-722-3523 Fax 843-352-2977
E-mail: ben@leclercqlaw.com Other: _____

Defendant's Attorney:
Paul B. Ferrara, III, Bar No. 70511
Address:
2300 Otranto Rd, North Charleston, SC 29406
Phone: 843-569-5511 Fax 843-569-5411
E-mail: paul@ferraralawfirm.net 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 disallow class

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

7-17-18
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: \$ _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CRAIG CHAPPELL, on behalf of himself
and other similarly situated,

Plaintiff(s),

v.

Ladles Soup – James Island LLC;
Ladlessoups, LLC; Ladles Soup At Cane
Bay LLC; Ladles Soups at Citadel Mall
LLP; Ladles Soups Calhoun LLC; Ladles
Soups Cane Bay LLC; Ladles Soups
Coosaw LLC; Ladles Soups Downtown
Charleston, LLC; Ladlessoups Fresh Fields,
LLC; Ladles Soups @ Freshfields Village,
LLC, Ladlessoups Mainstreet, LLC; Ladles
Soups Moncks Corner LLC; Ladlessoups
Mount Pleasant, LLC; Ladles Franchise
Development, LLC; Ladles Franchising Inc;
Ladles Fort Mill, LLC; Ladles Knightville
LLC; Ladles West Ashley; Teri Owens; Sue
Allen, Tracy Allen, Steve Traeger, Erik
Dyke, Julie Dyke, Stan Sutton, Carol Sutton,
Jack Dalter, Kellie Henderson; Jane Doe 1-
25 (Unknown Operating Company and
Management Company Owners); John Doe
25-40 (Management Personnel),

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-00785

**NOTICE OF MOTION AND MOTION
TO DISALLOW CLASS
CERTIFICATION**

FILED
2018 JUL 24 PM 1:42
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

NOW COMES the Defendants, Steven Traeger, Traeger Unlimited, d/b/a Ladlessoups
Fresh Fields, LLC, Ladles Franchise Development, LLC, Ladles Soups @ Freshfields Village,
LLC, Ladles Soup Downtown Charleston, LLC, Ladles Franchise Development, LLC, Dan
Sutton, Carol Sutton Ladles Soups Moncks Corner, LLC, Ladles Knightville, LLC, Ladles West
Ashley, and Ladles Soup –Ladles Fort Mill, LLC, by and through their undersigned attorney,
Paul B. Ferrara, III, Esq., within ten (10) days or hence sooner if the Court so allows and hereby

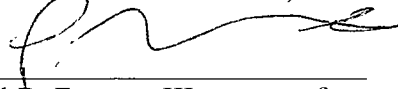
requests the Court to disallow Class certification. In support of this Motion, these Defendants will show the Court as follows:

In this case, Plaintiff failed to show: (1) that the proposed class definition is narrowly tailored; (2) that the alleged class is so numerous that joinder of all the members is impractical; (3) that there are questions of law or fact common to the class only; (4) there are claims or defenses of the representative party that are typical of the claims or defenses of the members of the alleged class; and (5) that the amount in controversy exceeds one hundred dollars for each all member of the alleged class.

WHEREFORE, these Defendants, Steven Traeger, Traeger Unlimited, d/b/a Ladlessoups Fresh Fields, LLC, Ladles Franchise Development, LLC, Ladles Soups @ Freshfields Village, LLC, Ladles Soup Downtown Charleston, LLC, Ladles Franchise Development, LLC, Dan Sutton, Carol Sutton Ladles Soups Moncks Corner, LLC, Ladles Knightsville, LLC, Ladles West Ashley, and Ladles Soup –Ladles Fort Mill, LLC, respectfully pray this Honorable Court enters an Order disallowing class certification.

(Signature Page to Follow)

FERRARA LAW FIRM, PLLC



Paul B. Ferrara, III attorney for:
Steven Traeger, Traeger Unlimited, d/b/a
Ladlessoups Fresh Fields, LLC, Ladles
Franchise Development, LLC, Ladles Soups
@ Freshfields Village, LLC, Ladles Soup
Downtown Charleston, LLC, Ladles Soups-
James Island, LLC, Dan Sutton, Carol
Sutton, Ladles Soups Moncks Corner, LLC,
Ladles Knightsville, LLC, Teri Owens,
Ladles West Ashley, and Ladles Fort Mill,
LLC,

2300 Otranto Road
North Charleston, SC 29406
843-569-5511
843-569-5411 fax
paul@ferraralawfirm.net

July 17, 2018
North Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CRAIG CHAPPELL, on behalf of himself
and other similarly situated,

Plaintiff(s),

v.

Ladles Soup – James Island LLC;
Ladlessoups, LLC; Ladles Soup At Cane
Bay LLC; Ladles Soups at Citadel Mall
LLP; Ladles Soups Calhoun LLC; Ladles
Soups Cane Bay LLC; Ladles Soups
Coosaw LLC; Ladles Soups Downtown
Charleston, LLC; Ladlessoups Fresh Fields,
LLC; Ladles Soups @ Freshfields Village,
LLC; Ladlessoups Mainstreet, LLC; Ladles
Soups Moncks Corner LLC; Ladlessoups
Mount Pleasant, LLC; Ladles Franchise
Development, LLC; Ladles Franchising Inc;
Ladles Fort Mill, LLC; Ladles Knightsville
LLC; Ladles West Ashley; Teri Owens; Sue
Allen, Tracy Allen, Steve Traeger, Erik
Dyke, Julie Dyke, Stan Sutton, Carol Sutton,
Jack Dalter, Kellie Henderson; Jane Doe 1-
25 (Unknown Operating Company and
Management Company Owners); John Doe
25-40 (Management Personnel),

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-00785

AFFIDAVIT OF SERVICE

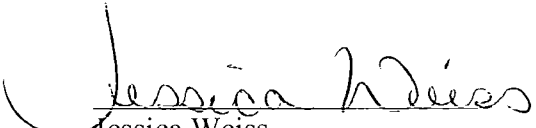
FILED
2018 JUL 24 PM 1:44
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

PERSONALLY appeared before me the undersigned who, being duly sworn, on oath
says:

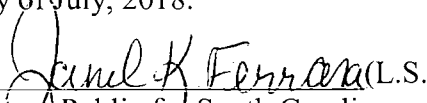
1. That she is an employee in the office of Ferrara Law Firm, attorneys for
the defendant herein;
2. That on the 17th day of July, 2018 she did via U.S. mail give a true and
correct copy of the foregoing Motion to Dismiss, Motion to Disallow
Class Certification and Motion Coversheet by mailing a copy to:

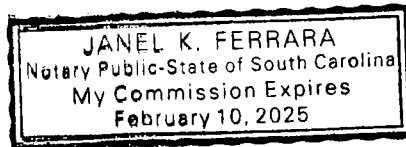
Benjamin Le Clercq
Le Clercq Law Firm
708 South Shelmore Blvd., #202
Mount Pleasant, SC 29464

3. That she is not a party to this action.


Jessica Weiss
Paralegal to Paul B. Ferrara, III

SWORN to before me this 17th
day of July, 2018.


Notary Public for South Carolina
My Commission Expires: 2/10/2025



STATE OF SOUTH CAROLINA,	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2018-CP-10-00785
	)	
CRAIG CHAPPELL, on behalf of himself and	)	
Others similarly situated,	)	
	)	
Plaintiff(s),	)	
v.	)	
	)	DEFENDANTS LADLES FRANCHISING, INC.,
	)	LADLESSOUPS, LLC, SUE ALLEN, TRACY ALLEN'S
	)	REPLY TO NOTICE OF MOTION AND MOTION TO
	)	DISALLOW CLASS CERTIFICATION
Ladles Soup-James Island LLC; Ladlessoups,	)	
LLC; Ladles Soup At Cane Bay, LLC; Ladles	)	
Soups at Citadel Mall LLP; Ladles Soups	)	
Calhoun LLC; Ladles Soups Cane Bay LLC;	)	
Ladles Soups Coosaw LLC; Ladles Soups	)	
Downtown Charleston, LLC; Ladlessoups	)	
Fresh Fields LLC; Ladles Soups @ Freshfields	)	
Village, LLC; Ladlessoups Mainstreet, LLC;	)	
Ladles Soups Moncks Corner LLC; Ladles	)	
Franchise Development, LLC; Ladles Franchising,	)	
Inc.; Ladles Fort Mill, LLC; Ladles Knightsville	)	
LLC; Ladles West Ashley; Teri Owens; Sue Allen,	)	
Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke	)	
Stan Sutton, Carol Sutton, Jack Dalter, Kellie	)	
Henderson; Jane Doe 1-25 (Unknown Operating	)	
Company and Management Company Owners);	)	
John Doe 25-40 (Management Personnel).	)	
	)	
Defendants.	)	
	)	

FILED
2018 NOV 13 PM 1:33
JULIE A. JENNINGS
CLERK OF COURT

This is an action alleging that the various Defendants misappropriated employee tips.

The Defendants Ladles Franchising, Inc., Ladlessoups, LLC, Sue Allen and Tracy Allen hereby respond to the motion of Defendant Traeger, et al. to disallow class certification, join in the same, and further assert the following additional grounds:

1. This action was commenced on February 14, 2018, and the Plaintiff has failed to move for an order of class certification “as soon as practicable...” as required by Rule 23(d), S.C.R.C.P.

2. As to Defendant Ladles Franchising, Inc. and Tracy Allen, the representative Plaintiff cannot possibly satisfy the following prerequisites of a class action under Rule 23(d), S.C.R.C.P.:

- a) there are no questions of law or fact common to the class which may be asserted against these Defendants;
- b) claims or defenses of the representative parties are not typical of any claim or defense that may be asserted against these Defendants.

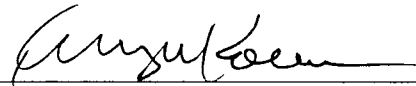
Since Ladles Franchising, Inc. has never employed tipped employees, no current or former employee can possibly demonstrate questions of law or fact common to members of any class which may ultimately be certified. For the same reason, there are no claims or defenses of the representative party which are typical to any claim or defense which could be asserted by any current or former employee of Ladles Franchising, Inc.

Defendant Tracy Allen could only be liable under the causes of action stated in the Complaint, were he an agent or officer of an entity employing tipped employees and also to have knowingly caused a violation of the Wages Act, Section 41-10-110, S.C. Code Anno., Dumas v. InfoSafe Corp., 320 S.C. 188, 195, 463 S.E. 2d 641, 645 (Ct. App. 1995), Temple v. Tec-Fab, Inc., 370 S.C. 383, 389, 635 S.E. 2d 541, 544 (Ct. App. 2006).

Since he has never been an officer, member, agent or manager of a Defendant entity employing tipped employees, he cannot be sued individually by a proposed class made up entirely of tipped employees or former employees.

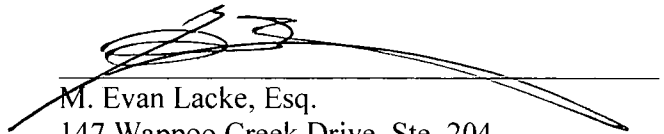
As this action solely prays for class relief, the appropriate remedy is dismissal from this action of Defendants Ladles Franchising, Inc. and Tracy Allen.

Respectfully Submitted,



Kerry W. Koon, Esq.
147 Wappoo Creek Drive, Ste. 203
Charleston, South Carolina 29412
Phone: (843) 795-7000
Fax: (843) 762-5276
Attorney for Defendants Ladles Franchising, Inc.,
Ladlessoups, LLC, Sue Allen and Tracy Allen

LACKE LAW FIRM, LLC



M. Evan Lacke, Esq.
147 Wappoo Creek Drive, Ste. 204
Charleston, South Carolina 29412
Phone: (843) 327-1523
Fax: (843) 795-3990
Attorney for Defendants Ladles Franchising, Inc.,
Ladlessoups, LLC, Sue Allen and Tracy Allen

November/2, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA,)
COUNTY OF CHARLESTON)
CRAIG CHAPPELL, on behalf of himself and)
Others similarly situated,)

Plaintiff(s),)
v.)

Ladles Soup-James Island LLC; Ladlessoups,)
LLC; Ladles Soup At Cane Bay, LLC; Ladles)
Soups at Citadel Mall LLP; Ladles Soups)
Calhoun LLC; Ladles Soups Cane Bay LLC;)
Ladles Soups Coosaw LLC; Ladles Soups)
Downtown Charleston, LLC; Ladlessoups)
Fresh Fields LLC; Ladles Soups @ Freshfields)
Village, LLC; Ladlessoups Mainstreet, LLC;)
Ladles Soups Moncks Corner LLC; Ladles)
Franchise Development, LLC; Ladles Franchising,)
Inc.; Ladles Fort Mill, LLC; Ladles Knightsville)
LLC; Ladles West Ashley; Teri Owens; Sue Allen,)
Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke)
Stan Sutton, Carol Sutton, Jack Dalter, Kellie)
Henderson; Jane Doe 1-25 (Unknown Operating)
Company and Management Company Owners);)
John Doe 25-40 (Management Personnel).)

Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2018-CP-10-00785

AFFIDAVIT OF SUE ALLEN

FILED
2018 NOV 13 PM 3:07
CLERK OF COURT

Personally appeared before me, *SUE ALLEN*, who first being duly sworn, depose and say
as follows:

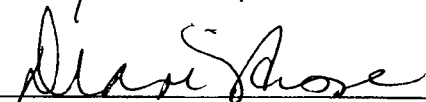
1. That I am the CEO of Ladles Franchising, Inc.

2. That I am the wife of Tracy Allen.
3. That I am personally familiar with the business of Ladles Franchising, Inc. since its incorporation in 2010.
4. That Ladles Franchising, Inc. has never employed waiters, servers, cashiers or other tipped employees.
5. Since 2017, my husband Tracy Allen has been President of Ladles Franchising, Inc.
6. My husband has never been an officer, member, agent or manager of any of the entities which are Defendants in this action other than Ladles Franchising, Inc.

This 9 day of November, 2018.


Sue Allen

SWORN to and subscribed before me
this 9th day of November, 2018.


Printed Name of Notary: Diane Hesse
Notary Public for Ohio
My Commission Expires: 5-2-2021



STATE OF SOUTH CAROLINA,)
COUNTY OF CHARLESTON)
CRAIG CHAPPELL, on behalf of himself and)
Others similarly situated,)
Plaintiff(s),)
v.)
Ladles Soup-James Island LLC; Ladlessoups,)
LLC; Ladles Soup At Cane Bay, LLC; Ladles)
Soups at Citadel Mall LLP; Ladles Soups)
Calhoun LLC; Ladles Soups Cane Bay LLC;)
Ladles Soups Coosaw LLC; Ladles Soups)
Downtown Charleston, LLC; Ladlessoups)
Fresh Fields LLC; Ladles Soups @ Freshfields)
Village, LLC; Ladlessoups Mainstreet, LLC;)
Ladles Soups Moncks Corner LLC; Ladles)
Franchise Development, LLC; Ladles Franchising,)
Inc.; Ladles Fort Mill, LLC; Ladles Knightsville)
LLC; Ladles West Ashley; Teri Owens; Sue Allen,)
Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke)
Stan Sutton, Carol Sutton, Jack Dalter, Kellie)
Henderson; Jane Doe 1-25 (Unknown Operating)
Company and Management Company Owners);)
John Doe 25-40 (Management Personnel).)
Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2018-CP-10-00785

AFFIDAVIT OF TRACY ALLEN

2018 NOV 13 PM 3:07
JULIE S. ALLEN
CLERK OF COURT

Personally appeared before me, *TRACY ALLEN*, who first being duly sworn, depose and say as follows:

1. Since 2017, I have been President of Ladles Franchising, Inc.

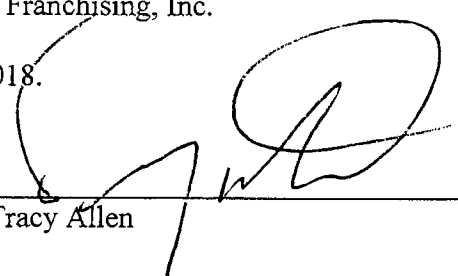
2. That I am the husband of Sue Allen.

3. That I am personally familiar with the business of Ladles Franchising, Inc. since its incorporation in 2010.

4. That Ladles Franchising, Inc. has never employed waiters, servers, cashiers or other tipped employees.

6. That I have never been an officer, member, agent or manager of any of the entities which are Defendants in this action other than Ladles Franchising, Inc.

This 9th day of November, 2018.

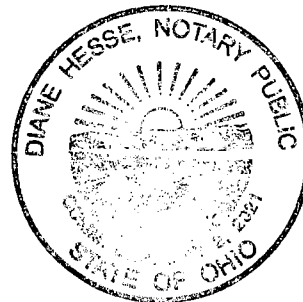


Tracy Allen

SWORN to and subscribed before me
this 9th day of November, 2018.



Printed Name of Notary: Diane Hesse
Notary Public for OH
My Commission Expires: 5-2-2021



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CRAIG CHAPPELL, on behalf of himself and
others similarly situated,

Plaintiff(s),

v.

Ladles Soups – James Island LLC;
Ladlessoups, LLC; Ladles Soups At Cane Bay
LLC; Ladles Soups At Citadel Mall LLP;
Ladles Soups Calhoun LLC; Ladles Soups
Cane Bay LLC; Ladles Soups Coosaw LLC;
Ladles Soups Downtown Charleston, LLC;
Ladlessoups Fresh Fields, LLC; Ladles Soups
@ Freshfields Village, LLC; Ladlessoups
Mainstreet, LLC; Ladles Soups Moncks
Corner LLC; Ladlessoups Mount Pleasant,
LLC; Ladles Franchise Development, LLC;
Ladles Franchising Inc.; Ladles Fort Mill,
LLC; Ladles Knightsville LLC; Ladles West
Ashley; Teri Owens; Sue Allen, Tracy Allen,
Steve Traeger, Erik Dyke, Julie Dyke, Stan
Sutton, Carol Sutton, Jason Dalter, Kellie
Henderson; Jane Doe 1-25 (Unknown
Operating Company and Management
Company Owners); John Doe 25-40
(Management Personnel)

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-785

PLAINTIFF'S RESPONSE TO
DEFENDANTS' NOTICE OF MOTION
AND MOTION TO DISALLOW CLASS
CERTIFICATION

2018 NOV 26 PM 12:05
CLERK OF COURT
BY 

Plaintiff, CRAIG CHAPPELL, by and through his undersigned counsel, hereby files his
response to Defendants, Steven Traeger, Traeger Unlimited, d/b/a Ladlessoups Fresh Fields, LLC,
Ladles Franchise Development, LLC, Ladles Soups @ Freshfields Village, LLC, Ladles Soup
Downtown Charleston, LLC, Ladles Franchise Development, LLC, Dan Sutton, Carol Sutton,
Ladles Soups Moncks Corner, LLC, Ladles Knightsville, LLC, Ladles West Ashley, and Ladles

Soup – Ladles Fort Mill, LLC, Notice of Motion and Motion to Disallow Class Certification (the “Motion”) and would respond as follows:

As of the date of filing of this memorandum, Defendants have not provided a memorandum of law supporting their Motion. Without more, the motion is subject to denial on that basis alone, since there is no citation to authority. The Motion argues in a general, perfunctory manner five reasons to disallow class certification: Plaintiff failed to show (1) the class was tailored narrowly; (2) numerosity was met; (3) commonality was met; (4) typicality was met; and (5) that each class member sought relief exceeding \$100.¹

The Court’s emailed notice of hearing on the Motion, dated November 1, 2018, directed the parties to submit memoranda three days prior to the hearing. Because Defendants have not obeyed this order their Motion should be denied.

Nevertheless, should the Court examine this matter under Rule 23, Plaintiff’s Complaint easily meets the requirements:

I. THERE IS NO SEPARATE REQUIREMENT THAT THE CLASS BE “NARROWLY TAILORED”

Rule 23, SCRCF contains no requirement that a class be “narrowly tailored”. No South Carolina case has imposed such a requirement that exists independently of Rule 23’s five requirements. To the contrary, Rule 23 requires analysis of i) Numerosity, ii) commonality, iii) typicality, iv) representativeness, and v) amount in controversy.

II. PLAINTIFF SHOWED NUMEROSITY

Plaintiff alleged that the class consists of at least 75 current and former in-restaurant employees of Defendants and that these members were geographically dispersed throughout South

¹ Defs.’ Mot. Disallow Class Cert. at 2.

Carolina and other states.³ As such, “joinder of all members is impractical.”⁴ Plaintiff Chappell is a representative employee for the class defined as all of the employees at every Ladles location in South Carolina. The Ladles Franchisor Defendants (“Franchisors”), working in conjunction with Franchisee Defendants (“Franchisees”) engaged in an illegal payment scheme in violation of the South Carolina Payment of Wages Act, and in breach of their agreements with Plaintiff and similarly situated class members, as described in the complaint, thereby damaging Plaintiffs. The exact nature and scope of the illegal payment scheme will be clarified in discovery. As to “numerosity,” given that there are more than 12 Ladles locations in South Carolina, and the transient nature of workers in the Food/Beverage industry, Plaintiff suspects that the class may be well in excess of 100 people.

III. PLAINTIFF SHOWED COMMONALITY

“To establish commonality, a party must show that there are questions of law or fact common to the class. [. . .] In practical terms this means the party must articulate the existence of significant common, legal, or factual issues which bind the proposed class together.”⁵ “Critically, [n]ot every issue in the case must be common to all class members.”⁶

Defendants have no good faith argument that Plaintiff has failed to satisfy the “commonality” requirement. Plaintiff’s complaint alleges that all class member Plaintiffs were not paid the credit card tips to which they were entitled. All Plaintiff class members share the exact same legal issue.

Although no South Carolina class-action case is on point with ours, some support using a “common scheme” theory to join disparate defendants. Plaintiff denies that Defendants are “disparate,” since Franchisors and Franchisees worked in concert as to the illegal payment scheme.

³ Compl. at para. 37.

⁴ Rule 23(a)(1), SCRCp.

⁵ Gardner v. South Carolina Dept. of Revenue, 353 S.C. 1, 21, 577 S.E.2d 190 (2003).

⁶ Id.

Nevertheless, in McGann v. Mungo⁷ the plaintiffs were residents of one subdivision alleging that various defendants with no legal relationship caused damages to homes and vehicles due to poor drainage system performance.⁸ Ruling on defendants' argument that Rule 23(a)(2), SCRPC wasn't met, the court considered common questions of "whether the developers complied with minimum standards for subdivision development whether [subdivision's] streets are defective and substandard, whether the drainage systems in [subdivision] are adequate, and whether the developers failed to repair the streets and drainage systems within [subdivision]."⁹ The court stated, "Obviously, the allegations of the amended complaint satisfy the pleading requirements of Rule 23(a)(2), which we also apply retrospectively, as to a community of interest among the members of the alleged class in the questions of law and fact involved."¹⁰ Although it didn't deal with a common scheme executed by multiple defendants, McGann's holding of sufficient commonality under the class-action rules, despite multiple defendants each of whom allegedly damaged not the entire class but only portions thereof, supports the argument that employees of various franchises suffered under a common misappropriation of their wages.

In Littlefield v. SC FORESTRY COM'N,¹¹ there were, like in McGann, many plaintiffs employed by many state agencies, yet they shared one legal issue (concerning pay for unused leave) which sufficed for class certification.¹² Further, the Supreme Court found the trial court had

⁷ McGann v. Mungo, 287 S.C. 561, 340 S.E.2d 154 (Ct. App. 1985).

⁸ McGann v. Mungo, 287 S.C. 561, 340 S.E.2d 154, 156 (Ct. App. 1985).

⁹ McGann v. Mungo, 287 S.C. 561, 340 S.E.2d 154, 158 (Ct. App. 1985).

¹⁰ McGann v. Mungo, 287 S.C. 561, 340 S.E.2d 154, 158 (Ct. App. 1985).

¹¹ Littlefield v. SC FORESTRY COM'N, 337 S.C. 348, 523 S.E.2d 781 (1999).

¹² Littlefield v. SC FORESTRY COM'N, 337 S.C. 348, 523 S.E.2d 781 (1999).

abused its discretion by failing to allow plaintiffs to redefine their class before denying certification.¹³

Plaintiff alleges that his employer wrongfully withheld his credit card tips to which he was entitled as a matter of statutory law, his employment contract, and common law.¹⁴ Plaintiff alleges that this withholding of credit card tips is a Ladles-wide common policy, and that Franchisors and Franchisees worked in concert to accomplish these ends.¹⁵ Plaintiff alleges several common issues of fact: whether members were (1) service employees at Ladles restaurants; (2) paid hourly plus tips; (3) not paid credit card tips; and (4) treated in a common way by their Ladles restaurant managers and owners and the other Defendants.¹⁶ Plaintiff alleges several common issues of law: whether Defendants' retention of credit card tips was in violation of the SCPWA, the members' employment contracts, or of state conversion law; and whether members are entitled to prejudgment interest and attorneys fees and costs.¹⁷

Plaintiff has articulated the significant common factual and legal issues of (1) whether it was a Ladles-wide policy to withhold credit card tips from service employees; and (2) whether class members were entitled to said tips. As the value of these tips forms the majority of the members' compensatory damages sought, these issues are the most significant to this case. Commonality has been shown.

Even were the Court to conclude that, as in Littlefield and McGann, some plaintiffs were damaged by one Franchisee defendant, others by a different Franchisee defendant—the

¹³ Littlefield v. SC FORESTRY COM'N, 337 S.C. 348, 354, 523 S.E.2d 781 (1999) (“[W]e see no reason the circuit court could not, as urged by plaintiffs, have redefined the class to include only former employees.”) (citing McGann).

¹⁴ Compl. (three counts for violation of Payment of Wages Act, breach of contract, and conversion).

¹⁵ Id. at para. 13.

¹⁶ Compl. at paras. 38(a)-(d).

¹⁷ Id. at 38(c), (e).

commonality requirement is still met. What matters is whether there is a sufficiently common question of law or fact to make the class action mechanism a more efficient way to resolve such common claims. As in Littlefield, all plaintiffs' harm was due to one and the same improper method of calculating pay, via concerted action by Franchisors and Franchisees, so class certification should not be denied.

IV. PLAINTIFF SHOWED TYPICALITY

Rule 23, SCRCP requires that "the claims . . . of the representative parties are typical of the claims . . . of the class."³⁴ Plaintiff alleged, "Plaintiff Chappell's claims are typical of the claims of the members of the class, as all such claims arise out of Defendants' wrongful conduct in illegally refusing to pay their hourly employees tips earned by them and paid by Defendants' customers via credit card, and instead wrongfully, deliberately and deceitfully withholding them. It would be difficult to meaningfully distinguish the claims of Plaintiff Class Members *inter se*." As all service employees were, it stands to reason, paid similar levels of compensation including credit card tips, and as the entire theory of this case revolves around Ladles denying its employees their credit card tips, Plaintiff's claims are typical of the members'. Here again, Defendants have no good faith argument that Plaintiff's claims are not typical of the prospective class.

PLAINTIFF SHOWED EACH MEMBER SEEKS MORE THAN \$100

Plaintiff alleged this.³⁵

³⁴ Rule 23(a)(3), SCRCP.

³⁵ Compl. at para. 44.

For these reasons, Defendants' motion should be denied and the class should be certified.

November 23, 2018

Respectfully Submitted,

s/Ben Whaley Le Clercq

Ben Le Clercq (S.C. Bar #65754)
Scott Riddell (S.C. Bar #102809)
Le Clercq Law Firm
Ben@LeClercqLaw.com
Scott@LeClercqLaw.com
708 South Shelmore Blvd. #202
Mount Pleasant, SC 29464
Phone (843) 722-3523
Fax (843) 352-2977
Counsel for Plaintiff

Ben Le Clercq
By direction
Scott Riddell
11/26/18
SRiddell

CERTIFICATE OF SERVICE

I, Ben Le Clercq, certify that on November 23, 2018, a true and correct copy of the foregoing PLAINTIFF'S RESPONSE TO DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISALLOW CLASS CERTIFICATION, was served upon counsel for Defendants, via electronic mail as follows:

Kerry Koon - kerrykoon@hotmail.com
 M. Evan Lacke - elacke@lackelawfirm.com
 147 Wappoo Creek Drive, Suite 204
 Charleston, SC 29412

Paul B. Ferrera, III - paul@ferraralawfirm.net
 Nadia Berg - N.Baig@ferraralawfirm.net
 Janel Ferrara - janel@ferraralawfirm.net
 Jessica Weiss - j.weiss@ferraralawfirm.net
 2300 Otranto Road
 North Charleston, SC 29406

P. Brandt Shelbourne - brandt@shelbournelaw.com
 Shannon Haik - civlit@shelbournelaw.com
 131 E. Richardson Avenue
 Summerville, SC 29483

2018 NOV 26 PM 12:06
 JUDGE
 CLERK OF COURT
 BY

s/Ben Le Clercq

Ben Le Clercq

Ben Le Clercq

*By direction
 Scott Riddle
 11/26/18
 S. Riddle*

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

CASE NO.: 2018-CP-10-785

CRAIG CHAPPELL, on behalf of himself and
others similarly situated,

PLAINTIFF'S FIRST INTERROGATORIES

Plaintiff(s),

v.

Ladles Soups – James Island LLC; Ladles
Soups, LLC; Ladles Soups At Cane Bay LLC;
Ladles Soups At Citadel Mall LLP; Ladles
Soups Calhoun LLC; Ladles Soups Cane Bay
LLC; Ladles Soups Coosaw LLC; Ladles Soups
Downtown Charleston, LLC; Ladles Soups
Fresh Fields, LLC; Ladles Soups @ Freshfields
Village, LLC; Ladles Soups Mainstreet, LLC;
Ladles Soups Moncks Corner LLC; Ladles
Soups Mount Pleasant, LLC; Ladles Franchise
Development, LLC; Ladles Franchising Inc.;
Ladles Fort Mill, LLC; Ladles Knightsville
LLC; Ladles West Ashley; Teri Owens; Sue
Allen, Tracy Allen, Steve Traeger, Erik Dyke,
Julie Dyke, Stan Sutton, Carol Sutton, Jason
Dalter, Kellie Henderson; Jane Doe 1-25
(Unknown Operating Company and
Management Company Owners); John Doe
25-40 (Management Personnel)

Defendants.

PLAINTIFFS' FIRST INTERROGATORIES

We hereby propound the following Interrogatories to to each Defendant (“Respondent”) listed in the above styled matter, to be answered separately, fully and completely by each such Defendant in accordance with Rule 34 of the South Carolina Rules of Civil Procedure, and within 30 days. These RFPs are submitted in conjunction with our First Requests for Production.

INSTRUCTIONS AND DEFINITIONS

1. **Respondent’s interrogatory responses must be signed by Respondent, and objections signed by counsel, as required by SCRCP 33.**

2. Every Interrogatory herein shall be deemed a continuing Interrogatory and Respondent must supplement his answers promptly, if and when he obtains relevant information in addition to, or in any way inconsistent with, his initial answer to any such Interrogatory in accordance with the applicable Rules of Civil Procedure.

3. Should privilege be claimed with regard to any information requested herein, the answer must, in each instance, state specifically the information sought, the privilege claimed, and the grounds on which the claim of privilege is based. Should Respondent be unable for reasons other than privileged to provide any information requested herein, the answer must, in each such instance, indicate specifically the information sought, the reason such information is presently unavailable and an estimate of the time within which such information will be presented to the undersigned.

4. If Respondent objects to any portion of an interrogatory on the ground that it seeks privileged information, identify all persons to whom such information has been disclosed, the nature of the privilege asserted and the dates of any communication for which privilege is asserted.

5. If Respondent objects to an interrogatory on the ground that it is too broad (i.e., that it calls for information which is relevant to the subject matter of the action and information which is not), Respondent should provide such information which is concededly relevant. If Respondent objects to an interrogatory on the ground that providing an answer would constitute an undue burden, Respondent provide such requested information as can be supplied without undertaking an undue burden. For those portions of any interrogatory to which Respondent objects or otherwise declines to answer, state the reason for such objection or declination.

- a. If you cannot answer all or part of any interrogatory in full after exercising due diligence to secure the full information to do so, so state and answer to the extent possible, specifying your inability to answer the remainder, stating whatever

information or knowledge you have concerning the unanswered portion, and detailing what you did in attempt to secure the unknown information.

6. The term “person(s)” includes a natural person, firm, association, partnership, business, trust, corporation, or public entity.

7. The word “you” or “your” means Respondent singularly or jointly and/or all past or present officers, directors, employees, agents, representatives, general partners, attorneys, or other persons acting or purporting to act for, on behalf of, or with Respondent. “You” or “your” also means any affiliate, parent, or subsidiary of Respondent.

8. The word “document(s)” means all written, printed, recorded or graphic matter, photographic matter, sound reproductions, or other retrievable data (whether recorded, taped, or coded electrostatically, electromagnetically or otherwise), from whatever source derived and however and by whomever, produced, reproduced, disseminated or made; without limiting the generality of the foregoing, the word “document(s)” includes the original and any non-identical copy and also every draft and proposed draft of all correspondence, memoranda, text messages, instant messages, emails, notes of meetings, telegram, telexes, facsimiles, reports, transcripts or notes of telephone conversations, diaries, notebooks, minutes, notes, tests, reports, analyses, studies, testimony, speeches, worksheets, maps, charts, diagrams, computer programs, information kept in computerized storage, computer printouts, and any other writings or documentary material of any nature whatsoever, whether or not divulged to persons other than you, together with any attachments thereto and enclosures therewith.

9. The term “identify” when used with respect to a natural person means to state the following: (1) the full name of the person, (2) his or her current business address and telephone number, (3) his or her position, and (4) a description of his or her responsibilities and knowledge of the substance of the question asked.

10. The term “identify” when used with respect to a person other than a natural person means to state the following: (1) its full name; (2) whether it is a firm, association, business, corporation, partnership, trust, or other entity; (3) the address of its principal place of business; and (4) the subdivision or part of the person most immediately involved with the subject matter of the interrogatory in question.

11. The term “identify” when used with respect to a document means to state the following: (1) the type of document (*e.g.*, letter, article, photograph, computer printout); (2) its date or approximate date; (3) its author or authors; (4) its recipient or recipients, including those persons who received copies of the document; (5) its general subject matter; and (6) its present location or custodian (or the last known location or custodian), or in lieu thereof, attach a copy of the document.

12. The term “identify” when used with respect to a communication or a statement means to: (1) state the mode of communication or statement (*e.g.*, by telephone, electronic mail, oral conversation); (2) state its date or approximate date; (3) identify its author or speaker; (4)

identify its recipient or recipients; (5) describe its general subject matter; and (6) identify any and all documents memorializing the communication or statement.

13. The term “identify” when used with respect to a meeting means to: (1) state the location of the meeting; (2) state the date of the meeting; (3) identify who attended the meeting; (4) describe the subject matter of the meeting; and (5) identify any and all documents memorializing the discussions at the meeting.

14. When an interrogatory requires you to “state” or to “state the basis” of a particular claim, contention, allegation, or defense, identify in your answer each and every verbal communication, meeting, and document that you believe supports, refers to, or evidences such a claim, contention, allegation, or defense, and identify every person having knowledge thereof.

15. When an interrogatory requires you to “describe” a particular matter, give a detailed account, narration, recitation, and report of the question asked.

16. Respondent is requested to provide *separate written responses* to these Interrogatories for each Respondent named.

17. The terms “you,” “Plaintiff,” or “Defendant” include every individual party and include your agents, employees, your attorneys, your accountants, your investigators, and anyone else acting on your behalf.

18. The term “relating to” as used herein means referred or referring to, alluded or alluding to, related or relating to, tending to support or refute the existence of, concerned or concerning with, connected with, regarding, describing, or reflecting.

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.

2. Does Respondent have liability insurance, or is there any other form of indemnity or bond, through which Respondent is or might be insured in any manner for the damages, claims, or actions that are the subject of the pleadings? If so, please provide the following information for each policy:

a. The kind of insurance, indemnity or bond;

- b. The name of the company or companies, including any excess or umbrella carriers, which you claim provide coverage;
- c. The policy number or policies numbers of any applicable policy;
- d. The limit or limits of liability of each policy.
- e. The named insured of each policy.
- f. Whether the insurance carrier has accepted or denied coverage.
- g. Whether you are being defended by the insurance carrier under a reservation or rights.

3. 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.

4. Identify each and every person who aided in answering these Interrogatories or the request for production of documents issued here with.

5. State all facts upon which you rely in support of each and every defense to Plaintiffs' Complaint in this matter.

6. State the factual basis as you understand it to each factual allegation in Plaintiffs' Complaint in this matter.

7. Set forth a list of photographs, plats, sketches, or other prepared documents in your possession that relate to a claim or defense in this case.

8. In connection with each expert witness whom Respondent proposes to use as a witness at the trial of this case, please list the following:

- a. the expert's name, address, in field of expertise;

- b. detailed summary of the expert's opinions regarding this case and the basis for them;
- c. summary of the expert's knowledge, skill, experience, training, or education as it applies to the specific field of expertise alleged in this case;
- d. description of the claims and lawsuits in which the expert has given opinions, including the names and addresses of the parties and their attorneys, and the location of any depositions and recorded statements the expert has given in cases other than this one;
- e. the percentage of expert's practice devoted to consulting work in legal claims, the percentage attributable to the claimant/plaintiff as opposed to the defendant, and the amount of income derived from such consulting in the last 2 years;
- f. the specifics of any publication in speaking engagements given by the expert on matters relating to the expert's profession; and
- g. the names of publications considered by the expert to be learned treatises as described in the Federal or South Carolina rule of evidence 803(18).

9. If Respondent or any other party with whom Respondent is familiar is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and/or pleading reflecting the correct information.

10. If Respondent is a legal entity, describe the type of entity, list all members and/or shareholders, directors, officers, and describe its constitutive documents. Describe which specific individuals at Respondent worked on or participated in the issues and facts described in this action? Give their names, contact details, and email addresses.

11. If Respondent is not a legal entity, give the names and contact details for all individuals with whom Respondent worked or with whom Respondent was affiliated arising from or related to this matter.

12. Describe and give the current location of all electronic equipment, including computers, handheld devices, mobile telephones, pagers, and/or PDAs that each person identified in the previous two Interrogatories has used. For each device, specify which people used it and for which subpart from the previous Interrogatory each person used it.

13. What does Respondent allege are the most important communications and meetings in this matter?

14. Does Respondent contend there is an oral contract? If so, please state what Respondent believes to be the terms and provisions of all such oral contract(s) in detail and state the name, address and contact information of all persons you believe have knowledge or information relating to the terms or provisions of the oral contract(s).

15. Identify any and all social media sites of which Respondent is/was a member or in which Respondent participated/subscribed from January 1st, 2015 to the day of trial. Please state whether you have a Facebook, LinkedIn, Twitter, or other social media page or site, and if so, please provide the login information and password necessary to access such site or page.

16. List and describe each and every document, drawing, map, diagram, model or other documentary material or tangible object that you intend to rely on to support your allegations/ defenses in this action, regardless of whether you intend to offer the same into evidence or merely use as a demonstrative aid at the trial of this action.

17. State whether you have been a party to a civil lawsuit. If so, for each lawsuit, please provide the following information:

- a. How were you named in the lawsuit (e.g. plaintiff, defendant, intervenor, etc.)?
 - b. What was the nature of each claim and defense?
 - c. The date, location, and title of the court in which the action was commenced.
 - d. The names of all the parties other than yourself involved in the action.
18. Please identify and describe every charge, administrative proceeding, arbitration and/or other legal proceeding brought against Respondent, and please identify the person making said allegations.
19. State your gross income for the years January 1, 2014 through the current date. Do you regularly produce profit and loss statements, balance sheets and income statements?
20. State the name and contact details of your tax preparer, accountant, and bookkeeper.
21. For each defendant that is a limited liability company, please state:
- a. The name listed in the current articles of organization;
 - b. All of the names used by the company during the past 10 years and the dates each was used;
 - c. The name and address of each member;
 - d. The name and address of each manager;
 - e. The date and place of formation;
 - f. The address of the principal place of business; and
 - g. The states in which it is registered to do business.
22. Set forth for each and every Defendant, individually, any and all real and personal property owned, whether individually, collectively, or otherwise owned including with other third parties, including but not limited to the following:

- a. all financial accounts, including bank, checking, savings, money market, investment, and/or securities accounts currently held by or for your benefit, and state current balances, location of the accounts, and name on accounts;
- b. any and all certificates of deposit, stock certificates in any publicly held or closely held corporation, as well as any bonds owned by each and every Defendant, membership interest in any and all limited liability companies, partnership interest in any and all partnerships, and any and all interest in any other form of business entity, including joint ventures, whether domestic or offshore, detailing without limitation and with particularity percentages of ownership, amount of revenue generated for each entity, etc.
- c. any and all titles to vehicles, mobile homes, or watercraft owned by each and every Defendant, detailing a description of each item including year, model, serial number, vehicle identification number, present value and the amount of any lien thereon;
- d. any and all deeds, mortgages, notes, contracts of sale, and settlement or closing statements relating to any real estate transactions involving each and every Defendant;
- e. any and all real property, including without limitation (county, state, jurisdiction), whether domestic or offshore for each and every Defendant;
- f. any and all life insurance policies owned by each and every Defendant, along with any information pertaining to any loans outstanding on any such policies;
- g. any and all items of jewelry or art owned by each and every Defendant, including a description of each item and its most recent appraised valuation;

- h. any and all leases of realty or personalty in favor of each and every Defendant;
- i. any and all books, records, documents, or writings concerning the financial status of Defendants not herein before specified, including any and all interest in any form of trust; and
- j. any and all tax receipts, tax returns or supplemental forms, and any and all other documents, forms or letters filed with United States Internal Revenue Service, and any other state tax authority within the last 5 years.

23. State the name and location of each and every Ladles' franchisee, and name the owners of that franchise.

24. What is the bank and account number for the account used to pay employees?

25. Do you use a third-party payroll processing service? Describe all documents received from them since January 1, 2015.

26. State the name, telephone number, including mobile phone number, email address, and street address for every employee of Respondent since January 1, 2015, and list whether they still work with Respondent, and if not, why they left.

27. How did Respondent come to be a Ladles Franchisee? Name and describe the Franchisor of Ladles ("Franchisor"), and describe Respondent's relationship with any such Franchisor, and the nature of the documents establishing such franchise relationship. Describe all communications, written or oral with such franchisor since January 1, 2015.

28. Since January 1, 2015, state each and every employee, member, and/or officer of Respondent that has had any responsibility for: i) payroll; ii) signing or disbursing paychecks and/or wages; iii) handling tips/tip policy; iv) accounting and credit card receipts; v) bookkeeping/accounting; vi) hiring and firing employees

29. Does Respondent have an employee handbook?
30. Since January 1, 2015, describe all payroll and salary documents provided to employees and or independent contractors, including W-2s and 1099s.
31. Who decided on behalf of Respondent that Respondent would retain credit card tips rather than pay them to employees? Did any other Defendant, or employee/agent/officer of another Defendant, share in the responsibility for that decision, agree with or suggest, counsel, or otherwise state that Respondents should retain credit card tips rather than pay them to employees?
32. When and how did Respondent decide that the credit card tip policy described in the prior paragraph would be Respondent's policy?
33. Describe each and every written and oral communication with any person, including employees, officers, agents, or individuals affiliated with other franchisees or franchisor, or otherwise arising from or related to Respondent's policy of retaining credit card tips. In particular, describe any and all emails relating to such policy.
34. Describe any and all meetings with any other franchisees, their agents, members, officers or employees, and/or with Franchisor its agents, members, officers or employees, discussing or describing Respondent or other Franchisee or Franchisor policy relating to tips.
35. What has been Respondent's policy as to cash tips since January 1, 2015? Has that policy ever changed?
36. Who fired Craig Chappell? Why was he fired?
37. Describe Respondent's accounting software.
38. Describe Respondent's management structure for employee operations. Describe the types of employees and their functions in Respondent's operations.

39. Describe any and all written communications were notices with Respondent's customers and clients notifying them as to any tip policy of Respondent, and in particular, Respondent's policy of retaining credit card tips rather than paying them to employees.

40. Have any employees complained or raised concerns about Respondent's tipping policies? Describe each and every such complaint or discussion, and whether the same is documented in any written communications.

As described above, every Interrogatory herein shall be deemed a continuing Interrogatory and Respondent must supplement his answers promptly, if and when he obtains relevant information in addition to, or in any way inconsistent with, his initial answer to any such Interrogatory in accordance with the applicable Rules of Civil Procedure

Respectfully submitted,

s/Ben Le Clercq

Le Clercq Law Firm
Ben Whaley Le Clercq
SC Bar # 65754
Scott Riddell
SC Bar #102809
708 S. Shelmore, Suite 202
Mt. Pleasant, SC 29464
843-722-3523
ben@leclercqlaw.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, Debbie Mathews, certify that on May 24, 2019 a true and correct copy of the foregoing **FIRST INTERROGATORIES** was served upon counsel for Defendants, via email.

s/Debbie Mathews

Debbie Mathews

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

CASE NO.: 2018-CP-10-785

CRAIG CHAPPELL, on behalf of himself and
others similarly situated,

PLAINTIFF'S FIRST REQUESTS FOR
PRODUCTION

Plaintiff(s),

v.

Ladles Soups – James Island LLC; Ladles
Soups, LLC; Ladles Soups At Cane Bay LLC;
Ladles Soups At Citadel Mall LLP; Ladles
Soups Calhoun LLC; Ladles Soups Cane Bay
LLC; Ladles Soups Coosaw LLC; Ladles Soups
Downtown Charleston, LLC; Ladles Soups
Fresh Fields, LLC; Ladles Soups @ Freshfields
Village, LLC; Ladles Soups Mainstreet, LLC;
Ladles Soups Moncks Corner LLC; Ladles
Soups Mount Pleasant, LLC; Ladles Franchise
Development, LLC; Ladles Franchising Inc.;
Ladles Fort Mill, LLC; Ladles Knightsville
LLC; Ladles West Ashley; Teri Owens; Sue
Allen, Tracy Allen, Steve Traeger, Erik Dyke,
Julie Dyke, Stan Sutton, Carol Sutton, Jason
Dalter, Kellie Henderson; Jane Doe 1-25
(Unknown Operating Company and
Management Company Owners); John Doe
25-40 (Management Personnel)

Defendants.

PLAINTIFFS' FIRST REQUESTS FOR PRODUCTION

We hereby propound the following Requests for Production ("RFP") to each Defendant ("Respondent") listed in the above styled matter, to be answered separately, fully and completely by each such Defendant in accordance with Rule 34 of the South Carolina Rules of Civil Procedure, and within 30 days. These RFPs are submitted in conjunction with our Interrogatories.

INSTRUCTIONS AND DEFINITIONS

1. You must produce a written response within thirty (30) days after service of this request to Le Clercq Law Firm, 708 South Shelmore, Suite 202, Mt. Pleasant, South Carolina 29464. Your response must state that production and related activities will be permitted as requested or that the requested production is objected to, in which event the reasons for your objection must be stated.

2. Documents produced for inspection must be produced as they are kept in the usual course of business or be organized and labeled to correspond with the categories in this request. In particular, PDF files must be produced with OCR engaged, as a searchable file, and not simply as an image which is not searchable.

3. Electronic Data and Electronically stored information (ESI) must be produced in its native format with all metadata preserved.

4. Every RFP herein shall be deemed a continuing RFP and Respondent must supplement production promptly, if, and when he obtains relevant documents in addition to his initial production in accordance with the applicable Rules of Civil Procedure.

5. Should privilege be claimed with regard to any production requested herein, the answer must, in each instance, state specifically the production sought, the privilege claimed, and the grounds on which the claim of privilege is based. Should Respondent be unable for reasons other than privileged to provide production requested herein, the answer must, in each such instance, indicate specifically the production sought, the reason such production is presently unavailable and an estimate of the time within which such production will be presented to the undersigned.

6. If Respondent objects to any portion of an RFP on the ground that it seeks privileged information, identify all persons to whom such information has been disclosed, the nature of the privilege asserted and the dates of any communication for which privilege is asserted.

7. If Respondent objects to an RFP on the ground that it is too broad (i.e., that it calls for production which is relevant to the subject matter of the action and that which is not),

Respondent should provide such production which is concededly relevant. If Respondent objects to an RFP on the ground that providing an answer would constitute an undue burden, Respondent provide such requested production as can be supplied without undertaking an undue burden. For those portions of any RFP to which Respondent objects or otherwise declines to answer, state the reason for such objection or declination.

8. The term “person(s)” includes a natural person, firm, association, partnership, business, trust, corporation, or public entity.

9. The word “you” or “your” means Respondent singularly or jointly and/or all past or present officers, directors, employees, agents, representatives, general partners, attorneys, or other persons acting or purporting to act for, on behalf of, or with Respondent. “You” or “your” also means any affiliate, parent, or subsidiary of Respondent.

10. “Computer” shall include, but is not limited to, microcomputers (also known as personal computers or desktops), laptop computers, portable computers, personal digital assistants, Blackberrys, minicomputers and mainframe computers.

11. “Document” or “media” means recorded material in any form, including the original and all non-identical copies (whether different from the originals by reason of any notation made on such copies or otherwise), including, without limitation, correspondence, memoranda, notes, desk calendar, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, invoices, statements, receipts, returns, warranties, guaranties, summaries, pamphlets, books, interoffice and intraoffice communications, offers, notations of any sort of conversations, telephone calls, voice mails, chat rooms, meetings or other communications, bulletins, bulletin boards, magazines, publications, printed matter, photographs, video, computer stored or generated information, teletypes, telefax, invoices, worksheets and all drafts, alterations, modifications, changes and amendments of any of the foregoing, tapes, tape recording transcripts, graphic or aural records or representations of any kind, of which you have knowledge or which are or were formally in your actual or constructive possession, custody, or control. .

12. “Electronic data” means all information stored in a digital format. Electronic data includes, but is not limited to, electronic mail messages and attachments, contacts, journal entries, calendar entries, word processing documents, spreadsheets, databases including all records and fields and structural information, charts, graphs, and any and all miscellaneous files responsive to the following requests. The responding party is expected to search for any and all information stored on hard disks, floppy disks, CDs, DVDs, USB devices, Smart Phones and Personal Digital Assistants (such as Palm Pilots, Blackberrys and iPhones), and in any other vehicle for digital data storage and/or transmittal. The term electronic data also includes the file, folder tabs and/or containers and labels appended to, or associated with, any physical storage device associated with the information described above.

13. “Person” or “entity” means any natural person, firm, corporation, partnership, proprietorship, joint venture, organization, group of natural persons or other association separately identifiable, whether or not such association has a separate juristic existence in its own right.

14. These RFPs are for all documents in Respondent's "Possession, custody or control," including the joint or several possession, custody or control not only by the person to whom these interrogatories and requests are addressed, but also the joint or several possession, custody or control by each or any other person or entity acting or purporting to act on behalf of the person, whether as employee, attorney, accountant, agent, sponsor, spokesman or otherwise.

15. The term "relating to" as used herein means referred or referring to, alluded or alluding to, related or relating to, tending to support or refute the existence of, concerned or concerning with, connected with, regarding, describing, or reflecting.

REQUESTS FOR PRODUCTION

1. All documents identified, described, referenced, or referred to in your responses to our First Interrogatories or to our First Requests for Production.

2. Any and all written communications, correspondence, memoranda, documents, and things relating to, supporting, refuting, or involving any of the facts and claims alleged in Plaintiff's Complaint and/or any answer by a Defendant.

3. Any and all written communications and/or documents relating to or involving the Plaintiff and/or any Defendant.

4. All statements given by respondent or any witness identified by Respondent or other witness to the facts relevant to this case that are in the possession of Respondent or his counsel, whether written or recorded, that relate in any way to the allegations of the complaint in this matter, or an answer by any Defendant.

5. Any and all written communications, documents, and things relating to, supporting, refuting, or involving any of the averments and defenses set forth in any pleading you have submitted in this matter.

6. Copies of all documents produced by third parties pursuant to subpoenas issued in this case or any request made pursuant to the Freedom of Information Act or other request by Respondent or Respondent's counsel.

7. Any and all documents identified in response to Interrogatory number 8, relating to expert witnesses.

8. All e-mails, faxes, letters, text messages and other written communication between each and every Defendant and each and every Plaintiff.

9. If Respondent is a legal entity, produce all internal communications relating to this matter, including without limitation all e-mails, faxes, letters, text messages and other written communications between and among Respondent's employees, officers, directors, agents and counsel.

10. Provide for inspection all computers, electronic devices, and telephones containing relevant production, ESI, or electronic data, including those described in response to Interrogatory number 12.

11. Produce a complete, itemized accounting and financial summary of all amounts paid and/or owed to you by any other party to this action for the period January 1, 2015 to present.

12. All federal and state tax returns, income statements, balance sheets, and profit/loss statements for Respondent during the last five years, up through and including the date of trial.

13. All Respondent's bank statements from the last five years, up through and including the date of trial.

14. For any individual Respondent, produce any resume or curriculum vitae you have created or used from the last five years, up to and including the date of trial.

15. Any and all documents evidencing or relating to postings, blogs, whether statements on any Internet were social media site in which you discuss any matter or issue arising from or relating to this action.

16. Produce each and every post, note, mention, story, document, or other item made

by Respondent during the last seven years, up through and including the date of trial, on any and all membership-based Internet websites which relates to or in any way references any party or witness to this action, or any issue or claim in this matter, and/or the allegations set forth in the complaint or any answer filed in this matter. For purposes of this RFP, “membership-based Internet websites” shall include social media websites (including but not limited to Myspace, Flickr, YouTube, Facebook, classmates, Bebo, Deviant Art, LinkedIn, Meetup, Gather, My Yearbook, Friendster, Google Plus, or Web Shots), blogging websites (including but not limited to Blogger, Live Journal, twitter, Windows Live Spaces, WordPress, Blogspot, Vox, or Xanga), dating websites (including but not limited to Adult Friend Finder, Ok Cupid, eHarmony, match, or Fubar), and any other personal websites for which Respondent has created, used, or maintained a personal account, username, or profile at any time for the last seven years up to the present.

17. Organization charts for all of Respondent’s businesses relating to this matter, including the name, work address, and telephone number of all employees providing computer support functions within any of the organizations.

18. All Respondent’s employee handbooks and other materials disseminating policies and procedures to individual employees.

19. All Respondent’s hard copy or electronic calendars for the last five years, up through and including the date of trial.

20. Lists of all employees since January 1st, 2015, up through and including the date of trial.

21. A description of your payroll process, whether you are doing it in-house or whether you are using third-party vendor.

22. A copy of Respondent's each and every profit and loss statement, income statement, and balance sheet since January 1, 2015.

23. Any and all accounting, payroll, banking, or other records relating to salary payments, tips, wages, employment tax records, since January 1, 2015.

24. All W-2s, 1099s, and other employee and/or independent contractor records since Respondent's creation.

25. A copy of each and every piece of written communication, email, text, fax, letter, or otherwise, arising from or relating to Respondent's policy of retaining credit card tips rather than pay them to employees. As described above, every RFP herein shall be deemed a continuing RFP and Respondent must supplement his answers promptly, if and when he obtains relevant production in addition to, or in any way inconsistent with, his initial production in accordance with the applicable Rules of Civil Procedure.

26. A copy of each and every complaint or discussion or document described in response to Interrogatory #30-40.

27. A copy of each and every complaint and/or administrative proceeding in which Respondent has been involved.

Respectfully submitted,

s/Ben Le Clercq

Ben Le Clercq
(S.C. Bar #65754, U.S. District Court # 7453)
Scott Riddell
(S.C. Bar #102809, U.S. District Court #12543)
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Mount Pleasant, SC 29464
Phone (843) 722-3523
Fax (843) 352-2977
Ben@LeClercLaw.com
Scott@LeClercLaw.com
Counsel for Plaintiff

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, Debbie Mathews, certify that on May 24, 2019 a true and correct copy of the foregoing **FIRST INTERROGATORIES** was served upon counsel for Defendants, via email.

s/Debbie Mathews

Debbie Mathews

STATE OF SOUTH CAROLINA,

COUNTY OF CHARLESTON

CRAIG CHAPPELL, on behalf of himself and
Others similarly situated,

Plaintiff(s),

v.

Ladles Soup-James Island LLC; Ladlessoups,

LLC; Ladles Soup At Cane Bay, LLC; Ladles

Soups at Citadel Mall LLP; Ladles Soups

Calhoun LLC; Ladles Soups Cane Bay LLC;

Ladles Soups Coosaw LLC; Ladles Soups

Downtown Charleston, LLC; Ladlessoups

Fresh Fields LLC; Ladles Soups @ Freshfields

Village, LLC; Ladlessoups Mainstreet, LLC;

Ladles Soups Moncks Corner LLC; Ladles

Franchise Development, LLC; Ladles Franchising,

Inc.; Ladles Fort Mill, LLC; Ladles Knightsville

LLC; Ladles West Ashley; Teri Owens; Sue Allen,

Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke

Stan Sutton, Carol Sutton, Jack Dalter, Kellie

Henderson; Jane Doe 1-25 (Unknown Operating

Company and Management Company Owners);

John Doe 25-40 (Management Personnel).

Defendants.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 2018-CP-10-00785

**DEFENDANTS' LADLES FRANCHISING,
INC., LADLESSOUPS, LLC, SUE ALLEN,
AND TRACY ALLEN'S ANSWERS TO
PLAINTIFF'S FIRST
INTERROGATORIES**

COMES NOW, Defendants Ladles Franchising, Inc., Ladlessoups, LLC, Sue Allen, and Tracy

Allen and answers Plaintiff's First Set of Interrogatories as follows:

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: Teri Owens, address known to Plaintiff, written statement provided August 1, 2019 (produced in response to Plaintiff's Request for Production); Suzie Allen, 1168 Furman Road, Cincinnati, Ohio 45216, no written or recorded statement taken; Tracy Allen, 1168 Furman Road, Cincinnati, Ohio 45216, no written or recorded statement taken.

2. Does Respondent have liability insurance, or is there any other form of indemnity or bond, through which Respondent is or might be insured in any manner for the damages, claims, or actions that are the subject of the pleadings? If so, please provide the following information for each policy: (a) The kind of insurance, indemnity or bond; (b) The name of the company or companies, including any excess or umbrella carriers, which you claim provide coverage; (c) The policy number or policies numbers of any applicable policy; (d) The limit or limits of liability of each policy; (e) The named insured of each policy; (f) Whether the insurance carrier has accepted or denied coverage; and (g) Whether you are being defended by the insurance carrier under a reservation or rights.

RESPONSE: None.

3. 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: Suzie Allen and Tracy Allen will testify that they personally were not involved in the facts, circumstances, actions, policies, and/or claims alleged by Plaintiff. Suzie Allen will testify on behalf of Ladlessoups, LLC that Ladlessoups, LLC was not involved in the facts, circumstances, actions, policies, and/or claims alleged by Plaintiff. Suzie Allen will testify on behalf of Ladles Franchising, Inc. that Ladles Franchising, Inc. was not involved in the facts, circumstances, actions, policies, and/or claims alleged by Plaintiff.

4. Identify each and every person who aided in answering these Interrogatories or the request for production of documents issued here with.

RESPONSE: Suzie Allen

5. State all facts upon which you rely in support of each and every defense to Plaintiffs' Complaint in this matter.

RESPONSE: For their defense, Respondents rely upon the fact that they had no relationship, contractual, employment, or otherwise, with Plaintiff and were not otherwise involved in the facts, circumstances, actions, policies, and/or claims alleged by Plaintiff in this action. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

Respondents Ladles Franchising, Inc., Suzie Allen, and Tracy Allen have never employed tipped employees.

6. State the factual basis as you understand it to each factual allegation in Plaintiffs' Complaint in this matter.

RESPONSE: Respondents never employed the Plaintiff nor did they have any control over his employment by Ladles James Island.

With regard to Ladlessoups, LLC, see Responses to Interrogatories Nos. 20-40, below.

Respondents object because this interrogatory calls for pure conjecture and speculation. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

7. Set forth a list of photographs, plats, sketches, or other prepared documents in your possession that relate to a claim or defense in this case.

RESPONSE: See Responses to Request for Production.

8. In connection with each expert witness whom Respondent proposes to use as a witness at the trial of this case, please list the following: (a) the expert's name, address, in field of expertise; (b) detailed summary of the expert's opinions regarding this case and the basis for them; (c) summary of the expert's knowledge, skill, experience, training, or education as it applies to the specific field of

expertise alleged in this case; (d) description of the claims and lawsuits in which the expert has given opinions, including the names and addresses of the parties and their attorneys, and the location of any depositions and recorded statements the expert has given in cases other than this one; (e) the percentage of expert's practice devoted to consulting work in legal claims, the percentage attributable to the claimant/plaintiff as opposed to the defendant, and the amount of income derived from such consulting in the last 2 years; (f) the specifics of any publication in speaking engagements given by the expert on matters relating to the expert's profession; and (g) the names of publications considered by the expert to be learned treatises as described in the Federal or South Carolina rule of evidence 803(18).

RESPONSE: None.

9. If Respondent or any other party with whom the Respondent is familiar is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and/or pleading reflecting the correct information.

RESPONSE: None.

10. If Respondent is a legal entity, describe the type of entity, list all members and/or shareholders, directors, officers, and describe its constitutive documents. Describe which specific individuals at Respondent worked on or participated in the issues and facts described in this action? Give their names, contact details, and email addresses.

RESPONSE: Ladlessoups, LLC is a South Carolina limited liability company that was organized on August 27, 2007 upon the filing of its Articles of Organization with the South Carolina Secretary of State. Suzie Allen is the sole member. The LLC was the operating entity for the Ladles Soups store in West Ashley, South Carolina. The assets of the Ladles Soups store in West Ashley were sold to Corey Paul in September of 2017. The LLC is still in existence but ceased operating in August of 2017 upon the sale of its assets.

Ladles Franchising, Inc. is a South Carolina corporation that was incorporated on August 13, 2010 upon the filing of its Articles of Incorporation with the South Carolina Secretary of State. There are currently five shareholders of Ladles Franchising, Inc. as follows:

Suzie Allen, Tracy Allen, Carol Ellenburg, Steve Traeger, and David Flander. Suzie Allen, Tracy Allen, and David Flander constitute the Board of Directors. Suzie Allen is the Chief Executive Officer. Tracy Allen is the President. David Flander is the Chairman of the Board.

Neither Ladlessoups, LLC nor Ladles Franchising, Inc. worked on or participated in the issues and facts described in this action.

11. If Respondent is not a legal entity, give the names and contact details for all individuals with whom Respondent worked or with whom Respondent was affiliated arising from or related to this matter.

RESPONSE: Suzie Allen is the Chief Executive Officer for Ladles Franchising, Inc. Tracy Allen is the President for Ladles Franchising, Inc. Ladles Franchising, Inc. has a contractual franchisor/franchisee relationship with Teri Owens, the owner of Ladles Soups James Island, LLC.

12. Describe and give the current location of all electronic equipment, including computers, handheld devices, mobile telephones, pagers, and/or PDAs that each person identified in the previous two Interrogatories has used. For each device, specify which people used it and for which subpart from the previous Interrogatory each person used it.

RESPONSE: Suzie Allen owns a business cell phone and business laptop computer which are in her possession in Ohio. Tracy Allen owns a business cell phone and business desktop computer which are in his possession in Ohio.

13. What does Respondent allege are the most important communications and meetings in this matter?

RESPONSE: Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

14. Does Respondent contend there is an oral contract? If so, please state what Respondent believes to be the terms and provisions of all such oral contract(s) in detail and state the name, address and contact information of all persons you believe have knowledge or information relating to the terms or provisions of the oral contract(s).

RESPONSE: Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process. However, there has never been any contract, oral or otherwise, between Plaintiff and Respondents.

15. Identify any and all social media sites of which Respondent is/was a member or in which Respondent participated/subscribed from January 1st, 2015 to the day of trial. Please state whether you have a Facebook, LinkedIn, Twitter, or other social media page or site, and if so, please provide the login information and password necessary to access such site or page.

RESPONSE: Ladlessoups, LLC had a Facebook page during the time of its operation until September of 2017 for purposes of updating its menu. Since such page is no longer maintained by Ladlessoups, LLC, there is no login or password information available.

Ladles Franchising, Inc. has never been a member or participated/subscribed to any social media site.

Tracy Allen and Suzie Allen both maintain personal Facebook pages and which are not used for business purposes.

Respondents object to the entirety of this request because it is not reasonably calculated to lead to admissible evidence. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

16. List and describe each and every document, drawing, map, diagram, model or other documentary material or tangible object that you intend to rely on to support your allegations/defenses in this action, regardless of whether you intend to offer the same into evidence or merely use as a demonstrative aid at the trial of this action.

RESPONSE: Ladles Franchising, Inc.'s Franchise Agreement, a sample of which is produced in response to Plaintiff's Request for Production. Additionally, the Franchise Disclosure Document issued to Ladles Soups-James Island, LLC is produced in response to Plaintiff's Request for Production. Respondents are attempting to locate a copy of the original Franchise Agreement with Ladles Soups James Island and will produce the same upon its location.

17. State whether you have been a party to a civil lawsuit. If so, for each lawsuit, please provide the following information: (a) How were you named in the lawsuit (e.g. plaintiff, defendant,

intervenor, etc.)? (b) What was the nature of each claim and defense? (c) The date, location, and title of the court in which the action was commenced. (d) The names of all the parties other than yourself involved in the action.

RESPONSE: Other than this matter, Suzie Allen was defendant in a personal bank repossession lawsuit in 2008 brought by First Federal Bank which resulted in the repossession of her boat. Suzie Allen was also a defendant in an action brought by an artist, John Daso, with regard to damaged artwork which was displayed in a Ladles Soups location a number of years ago.

Other than this matter, Tracy Allen has never been a party to a civil lawsuit.

Other than this matter, neither Ladlessoups, LLC nor Ladles Franchising, Inc. has ever been party to a civil lawsuit.

18. Please identify and describe every charge, administrative proceeding, arbitration and/or other legal proceeding brought against Respondent, and please identify the person making said allegations.

RESPONSE: None. See Response to Interrogatory #17, above.

19. State your gross income for the years January 1, 2014 through the current date. Do produce profit and loss statements, balance sheets and income statements?

RESPONSE: Respondents object to this Interrogatory as overly broad and not designed to lead to admissible or discoverable evidence. Should Respondents be ordered to produce this information, it should only be pursuant to a protective order.

20. State the name and contact details of your tax preparer, accountant, and bookkeeper.

RESPONSE: Pat Luciano is the accountant for Ladles Franchising, Inc. and Suzie Allen and Tracy Allen, personally. Pat Luciano was the accountant for Ladlessoups, LLC from 2015 through September of 2017. Pat Luciano's contact information is: 7445 Cross County Rd # 9, North Charleston, SC 29418; phone (843) 552-1000.

21. For each defendant that is a limited liability company, please state: (a) The name listed in the current articles of organization; (b) All of the names used by the company during the past 10 years and the dates each was used; (c) The name and address of each member; (d) The name and

address of each manager; (e) The date and place of formation; (f) The address of the principal place of business; and (g) The states in which it is registered to do business.

RESPONSE: With regard to Ladlessoups, LLC, please refer to the information contained in the Response to Interrogatory #10, above. Additionally, no other names were used by Ladlessoups, LLC. Suzie Allen is the sole member of Ladlessoups, LLC and her address is 1168 Furman Road, Cincinnati, Ohio 45216. The address of Ladlessoups, LLC principle place of business was 3125 Bees Ferry Rd, Charleston, SC 29414. Ladlessoups, LLC was only registered to do business in the State of South Carolina.

22. Set forth for each and every Defendant, individually, any and all real and personal property owned, whether individually, collectively, or otherwise owned including with other third parties, including but not limited to the following: (a) all financial accounts, including bank, checking, savings, money market, investment, and/or securities accounts currently held by or for your benefit, and state current balances, location of the accounts, and name on accounts; (b) any and all certificates of deposit, stock certificates in any publicly held or closely held corporation, as well as any bonds owned by each and every Defendant, membership interest in any and all limited liability companies, partnership interest in any and all partnerships, and any and all interest in any other form of business entity, including joint ventures, whether domestic or offshore, detailing without limitation and with particularity percentages of ownership, amount of revenue generated for each entity, etc.; (c) any and all titles to vehicles, mobile homes, or watercraft owned by each and every Defendant, detailing a description of each item including year, model, serial number, vehicle identification number, present value and the amount of any lien thereon; (d) any and all deeds, mortgages, notes, contracts of sale, and settlement or closing statements relating to any real estate transactions involving each and every Defendant; (e) any and all real property, including without limitation (county, state, jurisdiction), whether domestic or offshore for each and every Defendant; (f) any and all life insurance policies owned by each and every Defendant, along with any information pertaining to any loans outstanding on any such policies; (g) any and all items of jewelry or art owned by each and every Defendant,

including a description of each item and its most recent appraised valuation; (h) any and all leases of realty or personalty in favor of each and every Defendant; (i) any and all books, records, documents, or writings concerning the financial status of Defendants not herein before specified, including any and all interest in any form of trust; and (j) any and all tax receipts, tax returns or supplemental forms, and any and all other documents, forms or letters filed with United States Internal Revenue Service, and any other state tax authority within the last 5 years.

RESPONSE: Respondents object to this Interrogatory as overly broad and not designed to lead to admissible or discoverable evidence. Should Respondents be ordered to produce this information, it should only be pursuant to a protective order.

23. State the name and location of each and every Ladles' franchisee, and name the owners of that franchise.

RESPONSE: Ladles Soups West Ashley, 3125 Bees Ferry Rd., Charleston, SC 29414 (Corey Paul, owner); Ladles Soups Freshfields, 190 Gardener's Circle, O-100, Johns Island, SC 29455 (Steve Traeger, owner); Ladles Soups Knightsville, 1585 Central Avenue, Summerville, SC 29483 (Deena Taylor, owner); Ladles Soups Coosaw, 8600 Dorchester Rd., Ste. 101, N. Charleston, SC 29420 (Kelli Henderson, owner); Ladles Soups Charleston, 68 Cannon St., Charleston, SC 29403 (Carol Ellenburg, owner); Ladles Soups Moncks Corner, 636 Rembert C. Dennis Blvd., Moncks Corner, SC 29461 (Andy Clark, owner); Ladles Soups Fort Mill, 526 Mercantile Place, Fort Mill, SC 29715 (Corey Paul, owner); Ladles Soups Kill Devil Hills, 1901 S. Croaton Hwy., Kill Devil Hills, NC 27948 (Laurie Harvin, owner); Ladles Soups James Island, 1175A Folly Rd., Charleston, SC 29412 (Teri Owens, owner); Ladles Soups Mount Pleasant, 1164 Basketweave Dr., Mt. Pleasant, SC 29466 (Julie Dyke, owner).

24. What is the bank and account number for the account used to pay employees?

RESPONSE: Ladlessoups, LLC, which was in operation until September of 2017, used Suntrust bank accounts (Acct. No. 1000164147703 and 1000037141248) to pay employees.

The remaining Respondents do not and have not had any employees and thus do not possess any accounts for the purpose of paying employees. Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

25. Do you use a third-party payroll processing service? Describe all documents received from them since January 1, 2015.

RESPONSE: Ladlessoups, LLC used ADP payroll processing service from 2015 through the end of its operation in September of 2017. ADP sent bi-weekly employee paychecks, quarterly payroll tax returns, and annual tax and payroll summaries to Ladlessoups, LLC.

The remaining Respondents do not and have not had any employees to pay and thus do not use any third-party payroll processing services for that purpose. Respondents object to this interrogatory because it seeks information from third parties and information not within its possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

26. State the name, telephone number, including mobile phone number, email address, and street address for every employee of Respondent since January 1, 2015, and list whether they still work with Respondent, and if not, why they left.

RESPONSE: The following employees worked for Ladlessoups, LLC during its time of operation: Avery Jones (no contact information available); Joseph Brennan (no contact information available); Christian Markley (no contact information available); Lindy Clark (no contact information available); Leighann Chicco (no contact information available); Christopher Goodman (no contact information available); Corey Paul (see Response to Interrogatory No. 23, above); Ireland Pejsa (no contact information available); Sean Powell (no contact information available); Tyrone Satterfield (no contact information available); Taylor Sirles (no contact information available); Morgan Weesner (no contact information available); Shelley Wiley (no contact information available); Matti Elliott (no contact information available); Jenn Evangelist (no contact information available); Madison Botoha (843.442.6257); Myah Botoha (843.330.2666); Cassidy Melbo (no contact information available); Taylor Raglands (843.478.5824); and Phillip Hawkins (no contact information available).

The remaining Respondents do not and have not had any employees. Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

27. How did Respondent come to be a Ladles Franchisee? Name and describe the Franchisor of Ladles ("Franchisor"), and describe Respondent's relationship with any such Franchisor, and the nature of the documents establishing such franchise relationship. Describe all communications, written or oral with such franchisor since January 1, 2015.

RESPONSE: None of the Respondents are or have been Ladles Franchisees.

28. Since January 1, 2015, state each and every employee, member, and/or officer of Respondent that has had any responsibility for: i) payroll; ii) signing or disbursing paychecks and/or wages; iii) handling tips/tip policy; iv) accounting and credit card receipts; v) bookkeeping/accounting; vi) hiring and firing employees.

RESPONSE: Suzie Allen was the sole member and only manager for Ladlessoups, LLC with the responsibility for payroll, signing or disbursing paychecks and/or wages; handling tips/tip policy; accounting and credit card receipts; bookkeeping/accounting; and hiring and firing employees, all for that location only.

Ladles Franchising, Inc. is a South Carolina corporation that was incorporated on August 13, 2010 upon the filing of its Articles of Incorporation with the South Carolina Secretary of State. There are currently five shareholders of Ladles Franchising, Inc. as follows: Suzie Allen, Tracy Allen, Carol Ellenburg, Steve Traeger, and David Flander. Suzie Allen, Tracy Allen, and David Flander constitute the Board of Directors. Suzie Allen is the Chief Executive Officer. Tracy Allen is the President. David Flander is the Chairman of the Board. Ladles Franchising, Inc. has never paid its officers as employees.

None of the remaining Respondents have employees, members, and/or officers.

29. Does Respondent have an employee handbook?

RESPONSE: Ladles Franchising, Inc. provides all franchisees with an Employee Handbook, a sample copy of which is produced in response to the Requests for Production.

Ladlessoups, LLC possessed a copy of the Employee Handbook during its operation that would be provided to employees.

The remaining Respondents do not and have not had any service employees, tipped or otherwise, and thus do not have any employee handbooks. Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

30. Since January 1, 2015, describe all payroll and salary documents provided to employees and or independent contractors, including W-2s and 1099s.

RESPONSE: See Responses to Interrogatories #24 and 25, above. See also Responses to Requests for Production #23 and #24.

Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge.

Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

31. Who decided on behalf of Respondent that Respondent would retain credit card tips rather than pay them to employees? Did any other Defendant, or employee/agent/officer of another Defendant, share in the responsibility for that decision, agree with or suggest, counsel, or otherwise state that Respondents should retain credit card tips rather than pay them to employees?

RESPONSE: As part of its tip-pooling arrangement, Ladlessoups, LLC transferred all credit card tips to its payroll account for payment to employees during its time of operation. Ladlessoups, LLC did not permanently retain any employees' credit card tips.

Ladles Franchising, Inc. did not employee any service employees, tipped or otherwise. The remaining Respondents do not have any employees. Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

32. When and how did Respondent decide that the credit card tip policy described in the prior paragraph would be Respondent's policy?

RESPONSE: See Response to Interrogatory #31, above. As Ladlessoups, LLC never permanently retained employees' credit card tips, Ladlessoups, LLC never decided, possessed, or had knowledge of such a policy of retaining employee's credit card tips. Ladlessoups, LLC transferred all credit card tips to its payroll account for payment to employees during its time of operation. This method was only implemented after consultation by Suzie Allen with the South Carolina Department of Employment and Workforce.

Ladles Franchising, Inc. did not employee any service employees, tipped or otherwise. The remaining Respondents do not have any employees. Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

33. Describe each and every written and oral communication with any person, including employees, officers, agents, or individuals affiliated with other franchisees or franchisor, or otherwise arising from or related to Respondent's policy of retaining credit card tips. In particular, describe any and all emails relating to such policy.

RESPONSE: None since there is no such policy to retain credit card tips.

34. Describe any and all meetings with any other franchisees, their agents, members, officers or employees, and/or with Franchisor, its agents, members, officers or employees, discussing or describing Respondent or other Franchisee or Franchisor policy relating to tips.

RESPONSE: Suzie Allen and Teri Owens have informally discussed Plaintiff's firing around the time of such firing and then had another conversation concerning Plaintiff after Plaintiff brought this lawsuit.

Suzie Allen, Teri Owens, and Carol Ellenberg, as sisters and business associates, have had informal discussions regarding restaurant practices in the past. In all past discussions that Suzie Allen has ever had with Teri Owens, Carol Ellenberg, or any other franchisee with regard to payroll and tipping practices, Suzie Allen has been consistently clear in stating that all tip monies belong to the employees and may never be permanently retained by the owner and/or franchisee. However, the Franchisor (Ladles Franchising, Inc.) has never mandated any payroll practices or policies for any of its franchisees, each of whom have always maintained independent control and authority to establish their own payroll practices and policies.

35. What has been Respondent's policy as to cash tips since January 1, 2015? Has that policy ever changed?

RESPONSE: As part of its tip-pooling arrangement, Ladlessoups, LLC transferred all credit card tips to its payroll account for payment to employees during its time of operation. Ladlessoups, LLC did not permanently retain any employees' credit card tips. As Ladlessoups, LLC never permanently retained employees' credit card tips, Ladlessoups, LLC never decided, possessed, or had knowledge of such a policy of retaining employee's credit card tips.

Ladles Franchising, Inc. did not employ any service employees, tipped or otherwise. The remaining Respondents do not have any employees. Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

36. Who fired Craig Chappell? Why was he fired?

RESPONSE: Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

37. Describe Respondent's accounting software.

RESPONSE: None.

38. Describe Respondent's management structure for employee operations. Describe the types of employees and their functions in Respondent's operations.

RESPONSE: Suzie Allen was the manager of Ladlessoups, LLC's during its time of operation.

With regard to Ladles Franchising, Inc, see Responses to Interrogatories #10 and #11, above.

The remaining Respondents do not have any employees or management structure for employee operations. Respondents object to this interrogatory because it seeks information from third parties and information not within its possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

39. Describe any and all written communications were notices with Respondent's customers and clients notifying them as to any tip policy of Respondent, and in particular, Respondent's policy of retaining credit card tips rather than paying them to employees.

RESPONSE: As Ladlessoups, LLC never permanently retained employees' credit card tips, Ladlessoups, LLC never decided, possessed, or had knowledge of such a policy of retaining employee's credit card tips. All credit card tips were paid into the payroll account for payment to employees,

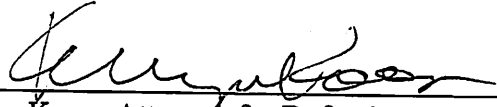
Ladles Franchising, Inc. has never employed service employees, tipped or otherwise, The remaining Respondents do not have any employees. Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

40. Have any employees complained or raised concerns about Respondent's tipping policies? Describe each and every such complaint or discussion, and whether the same is documented in any written communications.

RESPONSE: With regard to Ladlessoups, LLC, no.

Ladles Franchising, Inc. has never employed service employees, tipped or otherwise. The remaining Respondents do not and have not had any employees. Respondents object to this interrogatory because it seeks information from third parties and information not within its

possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.



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August 21, 2019
Charleston, South Carolina

STATE OF SOUTH CAROLINA,	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2018-CP-10-00785
	)	
CRAIG CHAPPELL, on behalf of himself and	)	DEFENDANTS' LADLES FRANCHISING,
Others similarly situated,	)	INC., LADLESSOUPS, LLC, SUE ALLEN,
	)	AND TRACY ALLEN'S RESPONSE TO
Plaintiff(s),	)	PLAINTIFF'S REQUESTS FOR
v.	)	PRODUCTION
	)	
Ladles Soup-James Island LLC; Ladlessoups,	)	
LLC; Ladles Soup At Cane Bay, LLC; Ladles	)	
Soups at Citadel Mall LLP; Ladles Soups	)	
Calhoun LLC; Ladles Soups Cane Bay LLC;	)	
Ladles Soups Coosaw LLC; Ladles Soups	)	
Downtown Charleston, LLC; Ladlessoups	)	
Fresh Fields LLC; Ladles Soups @ Freshfields	)	
Village, LLC; Ladlessoups Mainstreet, LLC;	)	
Ladles Soups Moncks Corner LLC; Ladles	)	
Franchise Development, LLC; Ladles Franchising,	)	
Inc.; Ladles Fort Mill, LLC; Ladles Knightsville	)	
LLC; Ladles West Ashley; Teri Owens; Sue Allen,	)	
Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke	)	
Stan Sutton, Carol Sutton, Jack Dalter, Kellie	)	
Henderson; Jane Doe 1-25 (Unknown Operating	)	
Company and Management Company Owners);	)	
John Doe 25-40 (Management Personnel).	)	
	)	
Defendants.	)	
	)	

COMES NOW, Defendants Ladles Franchising, Inc., Ladlessoups, LLC, Sue Allen, and Tracy Allen and responds to Plaintiff's First Request for Production as follows:

DOCUMENTS REQUESTED

1. All documents identified, described, referenced, or referred to in your responses to our First Interrogatories or to our First Requests for Production.

RESPONSE: The following documents are produced by Respondent Ladles Franchising, Inc. and attached hereto: (1) Sample Employee Handbook; (2) Franchise Disclosure Document provided to Ladles Soups-James Island, LLC; (3) Sample Franchise Agreement. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process; and (4) Ladlessoups, LLC Suntrust bank account statements (Acct. No. 1000037141248).

2. Any and all written communications, correspondence, memoranda, documents, and things relating to, supporting, refuting, or involving any of the facts and claims alleged in Plaintiff's Complaint and/or any answer by a Defendant.

RESPONSE: The following documents are produced by Respondent Ladles Franchising, Inc. and attached hereto: (1) Email from Teri Owens to Suzie Allen with Subject line "Craig Chappell employment," dated Friday, February 16, 2018 at 5:35 AM; (2) Email from Teri Owens to Suzie Allen with Subject line "Fwd: Wages," dated Monday, February 19, 2018 at 5:00 AM; (3) South Carolina Department of Employment and Workforce "Request for Information from Employer" and Teri Owen's responses to such request (both sent from Teri Owens to Suzie Allen after this lawsuit was filed by Plaintiff; and (4) all financial documents for Ladlessoups, LLC and Ladles Franchising, Inc. produced in response to this request.

Respondents object to this request to the extent that it requests attorney-client privileged communications and documents.

3. Any and all written communications and/or documents relating to or involving the Plaintiff and/or any Defendant.

RESPONSE: See Response to Request for Production No. 2, above. Respondents object to this Request for Production as overly broad and not designed to lead to admissible or discoverable evidence.

4. All statements given by respondent or any witness identified by Respondent or other witness to the facts relevant to this case that are in the possession of Respondent or his counsel, whether written or recorded, that relate in any way to the allegations of the complaint in this matter, or an answer by any Defendant.

RESPONSE: Respondent directs Plaintiff to refer to (1) Sue Allen's and Tracy Allen's Affidavits which were filed in support of Defendants Ladles Franchising, Inc., Ladlessoups, LLC, Sue Allen, and Tracy Allen's Notice of Motion and Motion to Disallow Class Certification in this matter and (2) Craig's Chappell's Deposition transcript, both of which are in possession of and/or have been served upon Plaintiff.

5. Any and all written communications, documents, and things relating to, supporting, refuting, or involving any of the averments and defenses set forth in any pleading you have submitted in this matter.

RESPONSE: See Responses to Requests for Production Nos. 1, 2, and 4, above.

6. Copies of all documents produced by third parties pursuant to subpoenas issued in this case or any request made pursuant to the Freedom of Information Act or other request by Respondent or Respondent's counsel.

RESPONSE: None.

7. Any and all documents identified in response to Interrogatory number 8, relating to expert witnesses.

RESPONSE: None.

8. All e-mails, faxes, letters, text messages and other written communication between each and every Defendant and each and every Plaintiff.

RESPONSE: See Responses to Requests for Production No. 2, above.

Respondents object to this Request for Production as overly broad and not designed to lead to admissible or discoverable evidence.

9. If Respondent is a legal entity, produce all internal communications relating to this matter, including without limitation all e-mails, faxes, letters, text messages and other written communications between and among Respondent's employees, officers, directors, agents and counsel.

RESPONSE: With regard to Respondent Ladles Franchising, Inc., please see Responses to Requests for Production No. 2, above.

With regarding to Ladlessoups, LLC, none exist.

Respondents object to this Request for Production as overly broad and not designed to lead to admissible or discoverable evidence. Respondents also object to this request to the extent that it requests attorney-client privileged communications and documents.

10. Provide for inspection all computers, electronic devices, and telephones containing relevant production, ESI, or electronic data, including those described in response to Interrogatory number 12.

RESPONSE: Respondents object to this Request for Production as overly broad and not designed to lead to admissible or discoverable evidence.

With regard to Sue Allen's and Tracy Allen's business cell phones and computers, those items are currently being used by those individuals, who now reside in Ohio. Respondents Sue Allen and Tracy Allen cannot be deprived of business property which they currently use for the purposes of ongoing business operations.

Respondents also object to this request to the extent that it requests attorney-client privileged communications and documents.

11. Produce a complete, itemized accounting and financial summary of all amounts paid and/or owed to you by any other party to this action for the period January 1, 2015 to present.

RESPONSE: Respondents object to this Interrogatory as overly broad and not designed to lead to admissible or discoverable evidence. Should Respondents be ordered to produce this information, it shall only be pursuant to a protective order.

12. All federal and state tax returns, income statements, balance sheets, and profit/loss statements for Respondent during the last five years, up through and including the date of trial.

RESPONSE: Respondents object to this Interrogatory as overly broad and not designed to lead to admissible or discoverable evidence. Should Respondents be ordered to produce this information, it shall only be pursuant to a protective order.

13. All Respondent's bank statements from the last five years, up through and including the date of trial.

RESPONSE: Ladlessoups, LLC 2015 and 2016 bank statements for Suntrust Acct. No. 1000037141248 are produced and attached hereto.

Respondents object to this Interrogatory as overly broad and not designed to lead to admissible or discoverable evidence, particularly as it requests Respondent Sue Allen and Tracy's Allen's personal bank account records. Should Respondents be ordered to produce this information, it should only be pursuant to a protective order.

14. For any individual Respondent, produce any resume or curriculum vitae you have created or used from the last five years, up to and including the date of trial.

RESPONSE: None.

15. Any and all documents evidencing or relating to postings, blogs, whether statements on any Internet were social media site in which you discuss any matter or issue arising from or relating to this action.

RESPONSE: None.

16. Produce each and every post, note, mention, story, document, or other item made by Respondent during the last seven years, up through and including the date of trial, on any and all membership-based Internet websites which relates to or in any way references any party or witness to this action, or any issue or claim in this matter, and/or the allegations set forth in the complaint or any answer filed in this matter. For purposes of this RFP, "membership-based Internet websites" shall include social media websites (including but not limited to Myspace, Flickr, YouTube, Facebook, classmates, Bebo, Deviant Art, LinkedIn, Meetup, Gather, My Yearbook, Friendster, Google Plus, or Web Shots), blogging websites (including but not limited to Blogger, Live Journal, twitter, Windows Live Spaces, WordPress, Blogspot, Vox, or Xanga), dating websites (including but not limited to Adult Friend Finder, Ok Cupid, eHarmony, match, or Fubar), and any other personal websites for which Respondent has created, used, or maintained a personal account, username, or profile at any time for the last seven years up to the present.

RESPONSE: None. Respondents object to this Interrogatory as overly broad and not designed to lead to admissible or discoverable evidence.

17. Organization charts for all of Respondent's businesses relating to this matter, including the name, work address, and telephone number of all employees providing computer support functions within any of the organizations.

RESPONSE: None.

18. All Respondent's employee handbooks and other materials disseminating policies and procedures to individual employees.

RESPONSE: Sample Employee Handbook disseminated to Ladlessoups, LLC employees during its period of operation is enclosed herein.

Ladles Franchising, Inc. has no such documents as it does not operate restaurants or employ service employees, tipped or otherwise. The remaining Respondents do not and have not had any employees.

19. All Respondent's hard copy or electronic calendars for the last five years, up through and including the date of trial.

RESPONSE: Respondents object to this Interrogatory as overly broad and not designed to lead to admissible or discoverable evidence.

20. Lists of all employees since January 1st, 2015, up through and including the date of trial.

RESPONSE: The following employees worked for Ladlessoups, LLC during its time of operation: Avery Jones; Joseph Brennan; Christian Markley; Lindy Clark; Leighann Chicco; Christopher Goodman; Corey Paul; Ireland Pejsa; Sean Powell; Tyrone Satterfield; Taylor Sirles; Morgan Weesner; Shelley Wiley; Matti Elliott; Jenn Evangelist; Madison Botoha; Myah Botoha; Cassidy Melbo; Taylor Raglands; and Phillip Hawkins.

The remaining Respondents do not and have not had any employees. Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

21. A description of your payroll process, whether you are doing it in-house or whether you are using third-party vendor.

RESPONSE: Ladlessoups, LLC used ADP payroll processing service from 2015 through the end of its operation in September of 2017. ADP sent bi-weekly employee paychecks, quarterly payroll tax returns, and annual tax and payroll summaries to Ladlessoups, LLC.

The remaining Respondents do not and have not had any employees to pay and thus do not use any third-party payroll processing services for that purpose. Respondents object to this interrogatory because it seeks information from third parties and information not within its possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

22. A copy of Respondent's each and every profit and loss statement, income statement, and balance sheet since January 1, 2015.

RESPONSE: None.

23. Any and all accounting, payroll, banking, or other records relating to salary payments, tips, wages, employment tax records, since January 1, 2015.

RESPONSE: Please find the following documents attached hereto in response to this request: (1) Ladlessoups, LLC 2015 Quickbooks Payroll Summary; (2) Ladles Franchising, Inc.'s 2016 IRS Form 1096 and accompanying Form 1099-Misc.'s; (3) Ladlessoups, LLC 2016 W-2 and Earnings Summaries; (4) Ladles Franchising, Inc.'s 2017 IRS Form 1096 and accompanying Form 1099-Misc.'s; and (5) Ladlessoups, LLC 2017 W-2 and Earnings Summaries.

Respondents Ladlessoups, LLC and Ladles Franchising, Inc. are attempting to locate additional documentation and will produce upon locating the same.

Ladles Franchising, Inc. has never employed service employees, tipped or otherwise.

The remaining Respondents do not and have not had any employees and thus do not possess such records.

24. All W-2s, 1099s, and other employee and/or independent contractor records since Respondent's creation.

RESPONSE: See Response to Request for Production No. 23, above.

Respondents Ladlessoups, LLC and Ladles Franchising, Inc. are attempting to locate the same and will produce upon locating them.

The remaining Respondents do not and have not had any employees and/or independent contractors and thus do not possess such records.

25. A copy of each and every piece of written communication, email, text, fax, letter, or otherwise, arising from or relating to Respondent's policy of retaining credit card tips rather than pay them to employees. As described above, every RFP herein shall be deemed a continuing RFP and Respondent must supplement his answers promptly, if and when he obtains relevant production in addition to, or in any way inconsistent with, his initial production in accordance with the applicable Rules of Civil Procedure.

RESPONSE: None. Respondent Ladlessoups, LLC never possessed a policy of permanently retaining employees credit card tips as all such tips were transferred to the payroll account and paid over to employees.

The remaining Respondents do not and have not had service employees, tipped or otherwise.

Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

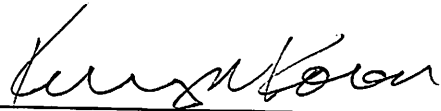
26. A copy of each and every complaint or discussion or document described in response to Interrogatory #30-40.

RESPONSE: See Response to Request for Production Nos. 23 and 24, above.

The remaining Respondents do not and have not had service employees, tipped or otherwise, and thus do not possess such documents.

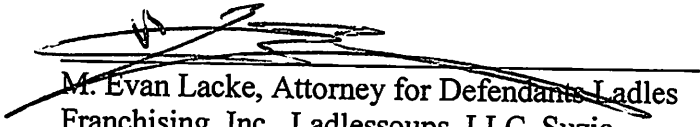
27. A copy of each and every complaint and/or administrative proceeding in which Respondent has been involved.

RESPONSE: Respondents object to this Interrogatory as overly broad and not designed to lead to admissible or discoverable evidence.



Kerry Koon, Attorney for Defendants Ladles
Franchising, Inc., Ladlessoups, LLC, Suzie
Allen, and Tracy Allen
147 Wappoo Creek Drive, Ste. 203
Charleston, South Carolina 29412
Phone: (843) 795-7000
Fax: (843) 762-5276

LACKE LAW FIRM, LLC



M. Evan Lacke, Attorney for Defendants Ladles
Franchising, Inc., Ladlessoups, LLC, Suzie
Allen, and Tracy Allen
147 Wappoo Creek Drive, Ste. 204
Charleston, South Carolina 29412
Phone: (843) 327-1523
Fax: (843) 795-3990

August 21, 2019
Charleston, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

CRAIG CHAPPELL)

Plaintiff,)

vs.)

LADLES SOUPS JAMES ISLAND LLC, ET AL.)

Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-785

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Ben Le Clercq, Bar No. 65754

Address:

708 S. Shelmore Blvd, Suite 202

Mount Pleasant, SC 29464

Phone: 843-722-3523 Fax 843-352-2977

E-mail: ben@leclercqlaw.com Other:

debbie@leclercqlaw.com

Defendant's Attorney:

Paul B. Ferrara, Bar No. 70511

Address:

8887 Old University Blvd, Suite 200, North

Charleston, SC 29406

Phone: 843-569-5111 Fax 843-569-5411

E-mail: paul@ferraralawfirm.net 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 Discovery Responses

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

August 22, 2019

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)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-785

CRAIG CHAPPELL, on behalf of himself and
others similarly situated,

Plaintiff(s),

v.

Ladles Soups – James Island LLC;
Ladlessoups, LLC; Ladles Soups At Cane Bay
LLC; Ladles Soups At Citadel Mall LLP;
Ladles Soups Calhoun LLC; Ladles Soups
Cane Bay LLC; Ladles Soups Coosaw LLC;
Ladles Soups Downtown Charleston, LLC;
Ladlessoups Fresh Fields, LLC; Ladles Soups
@ Freshfields Village, LLC; Ladlessoups
Mainstreet, LLC; Ladles Soups Moncks
Corner LLC; Ladlessoups Mount Pleasant,
LLC; Ladles Franchise Development, LLC;
Ladles Franchising Inc.; Ladles Fort Mill,
LLC; Ladles Knightsville LLC; Ladles West
Ashley; Teri Owens; Sue Allen, Tracy Allen,
Steve Traeger, Erik Dyke, Julie Dyke, Stan
Sutton, Carol Sutton, Jason Dalter, Kellie
Henderson; Jane Doe 1-25 (Unknown
Operating Company and Management
Company Owners); John Doe 25-40
(Management Personnel)

Defendants.

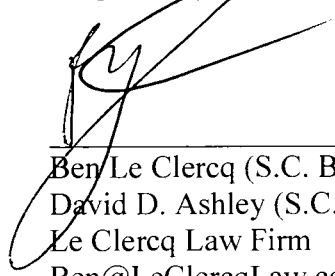
**PLAINTIFFS' MOTION TO COMPEL
DISCOVERY RESPONSES TO
PLAINTIFS' FIRST
INTERROGATOIRES AND FIRST
REQUESTS FOR PRODUCTION FROM
DEFENDANTS LADLES SOUPS –
JAMES ISLAND, LLC; LADELES
SOUPS FRESH FIELDS, LLC; LADLES
SOUPS @ FRESHFIELDS VILLAGE,
LLC; LADLES FRANCHISE
DEVELOPMENT, LLC; LADLES SOUP
DOWNTOWN CHARLESTON, LLC;
LADLES FORT MILL, LLC; LADLES
SOUPS MONCKS CORNER, LLC;
LADLES KNIGHTSVILLE, LLC;
LADLES WEST ASHLEY; LADLES
SOUPS COOSAW, LLC; DAN SUTTON;
CAROL SUTTON; STEVEN TRAEGER;
AND KELLI HENDERSON**

FILED
2019 AUG 22 PM 4:16
JULIE J. ARMSTRONG
CLERK OF COURT

Plaintiffs, by and through undersigned counsel, move this Honorable Court to order that
Defendants Ladles Soups – James Island LLC; Ladles Soups Coosaw LLC; Ladles Soups
Downtown Charleston, LLC; Ladlessoups Fresh Fields, LLC; Ladles Soups @ Freshfields Village,
LLC; Ladles Soups Moncks Corner LLC; Ladles Franchise Development, LLC; Fort Mill, LLC;
Ladles Knightsville LLC; Ladles West Ashley; Teri Owens; Steve Traeger; Stan Sutton; Carol

Sutton; and Kellie Henderson, ("Defendants"), respond fully to Plaintiffs' discovery requests. Defendants, through their attorney, Paul B. Ferrara, III, have failed to respond at all since being served with the requests on May 24, 2019. **Ex. A (Email serving First Interrogatories and First Requests for Production); Ex. A.2 (First Interrogatories and First Requests for Production).** Pursuant to SCRP Rule 11, Plaintiffs' counsel communicated with Defendants' counsel by email on July 12, 2019 and August 14, 2019 to resolve the issue. **Ex. B (emails to counsel for Defendants).** Ninety days have elapsed without Defendants producing any response at all and without Defendants even requesting an extension. Plaintiffs also ask the Court to find that Defendants have waived objections to all such requests due to its failure to provide these discovery responses.

Respectfully Submitted,



Ben Le Clercq (S.C. Bar #65754)
David D. Ashley (S.C. Bar #76206)
Le Clercq Law Firm
Ben@LeClercLaw.com
David@LeClercLaw.com
708 South Shelmore Blvd. #202
Mount Pleasant, SC 29464
Phone (843) 722-3523
Counsel for Plaintiff

August 22, 2019
Mt. Pleasant, South Carolina

2018-CP-10-785

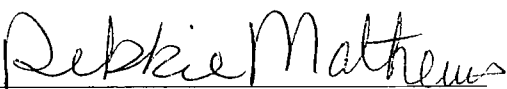
CERTIFICATE OF SERVICE

I, Debbie Mathews, certify that on August 22, 2019, a true and correct copy of the foregoing
**PLAINTIFF'S MOTION TO COMPEL DISCOVERY RESPONSES TO PLAINTIFFS'
FIRST INTERROGATORIES AND FIRST REQUESTS FOR PRODUCTION FROM
DEFENDANTS** was served upon counsel for Defendants, via electronic mail as follows:

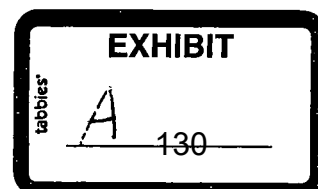
Kerry Koon - kerrykoon@hotmail.com
M. Evan Lacke - elacke@lackelawfirm.com
147 Wappoo Creek Drive, Suite 204
Charleston, SC 29412

Paul B. Ferrera, III - paul@ferraralawfirm.net
Janel Ferrara - janel@ferraralawfirm.net
Jessica Weiss - j.weiss@ferraralawfirm.net
2300 Otranto Road
North Charleston, SC 29406

P. Brandt Shelbourne - brandt@shelbournelaw.com
Yvonne Franklin - civlit@shelbournelaw.com
131 E. Richardson Avenue
Summerville, SC 29483


Debbie Mathews

FILED
2019 AUG 22 PM 4:47
JULIE J. ARYSTROM
CLERK OF COURT



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

CASE NO.: 2018-CP-10-785

CRAIG CHAPPELL, on behalf of himself and
others similarly situated,

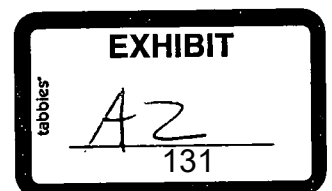
PLAINTIFF'S FIRST INTERROGATORIES

Plaintiff(s),

v.

Ladles Soups – James Island LLC; Ladles
Soups, LLC; Ladles Soups At Cane Bay LLC;
Ladles Soups At Citadel Mall LLP; Ladles
Soups Calhoun LLC; Ladles Soups Cane Bay
LLC; Ladles Soups Coosaw LLC; Ladles Soups
Downtown Charleston, LLC; Ladles Soups
Fresh Fields, LLC; Ladles Soups @ Freshfields
Village, LLC; Ladles Soups Mainstreet, LLC;
Ladles Soups Moncks Corner LLC; Ladles
Soups Mount Pleasant, LLC; Ladles Franchise
Development, LLC; Ladles Franchising Inc.;
Ladles Fort Mill, LLC; Ladles Knightsville
LLC; Ladles West Ashley; Teri Owens; Sue
Allen, Tracy Allen, Steve Traeger, Erik Dyke,
Julie Dyke, Stan Sutton, Carol Sutton, Jason
Dalter, Kellie Henderson; Jane Doe 1-25
(Unknown Operating Company and
Management Company Owners); John Doe
25-40 (Management Personnel)

Defendants.



PLAINTIFFS' FIRST INTERROGATORIES

We hereby propound the following Interrogatories to to each Defendant ("Respondent") listed in the above styled matter, to be answered separately, fully and completely by each such Defendant in accordance with Rule 34 of the South Carolina Rules of Civil Procedure, and within 30 days. These RFPs are submitted in conjunction with our First Requests for Production.

INSTRUCTIONS AND DEFINITIONS

1. **Respondent's interrogatory responses must be signed by Respondent, and objections signed by counsel, as required by SCRPC 33.**

2. Every Interrogatory herein shall be deemed a continuing Interrogatory and Respondent must supplement his answers promptly, if and when he obtains relevant information in addition to, or in any way inconsistent with, his initial answer to any such Interrogatory in accordance with the applicable Rules of Civil Procedure.

3. Should privilege be claimed with regard to any information requested herein, the answer must, in each instance, state specifically the information sought, the privilege claimed, and the grounds on which the claim of privilege is based. Should Respondent be unable for reasons other than privileged to provide any information requested herein, the answer must, in each such instance, indicate specifically the information sought, the reason such information is presently unavailable and an estimate of the time within which such information will be presented to the undersigned.

4. If Respondent objects to any portion of an interrogatory on the ground that it seeks privileged information, identify all persons to whom such information has been disclosed, the nature of the privilege asserted and the dates of any communication for which privilege is asserted.

5. If Respondent objects to an interrogatory on the ground that it is too broad (i.e., that it calls for information which is relevant to the subject matter of the action and information which is not), Respondent should provide such information which is concededly relevant. If Respondent objects to an interrogatory on the ground that providing an answer would constitute an undue burden, Respondent provide such requested information as can be supplied without undertaking an undue burden. For those portions of any interrogatory to which Respondent objects or otherwise declines to answer, state the reason for such objection or declination.

- a. If you cannot answer all or part of any interrogatory in full after exercising due diligence to secure the full information to do so, so state and answer to the extent possible, specifying your inability to answer the remainder, stating whatever

information or knowledge you have concerning the unanswered portion, and detailing what you did in attempt to secure the unknown information.

6. The term “person(s)” includes a natural person, firm, association, partnership, business, trust, corporation, or public entity.

7. The word “you” or “your” means Respondent singularly or jointly and/or all past or present officers, directors, employees, agents, representatives, general partners, attorneys, or other persons acting or purporting to act for, on behalf of, or with Respondent. “You” or “your” also means any affiliate, parent, or subsidiary of Respondent.

8. The word “document(s)” means all written, printed, recorded or graphic matter, photographic matter, sound reproductions, or other retrievable data (whether recorded, taped, or coded electrostatically, electromagnetically or otherwise), from whatever source derived and however and by whomever, produced, reproduced, disseminated or made; without limiting the generality of the foregoing, the word “document(s)” includes the original and any non-identical copy and also every draft and proposed draft of all correspondence, memoranda, text messages, instant messages, emails, notes of meetings, telegram, telexes, facsimiles, reports, transcripts or notes of telephone conversations, diaries, notebooks, minutes, notes, tests, reports, analyses, studies, testimony, speeches, worksheets, maps, charts, diagrams, computer programs, information kept in computerized storage, computer printouts, and any other writings or documentary material of any nature whatsoever, whether or not divulged to persons other than you, together with any attachments thereto and enclosures therewith.

9. The term “identify” when used with respect to a natural person means to state the following: (1) the full name of the person, (2) his or her current business address and telephone number, (3) his or her position, and (4) a description of his or her responsibilities and knowledge of the substance of the question asked.

10. The term “identify” when used with respect to a person other than a natural person means to state the following: (1) its full name; (2) whether it is a firm, association, business, corporation, partnership, trust, or other entity; (3) the address of its principal place of business; and (4) the subdivision or part of the person most immediately involved with the subject matter of the interrogatory in question.

11. The term “identify” when used with respect to a document means to state the following: (1) the type of document (*e.g.*, letter, article, photograph, computer printout); (2) its date or approximate date; (3) its author or authors; (4) its recipient or recipients, including those persons who received copies of the document; (5) its general subject matter; and (6) its present location or custodian (or the last known location or custodian), or in lieu thereof, attach a copy of the document.

12. The term “identify” when used with respect to a communication or a statement means to: (1) state the mode of communication or statement (*e.g.*, by telephone, electronic mail, oral conversation); (2) state its date or approximate date; (3) identify its author or speaker; (4)

identify its recipient or recipients; (5) describe its general subject matter; and (6) identify any and all documents memorializing the communication or statement.

13. The term “identify” when used with respect to a meeting means to: (1) state the location of the meeting; (2) state the date of the meeting; (3) identify who attended the meeting; (4) describe the subject matter of the meeting; and (5) identify any and all documents memorializing the discussions at the meeting.

14. When an interrogatory requires you to “state” or to “state the basis” of a particular claim, contention, allegation, or defense, identify in your answer each and every verbal communication, meeting, and document that you believe supports, refers to, or evidences such a claim, contention, allegation, or defense, and identify every person having knowledge thereof.

15. When an interrogatory requires you to “describe” a particular matter, give a detailed account, narration, recitation, and report of the question asked.

16. Respondent is requested to provide *separate written responses* to these Interrogatories for each Respondent named.

17. The terms “you,” “Plaintiff,” or “Defendant” include every individual party and include your agents, employees, your attorneys, your accountants, your investigators, and anyone else acting on your behalf.

18. The term “relating to” as used herein means referred or referring to, alluded or alluding to, related or relating to, tending to support or refute the existence of, concerned or concerning with, connected with, regarding, describing, or reflecting.

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.

2. Does Respondent have liability insurance, or is there any other form of indemnity or bond, through which Respondent is or might be insured in any manner for the damages, claims, or actions that are the subject of the pleadings? If so, please provide the following information for each policy:

a. The kind of insurance, indemnity or bond;

- b. The name of the company or companies, including any excess or umbrella carriers, which you claim provide coverage;
- c. The policy number or policies numbers of any applicable policy;
- d. The limit or limits of liability of each policy.
- e. The named insured of each policy.
- f. Whether the insurance carrier has accepted or denied coverage.
- g. Whether you are being defended by the insurance carrier under a reservation or rights.

3. 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.

4. Identify each and every person who aided in answering these Interrogatories or the request for production of documents issued here with.

5. State all facts upon which you rely in support of each and every defense to Plaintiffs' Complaint in this matter.

6. State the factual basis as you understand it to each factual allegation in Plaintiffs' Complaint in this matter.

7. Set forth a list of photographs, plats, sketches, or other prepared documents in your possession that relate to a claim or defense in this case.

8. In connection with each expert witness whom Respondent proposes to use as a witness at the trial of this case, please list the following:

- a. the expert's name, address, in field of expertise;

- b. detailed summary of the expert's opinions regarding this case and the basis for them;
- c. summary of the expert's knowledge, skill, experience, training, or education as it applies to the specific field of expertise alleged in this case;
- d. description of the claims and lawsuits in which the expert has given opinions, including the names and addresses of the parties and their attorneys, and the location of any depositions and recorded statements the expert has given in cases other than this one;
- e. the percentage of expert's practice devoted to consulting work in legal claims, the percentage attributable to the claimant/plaintiff as opposed to the defendant, and the amount of income derived from such consulting in the last 2 years;
- f. the specifics of any publication in speaking engagements given by the expert on matters relating to the expert's profession; and
- g. the names of publications considered by the expert to be learned treatises as described in the Federal or South Carolina rule of evidence 803(18).

9. If Respondent or any other party with whom Respondent is familiar is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and/or pleading reflecting the correct information.

10. If Respondent is a legal entity, describe the type of entity, list all members and/or shareholders, directors, officers, and describe its constitutive documents. Describe which specific individuals at Respondent worked on or participated in the issues and facts described in this action? Give their names, contact details, and email addresses.

11. If Respondent is not a legal entity, give the names and contact details for all individuals with whom Respondent worked or with whom Respondent was affiliated arising from or related to this matter.

12. Describe and give the current location of all electronic equipment, including computers, handheld devices, mobile telephones, pagers, and/or PDAs that each person identified in the previous two Interrogatories has used. For each device, specify which people used it and for which subpart from the previous Interrogatory each person used it.

13. What does Respondent allege are the most important communications and meetings in this matter?

14. Does Respondent contend there is an oral contract? If so, please state what Respondent believes to be the terms and provisions of all such oral contract(s) in detail and state the name, address and contact information of all persons you believe have knowledge or information relating to the terms or provisions of the oral contract(s).

15. Identify any and all social media sites of which Respondent is/was a member or in which Respondent participated/subscribed from January 1st, 2015 to the day of trial. Please state whether you have a Facebook, LinkedIn, Twitter, or other social media page or site, and if so, please provide the login information and password necessary to access such site or page.

16. List and describe each and every document, drawing, map, diagram, model or other documentary material or tangible object that you intend to rely on to support your allegations/ defenses in this action, regardless of whether you intend to offer the same into evidence or merely use as a demonstrative aid at the trial of this action.

17. State whether you have been a party to a civil lawsuit. If so, for each lawsuit, please provide the following information:

- a. How were you named in the lawsuit (e.g. plaintiff, defendant, intervenor, etc.)?
- b. What was the nature of each claim and defense?
- c. The date, location, and title of the court in which the action was commenced.
- d. The names of all the parties other than yourself involved in the action.

18. Please identify and describe every charge, administrative proceeding, arbitration and/or other legal proceeding brought against Respondent, and please identify the person making said allegations.

19. State your gross income for the years January 1, 2014 through the current date. Do you regularly produce profit and loss statements, balance sheets and income statements?

20. State the name and contact details of your tax preparer, accountant, and bookkeeper.

21. For each defendant that is a limited liability company, please state:

- a. The name listed in the current articles of organization;
- b. All of the names used by the company during the past 10 years and the dates each was used;
- c. The name and address of each member;
- d. The name and address of each manager;
- e. The date and place of formation;
- f. The address of the principal place of business; and
- g. The states in which it is registered to do business.

22. Set forth for each and every Defendant, individually, any and all real and personal property owned, whether individually, collectively, or otherwise owned including with other third parties, including but not limited to the following:

- a. all financial accounts, including bank, checking, savings, money market, investment, and/or securities accounts currently held by or for your benefit, and state current balances, location of the accounts, and name on accounts;
- b. any and all certificates of deposit, stock certificates in any publicly held or closely held corporation, as well as any bonds owned by each and every Defendant, membership interest in any and all limited liability companies, partnership interest in any and all partnerships, and any and all interest in any other form of business entity, including joint ventures, whether domestic or offshore, detailing without limitation and with particularity percentages of ownership, amount of revenue generated for each entity, etc.
- c. any and all titles to vehicles, mobile homes, or watercraft owned by each and every Defendant, detailing a description of each item including year, model, serial number, vehicle identification number, present value and the amount of any lien thereon;
- d. any and all deeds, mortgages, notes, contracts of sale, and settlement or closing statements relating to any real estate transactions involving each and every Defendant;
- e. any and all real property, including without limitation (county, state, jurisdiction), whether domestic or offshore for each and every Defendant;
- f. any and all life insurance policies owned by each and every Defendant, along with any information pertaining to any loans outstanding on any such policies;
- g. any and all items of jewelry or art owned by each and every Defendant, including a description of each item and its most recent appraised valuation;

- h. any and all leases of realty or personalty in favor of each and every Defendant;
- i. any and all books, records, documents, or writings concerning the financial status of Defendants not herein before specified, including any and all interest in any form of trust; and
- j. any and all tax receipts, tax returns or supplemental forms, and any and all other documents, forms or letters filed with United States Internal Revenue Service, and any other state tax authority within the last 5 years.

23. State the name and location of each and every Ladles' franchisee, and name the owners of that franchise.

24. What is the bank and account number for the account used to pay employees?

25. Do you use a third-party payroll processing service? Describe all documents received from them since January 1, 2015.

26. State the name, telephone number, including mobile phone number, email address, and street address for every employee of Respondent since January 1, 2015, and list whether they still work with Respondent, and if not, why they left.

27. How did Respondent come to be a Ladles Franchisee? Name and describe the Franchisor of Ladles ("Franchisor"), and describe Respondent's relationship with any such Franchisor, and the nature of the documents establishing such franchise relationship. Describe all communications, written or oral with such franchisor since January 1, 2015.

28. Since January 1, 2015, state each and every employee, member, and/or officer of Respondent that has had any responsibility for: i) payroll; ii) signing or disbursing paychecks and/or wages; iii) handling tips/tip policy; iv) accounting and credit card receipts; v) bookkeeping/accounting; vi) hiring and firing employees

29. Does Respondent have an employee handbook?

30. Since January 1, 2015, describe all payroll and salary documents provided to employees and or independent contractors, including W-2s and 1099s.

31. Who decided on behalf of Respondent that Respondent would retain credit card tips rather than pay them to employees? Did any other Defendant, or employee/agent/officer of another Defendant, share in the responsibility for that decision, agree with or suggest, counsel, or otherwise state that Respondents should retain credit card tips rather than pay them to employees?

32. When and how did Respondent decide that the credit card tip policy described in the prior paragraph would be Respondent's policy?

33. Describe each and every written and oral communication with any person, including employees, officers, agents, or individuals affiliated with other franchisees or franchisor, or otherwise arising from or related to Respondent's policy of retaining credit card tips. In particular, describe any and all emails relating to such policy.

34. Describe any and all meetings with any other franchisees, their agents, members, officers or employees, and/or with Franchisor its agents, members, officers or employees, discussing or describing Respondent or other Franchisee or Franchisor policy relating to tips.

35. What has been Respondent's policy as to cash tips since January 1, 2015? Has that policy ever changed?

36. Who fired Craig Chappell? Why was he fired?

37. Describe Respondent's accounting software.

38. Describe Respondent's management structure for employee operations. Describe the types of employees and their functions in Respondent's operations.

39. Describe any and all written communications were notices with Respondent's customers and clients notifying them as to any tip policy of Respondent, and in particular, Respondent's policy of retaining credit card tips rather than paying them to employees.

40. Have any employees complained or raised concerns about Respondent's tipping policies? Describe each and every such complaint or discussion, and whether the same is documented in any written communications.

As described above, every Interrogatory herein shall be deemed a continuing Interrogatory and Respondent must supplement his answers promptly, if and when he obtains relevant information in addition to, or in any way inconsistent with, his initial answer to any such Interrogatory in accordance with the applicable Rules of Civil Procedure

Respectfully submitted,

s/Ben Le Clercq

Le Clercq Law Firm
Ben Whaley Le Clercq
SC Bar # 65754
Scott Riddell
SC Bar #102809
708 S. Shelmore, Suite 202
Mt. Pleasant, SC 29464
843-722-3523
ben@leclercqlaw.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, Debbie Mathews, certify that on May 24, 2019 a true and correct copy of the foregoing **FIRST INTERROGATORIES** was served upon counsel for Defendants, via email.

s/Debbie Mathews

Debbie Mathews

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

CASE NO.: 2018-CP-10-785

CRAIG CHAPPELL, on behalf of himself and
others similarly situated,

PLAINTIFF'S FIRST REQUESTS FOR
PRODUCTION

Plaintiff(s),

v.

Ladles Soups – James Island LLC; Ladles
Soups, LLC; Ladles Soups At Cane Bay LLC;
Ladles Soups At Citadel Mall LLP; Ladles
Soups Calhoun LLC; Ladles Soups Cane Bay
LLC; Ladles Soups Coosaw LLC; Ladles Soups
Downtown Charleston, LLC; Ladles Soups
Fresh Fields, LLC; Ladles Soups @ Freshfields
Village, LLC; Ladles Soups Mainstreet, LLC;
Ladles Soups Moncks Corner LLC; Ladles
Soups Mount Pleasant, LLC; Ladles Franchise
Development, LLC; Ladles Franchising Inc.;
Ladles Fort Mill, LLC; Ladles Knightsville
LLC; Ladles West Ashley; Teri Owens; Sue
Allen, Tracy Allen, Steve Traeger, Erik Dyke,
Julie Dyke, Stan Sutton, Carol Sutton, Jason
Dalter, Kellie Henderson; Jane Doe 1-25
(Unknown Operating Company and
Management Company Owners); John Doe
25-40 (Management Personnel)

Defendants.

PLAINTIFFS' FIRST REQUESTS FOR PRODUCTION

We hereby propound the following Requests for Production ("RFP") to each Defendant ("Respondent") listed in the above styled matter, to be answered separately, fully and completely by each such Defendant in accordance with Rule 34 of the South Carolina Rules of Civil Procedure, and within 30 days. These RFPs are submitted in conjunction with our Interrogatories.

INSTRUCTIONS AND DEFINITIONS

1. You must produce a written response within thirty (30) days after service of this request to Le Clercq Law Firm, 708 South Sheltmore, Suite 202, Mt. Pleasant, South Carolina 29464. Your response must state that production and related activities will be permitted as requested or that the requested production is objected to, in which event the reasons for your objection must be stated.

2. Documents produced for inspection must be produced as they are kept in the usual course of business or be organized and labeled to correspond with the categories in this request. In particular, PDF files must be produced with OCR engaged, as a searchable file, and not simply as an image which is not searchable.

3. Electronic Data and Electronically stored information (ESI) must be produced in its native format with all metadata preserved.

4. Every RFP herein shall be deemed a continuing RFP and Respondent must supplement production promptly, if, and when he obtains relevant documents in addition to his initial production in accordance with the applicable Rules of Civil Procedure.

5. Should privilege be claimed with regard to any production requested herein, the answer must, in each instance, state specifically the production sought, the privilege claimed, and the grounds on which the claim of privilege is based. Should Respondent be unable for reasons other than privileged to provide production requested herein, the answer must, in each such instance, indicate specifically the production sought, the reason such production is presently unavailable and an estimate of the time within which such production will be presented to the undersigned.

6. If Respondent objects to any portion of an RFP on the ground that it seeks privileged information, identify all persons to whom such information has been disclosed, the nature of the privilege asserted and the dates of any communication for which privilege is asserted.

7. If Respondent objects to an RFP on the ground that it is too broad (i.e., that it calls for production which is relevant to the subject matter of the action and that which is not),

Respondent should provide such production which is concededly relevant. If Respondent objects to an RFP on the ground that providing an answer would constitute an undue burden, Respondent provide such requested production as can be supplied without undertaking an undue burden. For those portions of any RFP to which Respondent objects or otherwise declines to answer, state the reason for such objection or declination.

8. The term “person(s)” includes a natural person, firm, association, partnership, business, trust, corporation, or public entity.

9. The word “you” or “your” means Respondent singularly or jointly and/or all past or present officers, directors, employees, agents, representatives, general partners, attorneys, or other persons acting or purporting to act for, on behalf of, or with Respondent. “You” or “your” also means any affiliate, parent, or subsidiary of Respondent.

10. “Computer” shall include, but is not limited to, microcomputers (also known as personal computers or desktops), laptop computers, portable computers, personal digital assistants, Blackberrys, minicomputers and mainframe computers.

11. “Document” or “media” means recorded material in any form, including the original and all non-identical copies (whether different from the originals by reason of any notation made on such copies or otherwise), including, without limitation, correspondence, memoranda, notes, desk calendar, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, invoices, statements, receipts, returns, warranties, guaranties, summaries, pamphlets, books, interoffice and intraoffice communications, offers, notations of any sort of conversations, telephone calls, voice mails, chat rooms, meetings or other communications, bulletins, bulletin boards, magazines, publications, printed matter, photographs, video, computer stored or generated information, teletypes, telefax, invoices, worksheets and all drafts, alterations, modifications, changes and amendments of any of the foregoing, tapes, tape recording transcripts, graphic or aural records or representations of any kind, of which you have knowledge or which are or were formally in your actual or constructive possession, custody, or control. .

12. “Electronic data” means all information stored in a digital format. Electronic data includes, but is not limited to, electronic mail messages and attachments, contacts, journal entries, calendar entries, word processing documents, spreadsheets, databases including all records and fields and structural information, charts, graphs, and any and all miscellaneous files responsive to the following requests. The responding party is expected to search for any and all information stored on hard disks, floppy disks, CDs, DVDs, USB devices, Smart Phones and Personal Digital Assistants (such as Palm Pilots, Blackberrys and iPhones), and in any other vehicle for digital data storage and/or transmittal. The term electronic data also includes the file, folder tabs and/or containers and labels appended to, or associated with, any physical storage device associated with the information described above.

13. “Person” or “entity” means any natural person, firm, corporation, partnership, proprietorship, joint venture, organization, group of natural persons or other association separately identifiable, whether or not such association has a separate juristic existence in its own right.

14. These RFPs are for all documents in Respondent's "Possession, custody or control," including the joint or several possession, custody or control not only by the person to whom these interrogatories and requests are addressed, but also the joint or several possession, custody or control by each or any other person or entity acting or purporting to act on behalf of the person, whether as employee, attorney, accountant, agent, sponsor, spokesman or otherwise.

15. The term "relating to" as used herein means referred or referring to, alluded or alluding to, related or relating to, tending to support or refute the existence of, concerned or concerning with, connected with, regarding, describing, or reflecting.

REQUESTS FOR PRODUCTION

1. All documents identified, described, referenced, or referred to in your responses to our First Interrogatories or to our First Requests for Production.

2. Any and all written communications, correspondence, memoranda, documents, and things relating to, supporting, refuting, or involving any of the facts and claims alleged in Plaintiff's Complaint and/or any answer by a Defendant.

3. Any and all written communications and/or documents relating to or involving the Plaintiff and/or any Defendant.

4. All statements given by respondent or any witness identified by Respondent or other witness to the facts relevant to this case that are in the possession of Respondent or his counsel, whether written or recorded, that relate in any way to the allegations of the complaint in this matter, or an answer by any Defendant.

5. Any and all written communications, documents, and things relating to, supporting, refuting, or involving any of the averments and defenses set forth in any pleading you have submitted in this matter.

6. Copies of all documents produced by third parties pursuant to subpoenas issued in this case or any request made pursuant to the Freedom of Information Act or other request by Respondent or Respondent's counsel.

7. Any and all documents identified in response to Interrogatory number 8, relating to expert witnesses.

8. All e-mails, faxes, letters, text messages and other written communication between each and every Defendant and each and every Plaintiff.

9. If Respondent is a legal entity, produce all internal communications relating to this matter, including without limitation all e-mails, faxes, letters, text messages and other written communications between and among Respondent's employees, officers, directors, agents and counsel.

10. Provide for inspection all computers, electronic devices, and telephones containing relevant production, ESI, or electronic data, including those described in response to Interrogatory number 12.

11. Produce a complete, itemized accounting and financial summary of all amounts paid and/or owed to you by any other party to this action for the period January 1, 2015 to present.

12. All federal and state tax returns, income statements, balance sheets, and profit/loss statements for Respondent during the last five years, up through and including the date of trial.

13. All Respondent's bank statements from the last five years, up through and including the date of trial.

14. For any individual Respondent, produce any resume or curriculum vitae you have created or used from the last five years, up to and including the date of trial.

15. Any and all documents evidencing or relating to postings, blogs, whether statements on any Internet were social media site in which you discuss any matter or issue arising from or relating to this action.

16. Produce each and every post, note, mention, story, document, or other item made

by Respondent during the last seven years, up through and including the date of trial, on any and all membership-based Internet websites which relates to or in any way references any party or witness to this action, or any issue or claim in this matter, and/or the allegations set forth in the complaint or any answer filed in this matter. For purposes of this RFP, “membership-based Internet websites” shall include social media websites (including but not limited to Myspace, Flickr, YouTube, Facebook, classmates, Bebo, Deviant Art, LinkedIn, Meetup, Gather, My Yearbook, Friendster, Google Plus, or Web Shots), blogging websites (including but not limited to Blogger, Live Journal, twitter, Windows Live Spaces, WordPress, Blogspot, Vox, or Xanga), dating websites (including but not limited to Adult Friend Finder, Ok Cupid, eHarmony, match, or Fubar), and any other personal websites for which Respondent has created, used, or maintained a personal account, username, or profile at any time for the last seven years up to the present.

17. Organization charts for all of Respondent’s businesses relating to this matter, including the name, work address, and telephone number of all employees providing computer support functions within any of the organizations.

18. All Respondent’s employee handbooks and other materials disseminating policies and procedures to individual employees.

19. All Respondent’s hard copy or electronic calendars for the last five years, up through and including the date of trial.

20. Lists of all employees since January 1st, 2015, up through and including the date of trial.

21. A description of your payroll process, whether you are doing it in-house or whether you are using third-party vendor.

22. A copy of Respondent's each and every profit and loss statement, income statement, and balance sheet since January 1, 2015.

23. Any and all accounting, payroll, banking, or other records relating to salary payments, tips, wages, employment tax records, since January 1, 2015.

24. All W-2s, 1099s, and other employee and/or independent contractor records since Respondent's creation.

25. A copy of each and every piece of written communication, email, text, fax, letter, or otherwise, arising from or relating to Respondent's policy of retaining credit card tips rather than pay them to employees. As described above, every RFP herein shall be deemed a continuing RFP and Respondent must supplement his answers promptly, if and when he obtains relevant production in addition to, or in any way inconsistent with, his initial production in accordance with the applicable Rules of Civil Procedure.

26. A copy of each and every complaint or discussion or document described in response to Interrogatory #30-40.

27. A copy of each and every complaint and/or administrative proceeding in which Respondent has been involved.

Respectfully submitted,

s/Ben Le Clercq

Ben Le Clercq
(S.C. Bar #65754, U.S. District Court # 7453)
Scott Riddell
(S.C. Bar #102809, U.S. District Court #12543)
Le Clercq Law Firm
708 South Shelmore Blvd. #202
Mount Pleasant, SC 29464
Phone (843) 722-3523
Fax (843) 352-2977
Ben@LeClercLaw.com
Scott@LeClercLaw.com
Counsel for Plaintiff

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, Debbie Mathews, certify that on May 24, 2019 a true and correct copy of the foregoing **FIRST INTERROGATORIES** was served upon counsel for Defendants, via email.

s/Debbie Mathews

Debbie Mathews



Debbie Mathews <debbie@leclercqlaw.com>

Chappell v Ladles Defendants Discovery Responses

1 message

Debbie Mathews <Debbie@leclercqlaw.com>

Fri, Jul 12, 2019 at 9:23 AM

To: Paul Ferrara <paul@ferraralawfirm.net>, Janel Ferrara <janel@ferraralawfirm.net>, Jessica Weiss <j.weiss@ferraralawfirm.net>

Cc: "Ben Whaley Le Clercq, J.D., LL.M." <Ben@leclercqlaw.com>, Scott Riddell <scott@leclercqlaw.com>

Hello,

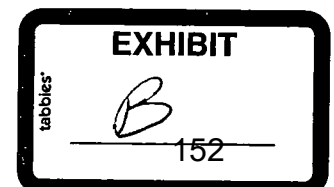
We served discovery on your office on May 24, 2019, and have not received the responses as of today. Please serve the responses no later than Tuesday, July 16, 2019. Please consider this our Rule 11 communication.

Debbie Mathews
Legal Assistant
Le Clercq Law Firm
708 South Shelmore Blvd., Suite 202
Mount Pleasant, SC 29464
Tel: 843-722-3523
Fax: 843-352-2977
debbie@leclercqlaw.com
www.leclercqlaw.com

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Debbie Mathews <debbie@leclercqlaw.com>

Re: Chappell v Ladles Defendants Discovery Responses

1 message

Debbie Mathews <Debbie@leclercqlaw.com>

Wed, Aug 14, 2019 at 3:41 PM

To: Paul Ferrara <paul@ferraralawfirm.net>, Janel Ferrara <janel@ferraralawfirm.net>, Jessica Weiss <j.weiss@ferraralawfirm.net>

Cc: "Ben Whaley Le Clercq, J.D., LL.M." <Ben@leclercqlaw.com>, David Ashley <David@leclercqlaw.com>

Hello,

We have not received the discovery responses. Can you let me know when we will receive them.
Thanks.

Debbie Mathews
Legal Assistant
Le Clercq Law Firm
708 South Shelmore Blvd., Suite 202
Mount Pleasant, SC 29464
Tel: 843-722-3523
Fax: 843-352-2977
debbie@leclercqlaw.com
www.leclercqlaw.com

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On Fri, Jul 12, 2019 at 9:23 AM Debbie Mathews <Debbie@leclercqlaw.com> wrote:

Hello,

We served discovery on your office on May 24, 2019, and have not received the responses as of today. Please serve the responses no later than Tuesday, July 16, 2019. Please consider this our Rule 11 communication.

Debbie Mathews
Legal Assistant
Le Clercq Law Firm
708 South Shelmore Blvd., Suite 202
Mount Pleasant, SC 29464
Tel: 843-722-3523
Fax: 843-352-2977
debbie@leclercqlaw.com
www.leclercqlaw.com

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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

CRAIG CHAPPELL)

Plaintiff,)

vs.)

LADLES SOUPS JAMES ISLAND LLC, ET AL.)

Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-785

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Ben Le Clercq, Bar No. 65754

Address:

708 S. Shelmore Blvd, Suite 202

Mount Pleasant, SC 29464

Phone: 843-722-3523 Fax 843-352-2977

E-mail: ben@leclercqlaw.com Other:

debbie@leclercqlaw.com

Defendant's Attorney:

Paul B. Ferrara, Bar No. 70511

Address:

8887 Old University Blvd, Suite 200, North

Charleston, SC 29406

Phone: 843-569-5111 Fax 843-569-5411

E-mail: paul@ferraralawfirm.net 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 for Continuance

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

August 22, 2019

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: \$ _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-785

CRAIG CHAPPELL, on behalf of himself and
others similarly situated,

Plaintiff(s),

v.

Ladles Soups – James Island LLC; Ladlessoups,
LLC; Ladles Soups At Cane Bay LLC; Ladles
Soups At Citadel Mall LLP; Ladles Soups
Calhoun LLC; Ladles Soups Cane Bay LLC;
Ladles Soups Coosaw LLC; Ladles Soups
Downtown Charleston, LLC; Ladlessoups
Fresh Fields, LLC; Ladles Soups @ Freshfields
Village, LLC; Ladlessoups Mainstreet, LLC;
Ladles Soups Moncks Corner LLC;
Ladlessoups Mount Pleasant, LLC; Ladles
Franchise Development, LLC; Ladles
Franchising Inc.; Ladles Fort Mill, LLC;
Ladles Knightsville LLC; Ladles West Ashley;
Teri Owens; Sue Allen, Tracy Allen, Steve
Traeger, Erik Dyke, Julie Dyke, Stan Sutton,
Carol Sutton, Jason Dalter, Kellie Henderson;
Jane Doe 1-25 (Unknown Operating Company
and Management Company Owners); John
Doe 25-40 (Management Personnel)

Defendants.

FILED
2019 AUG 22 PM 4:42
JULIE J. ARMSTRONG
CLERK OF COURT

MOTION FOR CONTINUANCE

Plaintiffs, by and through undersigned counsel, hereby file this Motion for Continuance,
and state as follows:

This is a class-action alleging failure to pay wages under the South Carolina Payment of Wages Act, breach of contract, and conversion. Plaintiffs allege that Defendants wrongfully and intentionally withheld credit card tips that were rightly intended for Plaintiffs. Contemporaneously herewith, Plaintiff submits its notice of intervention of additional plaintiff Lania Charpia, who also attaches an affidavit stating that it was defendant's policy to require its employees to purposefully deceive and lie to customers regarding defendants misleading, and deceptive conversion of credit card tips intended for Defendants' employees. Specifically, she was told by Defendants' managers to not disclose the truth the customers of "who gets the credit card tips." Rather, she was told to tell customers that servers and staff got such credit card tips, whereas in fact that was not the case. We also submit herewith Plaintiff's motion for class certification. Defendants have failed to respond whatsoever to discovery requests, and Plaintiffs have also therefore filed here with a motion to compel.

1. Though filed on February 14, 2018, this case had a lengthy initial motions phase. Defendants Motion to Disallow Class was denied as moot on January 29, 2019. Also on that date, Defendant's Motion to Dismiss Improper Parties was denied without prejudice, and the motion to dismiss Terry Owens was denied without prejudice. Subsequently, on March 6, 2019 the court denied Defendant's motion to reconsider. Discovery commenced.

2. The parties have not completed discovery and only the deposition of the Plaintiff has been taken and additional time to conduct discovery is needed.

3. Defendants have not responded to Plaintiffs' First Interrogatories and First Requests for Production, served May 24, and are 90 days late. Plaintiffs' Motion to Compel is being filed with this Motion for Continuance.

4. It is undersigned counsel's practice to try to work with opposing counsel to address discovery issues and disputes without having to involve the court. Accordingly, undersigned counsel's office, pursuant to SCRP Rule 11, communicated with Defendants' counsel by email on July 12, 2019 and August 14, 2019 to attempt to resolve the issue. Defendant's counsel was not responsive to these requests, which has led to the filing of the motion to compel.

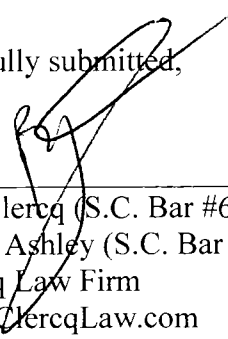
5. This matter was transferred to the Jury Trial Roster on August 20, 2019.

6. The Plaintiffs request that this matter be continued such that the case shall not be called to trial before April 13, 2020.

7. Plaintiffs' undersigned counsel has conferred in good faith with Defendants' counsel in an effort to resolve this request, but such efforts were unsuccessful.

WHEREFORE, Plaintiffs respectfully request that this court continue this matter such that the case shall not be called to trial before April 13, 2020.

Respectfully submitted,



Ben Le Clercq (S.C. Bar #65754)
David D. Ashley (S.C. Bar #76206)
Le Clercq Law Firm
Ben@LeClercqlaw.com
David@LeClercqlaw.com
708 South Shelmore Blvd. #202
Mount Pleasant, SC 29464
Phone (843) 722-3523
Counsel for Plaintiff

August 22, 2019
Mt. Pleasant, South Carolina

2018 - CP-70-185

CERTIFICATE OF SERVICE

I, Debbie Mathews, certify that on August 22, 2019, a true and correct copy of the foregoing **MOTION FOR CONTINUANCE** was served upon counsel for Defendants, via electronic mail as follows:

Kerry Koon - kerrykoon@hotmail.com
M. Evan Lacke - elacke@lackelawfirm.com
147 Wappoo Creek Drive, Suite 204
Charleston, SC 29412

Paul B. Ferrera, III - paul@ferraralawfirm.net
Janel Ferrara - janel@ferraralawfirm.net
Jessica Weiss - j.weiss@ferraralawfirm.net
2300 Otranto Road
North Charleston, SC 29406

P. Brandt Shelbourne - brandt@shelbournelaw.com
Yvonne Franklin - civlit@shelbournelaw.com
131 E. Richardson Avenue
Summerville, SC 29483

FILED
2019 AUG 22 PM 4:43
JULIE J. ARNSTROM
CLERK OF COURT

Debbie Mathews

Debbie Mathews

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

CRAIG CHAPPELL, ON BEHALF OF HIMSELF
AND OTHERS SIMILARLY SITUATED,

vs.)

LADLES SOUP-JAMES ISLAND LLC

Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2018 -CP-10-0785

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney:

BENJAMIN LECLERCQ, Bar No. _____
Address: 708 S. Shelmore Blvd., Ste. 202,
Mt. Pleasant, SC 29464

Phone: _____ Fax _____

E-mail: _____ Other: _____

Defendant's Attorney:

KERRY W. KOON & EVAN LACKE, Bar No. _____
Address:

147 Wappoo Creek Drive, Ste. 203 & 202
Charleston, SC 29412

Phone: 843.795.7000 Fax 843.762.5276

E-mail: kerrykoon@hotmail.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: DEFENDANTS LADLES FRANCHISING, INC., LADLESSOUPS, LLC, SUE ALLEN & TRACY ALLEN'S
MOTION FOR SUMAMRY JUDGMENT

Estimated Time Needed: 15 mins.

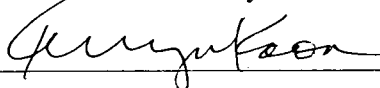
Court Reporter Needed: ☒ YES / ☐ NO

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.



8/26/2019

Date submitted

Signature of Attorney for ☐ Plaintiff / ☒ Defendants Ladles Franchising, Inc.
Ladlessoups, LLC, Sue Allen & Tracy Allen

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)

STATE OF SOUTH CAROLINA,) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO. 2018-CP-10-00785
)

CRAIG CHAPPELL, on behalf of himself and)
Others similarly situated,)
)

Plaintiff(s),)

***MOTION FOR SUMMARY JUDGMENT BY
DEFENDANTS LADLES FRANCHISING
INC., LADLESSOUPS, LLC, SUE ALLEN
AND TRACY ALLEN***

v.)
)

Ladles Soup-James Island LLC; Ladlessoups,)
LLC; Ladles Soup At Cane Bay, LLC; Ladles)
Soups at Citadel Mall LLP; Ladles Soups)
Calhoun LLC; Ladles Soups Cane Bay LLC;)
Ladles Soups Coosaw LLC; Ladles Soups)
Downtown Charleston, LLC; Ladlessoups)
Fresh Fields LLC; Ladles Soups @ Freshfields)
Village, LLC; Ladlessoups Mainstreet, LLC;)
Ladles Soups Moncks Corner LLC; Ladles)
Franchise Development, LLC; Ladles Franchising,)
Inc.; Ladles Fort Mill, LLC; Ladles Knightsville)
LLC; Ladles West Ashley; Teri Owens; Sue Allen,)
Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke)
Stan Sutton, Carol Sutton, Jack Dalter, Kellie)

FILED
2019 AUG 26 PM 12:59
JULIE J. ARMSTRONG
CLERK OF COURT

Henderson; Jane Doe 1-25 (Unknown Operating)
 Company and Management Company Owners);)
 John Doe 25-40 (Management Personnel).)
)
 Defendants.)
 _____)

TO THE PLAINTIFF ABOVE NAMED:

PLEASE TAKE NOTICE that the Defendants Ladles Franchising Inc., Ladlessoups, LLC, Sue Allen and Tracy Allen intend to move before the Honorable Court at a date and time to be set by the Court after the expiration of ten (10) days from the date of service hereof for an Order Granting Summary Judgment on the ground that there is no genuine issue of fact or law requiring a trial on the merits as to these Defendants. The further grounds for this motion are:

a) that despite this case having been filed on February 14, 2018, and pending over for over seventeen (17) months as a purported class action, Plaintiff has failed to comply with S.C.R.C.P. Rule 23 by failing to move to certify a class. Further, by order dated January 29, 2019, Judge McCoy found that Plaintiff had never moved to certify the class and more than six (6) additional months have since passed with no action by Plaintiff to comply;

b) that the Plaintiff was never employed by any of the moving Defendants and has no contractual or employer-employee relationship with these Defendants (Chappell deposition, Pages 81, 85 & 86);

c) that the Plaintiff was employed by Ladles Soups-James Island, LLC, a franchisee of Ladles Franchising, Inc. which is an independent entity whose employment practices are not controlled by these Defendant and whose only obligation to Ladles Franchising, Inc. is specified in the Franchise Agreement which does not mention tipping practices; these Defendant have promulgated no policies regarding handling of tips by franchises.

d) that none of these Defendants are Plaintiff's employer within the meaning of Section 41-11-10, et seq.;

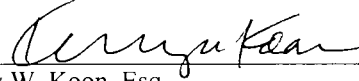
e) that none of these Defendants are an agent or officer of the Plaintiff's employer;

f) that the Plaintiff has no information, by his own admission, about any wage or tip practices other than his own employer according to deposition excerpts attached hereto (Chappell deposition Page 22, line 24 – Page 24, line 8; Page 44, line 19 – Page 47, line 20);

g) that, despite the allegations of Plaintiff's verified complaint, Plaintiff has testified that he has no knowledge of these Defendants having any policy about the handling of tips (Chappell deposition Page 48, line 22 – Page 50, line 2; Page 76, line 19 – Page 78, line 23);

This motion shall be grounded upon affidavits previously filed with the Court, copies of which are attached hereto, other affidavits attached hereto and deposition excerpts of the deposition of the Plaintiff attached hereto.

PLEASE BE PRESENT TO DEFEND IF SO MINDED!



Kerry W. Koon, Esq.
147 Wappoo Creek Drive, Ste. 203
Charleston, South Carolina 29412
Phone: (843) 795-7000
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Attorney for Defendants Ladles Franchising, Inc.,
Ladlessoups, LLC, Sue Allen and Tracy Allen

LACKE LAW FIRM, LLC



M. Evan Lacke, Esq.
147 Wappoo Creek Drive, Ste. 204
Charleston, South Carolina 29412
Phone: (843) 327-1523
Fax: (843) 795-3990
Attorney for Defendants Ladles Franchising, Inc.,
Ladlessoups, LLC, Sue Allen and Tracy Allen

8.24, 2019.
Charleston, South Carolina

In The Matter Of:
CHAPPELL VS.
LADLES SOUPS - JAMES ISLAND, LLC, et al.

CRAIG H. CHAPPELL
May 14, 2019

Rose Reporting, Inc.
(843) 559-4445 rosereportinginc.com

1 policy, that that's what all the restaurants did except
2 Mount Pleasant.

3 Q Who was he, Logan?

4 A Yes.

5 Q Logan who?

6 A Simmons.

7 Q Who was Logan Simmons?

8 A He was my coworker. He's the one that got me
9 the job, actually.

10 Q He did? Okay, great. Do you know where Logan
11 lives?

12 A I haven't seen him -- I haven't seen anybody
13 or talked to anybody since that day that I was fired.

14 Q Do you know Logan's phone number?

15 A No.

16 Q But you believe Logan to have worked at
17 Ladles - James Island?

18 A Yes, he's been there since the day they
19 opened.

20 Q What was his position?

21 A Same, he was everything.

22 Q So --

23 A They called him the poster child.

24 Q -- excluding what you were told, okay, I want
25 to be clear, Craig, you don't have any direct knowledge

1 that any of the other Ladles restaurants other than
2 James Island had any policies regarding tip sharing. Is
3 that a fair statement?

4 A Absolutely.

5 Q So that's a yes?

6 A Yes. It was just what I was told.

7 Q You have also filed a lawsuit requesting to be
8 a representative, a class representative, for these
9 other employees against these other restaurants that I'm
10 referring to. Are you abandoning that claim, if you
11 know?

12 THE WITNESS: Scott?

13 MR. RIDDELL: You're not allowed to ask me.

14 MR. KOON: Only you can answer.

15 THE WITNESS: Oh, I'm sorry.

16 Am I aban . . .

17 BY MR. FERRARA:

18 Q Are you abandoning those claims? Are you
19 still wanting to be a representative for other
20 employees --

21 A I want to be the voice for everybody.
22 Absolutely, 100 percent.

23 Q Do you have any knowledge that any of the
24 other restaurants other than what you've talked to me
25 about, did anything improper or even immoral, as you

1 stated? And I'm referring to your firsthand direct
2 knowledge.

3 A I still don't understand, sir.

4 Q Do you have any firsthand direct knowledge
5 that any of the other restaurants other than James
6 Island did anything illegal or immoral?

7 A I don't know anything about any other
8 restaurants, nothing.

9 Q Now, let's go back to the tip pooling that I
10 was referring to earlier. You said that you -- as I
11 understood your testimony, initially you did not have an
12 agreement or sign any type of an agreement to share in
13 any tips at Ladles - James Island. Is that correct?

14 A To my knowledge, no.

15 MR. RIDDELL: Object to the form.

16 BY MR. FERRARA:

17 Q You can answer.

18 MR. RIDDELL: Please leave me the time to make
19 an objection before you answer the question. Go ahead.

20 A I need that question repeated.

21 Q Sure. The question was that you did not sign
22 or enter into an agreement to share any tips at
23 Ladles - James Island during your employment?

24 A Not to my knowledge, no.

25 Q Now, you did tell me that on occasion you

1 A Yes, sir.

2 Q In this lawsuit, you're not claiming any lost
3 wages for hourly work, are you?

4 MR. RIDDELL: Objection. Calls for a legal
5 conclusion.

6 BY MR. RIDDELL:

7 Q You can still answer.

8 A No. She did bounce two checks on me one time,
9 but she made up for it.

10 Q What was that?

11 A She bounced two checks on me, but she made up
12 for them.

13 Q I'm going to go through some names and
14 restaurants and find out if you have any knowledge about
15 these restaurants or any defendants Ladles Soups at Cane
16 Bay. Do you have any knowledge about any of their
17 tipping practices at that restaurant?

18 A No, sir.

19 Q No? Okay. Let me do this. I'm going to hand
20 you a copy of the complaint, this verified complaint,
21 and let you look at the defendants for reference. And,
22 Craig, what I want you to do is look at the list of
23 defendants that's under the Craig Chappell, Plaintiff,
24 v. all of those defendants' names.

25 A Right.

1 Q And help us, the attorneys, understand. Do
2 you have any knowledge about any of these defendants
3 other than Ladles Soups - James Island, LLC, that you've
4 talked with me about?

5 A I don't know anything about any other
6 restaurants but Ladles - James Island other than what I
7 was told about the Mount Pleasant James Island -- or
8 Mount Pleasant Ladles. And like I said, it was told by
9 Logan, again, that they're the only ones that were
10 allowed to get charge tips, for some city ordinance.
11 That came from Logan, so I know it's hearsay. But, no,
12 I don't know anything about -- I don't know another
13 employee at another restaurant. I know nothing.

14 MR. RIDDELL: Paul, sorry, if I could
15 interject. Since testimony is based on that
16 (indicating), I just request that that be made an
17 exhibit, whatever you handed to him, whatever he looked
18 at.

19 MR. FERRARA: Sure, sure.

20 BY MR. FERRARA:

21 Q I guess we'll mark this as Exhibit No. 1 to
22 your deposition.

23 (Chappell Deposition Exhibit No. 1
24 was marked for identification.)

25 (Recess taken.)

1 BY MR. FERRARA:

2 Q Craig, when we took the break, I was just
3 asking you about Exhibit 1, which is the verified
4 complaint. I will ask you, did you read this complaint
5 and all the statements contained in it prior to filing
6 that?

7 A I know I have read every piece of paperwork
8 that I've received. I don't have my glasses with me
9 today.

10 Q Craig, maybe you can flip to the last page,
11 which is on the back side.

12 A Sure.

13 Q It's on the back. Is that your signature?

14 A Yes, it is.

15 Q And by you signing your name on this, you
16 certified that all the allegations in the complaint are
17 true and correct. Is that your understanding?

18 A That's my understanding.

19 Q You made some representations about Ladles at
20 the West Ashley location, which was Suzie's location on
21 Bees Ferry Road, the original Ladles, and her policies
22 about cash tips in this complaint. But I understand
23 your testimony today is that you don't have any
24 knowledge.

25 A I don't have any knowledge about any other

1 restaurant except the allegation that I heard about
2 Mount Pleasant. I don't know anything about West Ashley
3 and Suzie. I didn't even know she had a West Ashley
4 store.

5 Q So with respect to Ladles West Ashley, which
6 was, I called it the flagship store, Paragraph 16 of the
7 complaint, you mentioned that Suzie had a policy about
8 credit card tips. You did not know about that?

9 A No, I don't know anything about any other
10 restaurant's policies. But I was told that other than
11 Mount Pleasant, they all had the same policy. But like
12 I said, it's all hearsay. And I stated that from day
13 one. I don't know. I'm assuming they do, though.

14 Q And just so I'm clear, even though the
15 verified Complaint says you have information and belief
16 about this Ladles corporate policy, your testimony today
17 under oath is that you did not know about Ladles'
18 corporate policies with respect to credit card tips?

19 A I know Ladles - James Island keeps it. That's
20 all I know.

21 Q Right. So this lawsuit was filed over a year
22 ago. And since the time of filing the lawsuit, have you
23 undertaken any action to speak with anyone from the
24 other Ladles restaurants like Ladles Downtown, Ladles
25 Calhoun, Ladles Fort Mill about the employees' knowledge

1 of credit card tip policies, if any?

2 A Sir, since the day I was terminated I have not
3 seen, spoken, nothing to anybody that is in, you know,
4 works for Ladles anywhere.

5 Q Well, Craig, you're seeking to be the class
6 representative from all of the alleged other employees
7 that were part of this corporate policy that you're not
8 aware of. Is that correct?

9 A Yes.

10 Q Okay. And don't you think that it would be
11 prudent, if you want to be such representative, for you
12 to undertake some action to determine whether any of the
13 other Ladles other than James Island actually have a
14 policy regarding credit card tips?

15 MR. RIDDELL: Objection. Relevance and
16 speculation.

17 BY MR. FERRARA:

18 Q That's okay. You can answer.

19 A In my opinion, any restaurant, not only
20 Ladles, that has this policy, it should be changed. And
21 it's wrong.

22 Q Well, just so we're clear, when you say Ladles
23 has this policy, you really only mean Ladles - James
24 Island?

25 A That's the only one I'm aware of.

1 Q You and your attorneys have also named John
2 Does 1 through 40. Can you tell me what John Doe and
3 Jane Doe were named for in this lawsuit?

4 A I have no idea what you're talking about.

5 Q So you don't have any information regarding
6 Paragraph 7 and 8 of Exhibit No. 1 to your deposition?

7 A I don't know who these people are.

8 Q Craig, take a look and read Paragraph 7 and 8.

9 A I'm trying to, sir. I don't have my glasses.
10 Paragraph 7, I can honestly say I don't
11 understand two-thirds of what that's even saying. You
12 might have to explain it to me, sir.

13 Q Craig, what about Paragraph 8?

14 A I'm starting that, sir. Again, if you can put
15 it in layman's terms, so I could understand it?
16 Honestly, sir, I don't understand what that says. Can
17 you just tell me in your terms.

18 Q Craig, I'm not allowed to do that. I'm not
19 your attorney. And I'm not asking you for a legal
20 conclusion. I'm just asking you --

21 A I don't understand it, that's all.

22 Q Do you know of any other defendants other than
23 Ladles - James Island that you would have a claim
24 against?

25 A No, because I'm not for sure what other

1 people's policies are for sure.

2 Q In Paragraph 36, Craig, you are asserting that
3 all of the defendants have employees that are subject to
4 the tip policy your Complaint is asserting is unlawful?

5 A I think it's very unlawful. Now, I don't know
6 the law. But like I say, it's a moral issue in my
7 opinion, and hopefully it's illegal too, if that's what
8 you're asking me, sir.

9 Q Well, you're proposing -- initially when you
10 filed the suit back in February, you were proposing to
11 be a representative for all employees who --

12 A Absolutely, yes.

13 Q One second.

14 -- all employees who worked for
15 defendants in Ladles and were paid hourly wages plus
16 tips?

17 A Cash tips.

18 Q Cash tips, okay. Is it your assertion that
19 the employees who were not paid cash tips would not be
20 part of this lawsuit?

21 A I think all tips should be the employee's
22 right to keep, charge and cash.

23 Q When you received the tip payments from James
24 Island, the cash tip payments you referred to earlier,
25 did you receive a breakdown of the total collected tips

1 Q Okay.

2 A If you could explain it to me.

3 Q Well, I didn't write it, but I'm happy to say
4 what I think it says. It says, "This pattern has upon
5 information and belief been repeated for all other
6 Ladles locations." The pattern, I assume, is the not
7 paying tips.

8 A Right.

9 Q Again, as far as Ladlessoups Mount Pleasant,
10 that would not apply. You're not aware of the pattern?
11 They weren't part of that pattern?

12 A No, I am not aware.

13 Q Thank you.

14 MR. SHELBOURNE: Craig, I think I'm done.
15 Thank you very much.

16 THE WITNESS: You're welcome.

17 EXAMINATION

18 BY MR. KOON:

19 Q My name is Kerry Koon. Evan Lacke, who is
20 sitting to my left, and I represent Ladlessoups, LLC,
21 which formerly operated the Bees Ferry location; Ladles
22 Franchising, Inc.; and Suzie and Tracy Allen.

23 A Okay.

24 Q So when you answered Mr. Shelbourne's
25 questions about Paragraph 31, saying that you were

1 unaware of any group-wide policies, did that include
2 policies of Ladles Franchising, Inc.?

3 A The only thing I was aware of was Mount
4 Pleasant not following that policy, if there was a
5 policy, if that's what you are asking.

6 Q Okay. Well, you said you weren't aware of any
7 of the other restaurants having such a policy.

8 A Oh, I wasn't aware of any restaurant, yes.

9 Q Okay. So anything -- would it be fair to say
10 that your knowledge of any group-wide policy would be
11 based solely on speculation?

12 A Right.

13 Q And that would include any policy that may or
14 may not have been promulgated by Ladles Franchising,
15 Inc.; is that correct?

16 A Correct.

17 Q Now, when you received your cash tips while
18 working at James Island, was there any distinction about
19 the division of daily cash tips as to what your duties
20 had been for that day?

21 A No. Because during every given day everybody
22 literally did everything. I cleaned tables, swept
23 floors, mopped floors, cooked, cash register. The cash
24 register guy came back and cooked when I was out front.
25 Again, everybody learned every position. I thought it

1 was great everybody did that.

2 Q So there was no distinction as to cash tips
3 between the back of the staff and the front staff?

4 A Absolutely divided even, no matter who.

5 Q Now, you didn't know anything about any policy
6 promulgated by Suzie Allen other than the speculation as
7 well; is that correct?

8 A No.

9 Q Is that correct?

10 A That is correct, yes.

11 Q I will ask you the same question for Tracy
12 Allen. You don't know any policy promulgated by Tracy
13 Allen other than speculation --

14 A I don't even know who Tracy is.

15 Q Well, he's somebody you sued, but you don't
16 know whether he's related --

17 A Is Tracy her husband? If I'm correct, I think
18 that might be Suzie's husband.

19 Q Okay.

20 A Yes.

21 Q But you don't know anything about a policy he
22 promulgated?

23 A No.

24 Q Now, do you have your tax returns for the year
25 2015 and 2016?

1 A If my lawyer advises me to, I will.

2 Q Did you ever receive a paycheck from any
3 organization, company, LLC, or incorporated entity
4 connected with Ladles other than Ladles - James Island?

5 A No.

6 Q Who signed your paychecks?

7 A I have no idea. They used to come in from, I
8 think, Jersey or something.

9 Q Did you receive a W-2 form?

10 A I did.

11 Q Was it from Ladles - James Island, LLC?

12 A Sir, that I don't know.

13 Q Did you ever receive a paycheck from Ladles
14 Soups Bees Ferry location?

15 A No.

16 Q Did you ever receive a paycheck from Ladles
17 Franchising, Inc.?

18 A Only paycheck I got was Ladles - James Island.

19 Q So the answer as to whether you ever received
20 a paycheck from Ladles Franchising, Inc. is no?

21 A Correct.

22 Q In case there is any confusion, did you ever
23 receive a paycheck from an LLC known as Ladlessoups,
24 LLC, which operated formerly the Bees Ferry location?

25 A No.

1 A I'm not aware, no.

2 Q Do you know who the officers or members of
3 Ladles Soups on James Island, LLC are?

4 MR. RIDDELL: Object to the form.

5 BY MR. KOON:

6 Q You can answer.

7 A I don't know what you mean by officers.

8 Q Do you know who the owners of Ladles - James
9 Island are?

10 A The owner is Teri Owens.

11 Q Was she the ultimate boss as far as James
12 Island, Ladles Soups - James Island, LLC?

13 A Yes, sir.

14 Q Do you have any knowledge that either Sue
15 Allen or Tracy Allen have any ownership interest in
16 Ladles Soups - James Island, LLC?

17 A I have no idea.

18 Q Who did the research that identified the
19 various corporations and limited liability companies
20 that you have sued?

21 A My attorney, I'm sure.

22 Q And do you understand that each corporation
23 may have separate ownership?

24 A I understand that it's a franchise. That's
25 about all I know.

1 Q Each individual location is separately owned,
2 although some owners may own more than one location.

3 A Correct.

4 Q Is that a correct statement?

5 A I don't know.

6 MR. RIDDELL: Objection. Assumes facts not in
7 evidence. Calls for speculation.

8 BY MR. KOON:

9 Q Anything you know about the ownership of the
10 various locations is purely speculation?

11 A I don't know anything about the company,
12 period, sir, except where I worked.

13 Q Other than Teri Owens, you're not aware,
14 except by speculation, of anyone who had anything to do
15 with the tipping policy and the handling of tips at the
16 James Island location?

17 A I do not know.

18 Q In other words you are unaware?

19 A Yes.

20 Q Except by speculation?

21 A Yes.

22 Q Was every employee at the James Island
23 location in contact with customers at some point in
24 their shift?

25 MR. RIDDELL: Objection. Calls for

STATE OF SOUTH CAROLINA,

COUNTY OF CHARLESTON

CRAIG CHAPPELL, on behalf of himself and
Others similarly situated,

Plaintiff(s),

v.

Ladies Soup-James Island LLC; Ladlessoups,

LLC; Ladies Soup At Cane Bay, LLC; Ladles

Soups at Citadel Mall LLP; Ladles Soups

Calhoun LLC; Ladles Soups Cane Bay LLC;

Ladles Soups Coosaw LLC; Ladles Soups

Downtown Charleston, LLC; Ladiessoups

Fresh Fields LLC; Ladles Soups @ Freshfields

Village, LLC; Ladlessoups Mainstreet, LLC;

Ladles Soups Moncks Corner LLC; Ladles

Franchise Development, LLC; Ladles Franchising,

Inc.; Ladles Fort Mill, LLC; Ladles Knightsville

LLC; Ladles West Ashley; Teri Owens; Sue Allen,

Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke

Stan Sutton, Carol Sutton, Jack Dalter, Kellie

Henderson; Jane Doe 1-25 (Unknown Operating

Company and Management Company Owners);

John Doe 25-40 (Management Personnel).

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2018-CP-10-00785

**AFFIDAVIT OF SUE ALLEN IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2019 AUG 26 PM 12:59

FILED

Personally appeared before me, *SUE ALLEN*, who first being duly sworn, depose and say
as follows:

That I am sole member of Ladlessoups, LLC which until September 2017, operated the Ladles Soups restaurant at 3125 Bees Ferry Road, Charleston, South Carolina 29414.

I am currently the CEO of Ladles Franchising, Inc.. My husband Tracy Allen is the President.

I have never been an agent or officer of any Ladles Soups restaurant entities named in this action other than Ladlessoups, LLC.

I have never been an agent or officer of Ladles Soup- James Island, LLC, who employed the Plaintiff Craig Chappell.

Tracy Allen has never been an agent or officer of any of the Ladles Soups franchisees which are named as Defendants in this lawsuit.

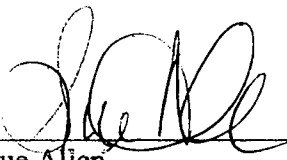
All of the Ladles Soups entities operating restaurants are franchisees of Ladles Franchising, Inc. Each of the entities are a separate and independent entity. The Ladles Soups franchises all operate independently of Ladles Franchising, Inc. and their relationship with Ladles Franchising, Inc. is solely controlled by the franchise agreement (a sample copy of which is attached hereto as Exhibit "A"). The franchise agreement does not direct or control the franchises regarding compensation policies. It does not address or direct the handling of tips in any fashion. Those matters are solely under independent control of each franchisee.

Ladles Franchising, Inc. has never employed Craig Chappell.

Ladles Franchising, Inc. does not have employees other than its own officers and agents.

Ladles Franchising, Inc. has never operated a restaurant and has never employed waiters, servers, cooks, cashiers or receptionists or any other employees who might receive tips.

Ladles Franchising, Inc. has no policy concerning the handling of tips by individual franchises.


Sue Alien

SWORN to and subscribed before me
this 16 day of August, 2019.


Printed Name of Notary: Cynthia Palmer
Notary Public for OHIO
My Commission Expires: 9-11-23

Ex. "A"

FRANCHISE AGREEMENT

BETWEEN

Ladlessoups, LLC

2345 Brevard Rd

Charleston, SC 29414

AND

_____, INC.

DATED

December _____, 2010

FOR

[RESTAURANT STREET ADDRESS]

[STATE, CITY]

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EXHIBITS:

Exhibit A: Disclosure Acknowledgment Statement/Confidentiality Agreement..... A-

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FRANCHISE AGREEMENT

THIS FRANCHISE (the "Agreement") is made and entered into as of _____, 20____ (the "Agreement Date"), by and between Ladles Franchising Inc., a South Carolina corporation, whose principal address is 2345 Brevard Road, Charleston, SC 29414 and _____ whose principal address is _____. For purposes of simplicity, we will sometimes refer to Ladles Franchising Inc. as "us", "we" or the "Company," and we will sometimes refer to you as "you" or "Franchisee."

1. INTRODUCTION AND GRANT OF FRANCHISE

A. Introduction

Through expenditure of considerable time, skill, effort and money, we have developed a system for establishing, operating and franchising distinctive, high quality restaurants ("Ladlessoups Restaurants") serving the public under the name "Ladlessoups." A Ladlessoups' Restaurant consists of all structures, facilities, appurtenances, grounds, landscaping, signs, furniture, fixtures, equipment and entry, exit, parking and other areas commonly associated with such a restaurant. The approved food, beverage and other products served and sold by Ladlesoup's Restaurants (the "Products") for consumer consumption and not for resale are prepared in accordance with our standards, specifications and secret recipes. Ladlessoup's Restaurants are established pursuant to our plans and specifications for construction, conversion, remodeling, decorating, equipment and layout, and are operated in accordance with our distinctive business formats, construction plans, inspection and consultation programs, signs, equipment, layouts, methods, specifications, standards, recipes (including soup recipes), confidential information, trade secrets, operating procedures, training programs and materials, guidance, policy statements and related materials, designs, advertising, publicity, and marketing programs and other materials (which we may modify from time to time) (collectively, the "System"). We own, use, promote and license certain trade names, trademarks, service marks and other commercial symbols, and applications related thereto, including but not limited to

"Ladlessoups" and "Ladlessoups Restaurants" (collectively, the "Marks"), and the confidential information, copyrights, and business format and related property rights which comprise the System. We may change, modify or improve the System from time to time to enhance the operations of Ladlessoups' Restaurants. All improvements and additions you, we or anyone else makes to the System, whenever made or used in connection with the system, will inure to us and become our sole property. We grant, to qualified persons, franchises to own and operate Ladlessoups Restaurants pursuant to the System selling the Products and services we authorize and approve.

B. Grant of Franchise

(1) Grant. You have applied for a franchise to own and operate a Ladlessoups Restaurant (the "Restaurant") at, and only at, the location known as: (the "Premises") and we have approved your application in reliance upon all of the representations and warranties you have made to us in connection with this Agreement, including but not limited to the information contained in your application for a franchise and, if the Restaurant is newly constructed and equipped, the representations and warranties you made to us in the Commitment Agreement between you and us dated _____, 20__ . Subject to the provisions of the Agreement, and in reliance on such representations and warranties, we hereby grant to you, effective upon the execution of this Agreement, a franchise (the "Franchise") to operate a Laddlessoups' Restaurant at the Premises, and to use the System and the Marks in operating the Restaurant, for a term of ten (10) years, beginning on the date of completion, expiration or termination of the Development Agreement between you and us dated _____, 20__, unless this Agreement is sooner terminated as provided in Section 14 of this Agreement. Termination or expiration of this Agreement will constitute a termination or expiration of the Franchise. Except as otherwise provided in the Development Agreement, you may not conduct your business pursuant to this Agreement from any location other than the Premises except upon our approval of your application for change of location, and the payment of the then current change of location fee.

(2) Best Efforts. You agree that you will at all times faithfully, honestly and diligently perform your obligations under this Agreement and that you will continuously exert, during the full term of this Agreement, your best reasonable efforts to promote and enhance the business of the Restaurant and the goodwill of the Marks and the System.

(3) Operation. You agree that you will continuously, from the date you open the Restaurant for business to the public, operate, occupy and do business in the Restaurant, 7 days a week, 365 days a year during the hours of _____ to _____ weekdays, and to _____ midnight on weekends (it being understood that the Restaurant may be closed for business while any repairs or refurbishments are being undertaken and that different hours of operation may be approved by the Vice President of Operations of the Company) and to operate the Restaurant in a manner reasonably calculated to produce the maximum volume of gross sales (as defined in Section 7C of this Agreement) and to help establish and maintain a high reputation for the Restaurant, unless the Restaurant is in the process of being replaced pursuant to the provisions of any applicable Development Agreement.

C. Rights Reserved by Company

We retain the right, subject to the exercise of good faith, in our sole and absolute discretion, to: (1) operate and grant to others the right to operate, Laddlessoups' Restaurants or other restaurants using the System or the Marks at such locations which may include locations within the Trade Area (as defined in Section 16A, unless an exclusive territory has been granted pursuant to a Development Agreement, in which case the terms of the Development Agreement will apply) and on such terms and conditions as we deem appropriate; (2) operate, and grant to others the right to operate restaurants under other trade names, trademarks, service marks and commercial symbols different from the Marks, notwithstanding the fact that such restaurants may be the same as or similar to a Laddlessoups' Restaurant; and (3) sell the Products or other products identified by the Marks or by other trademarks in any channel of distribution.

2. TRAINING

Prior to the execution of this Agreement, we have furnished you and your Restaurant Managers (each as hereinafter defined) training in the operation of a Ladlessoups' Restaurant. We will require similar training for all successors to such persons. No person shall be permitted to supervise the Restaurant until the training has been completed. The training program will include classroom instruction and field training and will be furnished at a training facility we have determined and/or at a Laddlessoups' Restaurant, and will last for such duration as we determine to be necessary.

Your Restaurant Managers must complete the training program to our reasonable satisfaction. If we, in our sole discretion, determine that any of such persons are unable to complete the training program satisfactorily, upon our request you agree to hire, as soon as practicable, a replacement who must complete our training program to our reasonable satisfaction. We may also offer such refresher or supplemental training programs to you and such persons as we, from time to time, deem appropriate at such places as we designate. By giving you prior written notice, we will have the right to require attendance at any refresher or supplemental training program by you or any of such persons.

No tuition charge will be made for required initial training programs. You will be responsible for the travel, local transportation, lodging and meal expenses, and compensation of yourself and your Restaurant Managers incurred while attending the training program and any refresher or supplemental training programs we offer to you or require you or such persons to attend. Reasonable charges may be made by us for training materials and we may require you to purchase certain equipment to be used in such training.

3. GUIDANCE

A. Guidance and Assistance

We will furnish guidance to you with respect to:

- (1) preparation, packaging, sale and delivery of Products authorized for sale at Ladlessoups' Restaurants;
 - (2) development, preparation and packaging of new Products we develop for sale at Ladlessoups' Restaurants;
 - (3) specifications, standards and operating procedures utilized by Ladlessoups' Restaurants, and any modification thereof;
 - (4) approved equipment, furniture, furnishings, signs, food products, operating materials and supplies;
 - (5) development and implementation of local advertising and promotional programs;
- and

(6) general operating and management procedures of Ladlessoups' Restaurants.

In our discretion, we will furnish this guidance and assistance to you in the form of our confidential operations manual, bulletins, written reports and recommendations, electronic mail or other written or electronic materials (all of which are hereinafter referred to as the "Operations Manual"), inspection reports for the Restaurant, refresher training programs and/or telephonic consultations at our offices or at the Restaurant. If you request, we will furnish additional guidance and assistance relative to the operation of the Restaurant at per diem fees and charges we establish from time to time. If special training of Restaurant personnel or other assistance in operating the Restaurant is requested by you, and must take place at the Restaurant, all our expenses for such training, including a per diem charge and travel, local transportation, lodging and meal expenses for our personnel, must be paid by you.

B. Operations Manual

We will loan to you during the term of the Franchise one (1) copy of the Operations Manual which may consist of multiple parts and/or volumes. The Operations Manual will contain mandatory and suggested specifications, standards and operating procedures that we prescribe from time to time for Ladlessoups' Restaurants and information relative to your obligations under this Agreement and in the operation of a Ladlessoups' Restaurant. We may modify the Operations Manual from time to time to reflect changes in the specifications, standards and operating procedures of Ladlessoups' Restaurants, to disclose information concerning new Products and services which we may develop for sale at Ladlessoups' Restaurants, to specify types, brands and models of equipment which you must utilize to produce and sell such new Products and services, and to specify changes in the decor, format, image, Products, services and operation of a Ladlessoups' Restaurant. You must keep your copy of the Operations Manual current by immediately inserting all modified pages we furnish to you and destroying the then obsolete pages. In the event of a dispute relative to the contents of the Operations Manual, the master copies we maintain at our principal office will be controlling. You may not at any time copy any part of the Operations Manual, disclose any part of it to employees or others not having a need to know its contents for purposes of operating the Restaurant, or permit its removal from the Restaurant without our prior approval. In the event a new version of the Operations Manual is provided to you, you must immediately return the then obsolete version to us. To the extent the Operations Manual contains any specification, standard or

operating procedure concerning the operation of the Restaurant, such provision shall be deemed to be incorporated into this Agreement, unless such provision conflicts with applicable laws or ordinances.

4. MARKS

A. Goodwill and Ownership of Marks

You acknowledge that we have the right to license the Marks, that the Marks are represented to be valid, and that your right to use the Marks is derived solely from this Agreement (and the Trademark License Agreement if applicable) and is limited to your operation of the Restaurant pursuant to and in compliance with this Agreement and all applicable standards, specifications and operating procedures we prescribe from time to time during the term of the Franchise. Any unauthorized use of the Marks by you will constitute a breach of this Agreement and may constitute an infringement of our rights in and to the Marks. You acknowledge and agree that all of your usage of the Marks and any goodwill established by your use of the Marks will inure to our exclusive benefit, and that this Agreement does not confer any goodwill or other interests in the Marks upon you (other than the right to operate a Ladlessoups' Restaurant in compliance with this Agreement). All provisions of this Agreement applicable to the Marks will apply to any other trademarks, service marks and commercial symbols we later develop, authorize and license you to use.

B. Limitations on Franchisee's Use of Marks

You agree to use the Marks as the sole trade identification of the Restaurant. You must also identify yourself as the independent owner of the Restaurant in the manner we reasonably prescribe. You must not use any Mark as part of any corporate or trade name or with any prefix, suffix or other modifying words, terms, designs or symbols (other than logos and additional trade and service marks we license to you under this Agreement), or in any modified form, nor may you use any Mark in connection with the performance or sale of any unauthorized services or products or in any other manner we have not expressly authorized in writing. You must prominently display the Marks in the manner we reasonably prescribe at the Restaurant, on menus and in connection with advertising and marketing materials. You must not employ any of the Marks in signing contracts, applications for licenses or permits, or in any manner that may imply our responsibility for, or result in our liability for, any of your

indebtedness or obligations, nor may you use the Marks in any way not authorized herein. You further agree to give such notices of trade and service mark registrations as we specify, and you must obtain such fictitious or assumed name registrations as may be required under applicable law.

C. Notification of Infringements and Claims

You agree to immediately notify us of any apparent infringement of or challenge to your use of any Mark, or claim by any person of any rights in any mark. You agree not to communicate with any person other than us, your counsel and our counsel in connection with any such infringement, challenge or claim. We will have sole discretion to take such action as we deem appropriate in connection with any infringement, challenge or claim, and the right to exclusively control any settlement, litigation or U.S. Patent and Trademark Office or other proceeding arising out of the alleged infringement, challenge or claim or otherwise relating to any Mark. You agree to execute any and all instruments and documents, render such assistance and do such acts and things as may, in the opinion of our counsel, be necessary or advisable to protect and maintain our interest in any litigation or other proceeding or to otherwise protect and maintain our interest in the Marks.

D. Discontinuance of Use of Marks

If it becomes advisable at any time in our reasonable judgment to modify or discontinue use of any Mark and/or for the Restaurant to use one (1) or more additional or substitute trade or service marks, you agree, at your expense, to comply with our directions to modify or otherwise discontinue the use of such Mark, and/or use one (1) or more additional or substitute trade or service marks, within a reasonable time after we give you notice.

E. Indemnification of Franchisee

We agree to indemnify you against, and to reimburse you for, and to our option, to defend you against, all damages for which you are held liable in any proceeding arising out of your use of the marks "Ladlessoups'" and "Ladlessoups' Restaurant", pursuant to and in compliance with this Agreement, and for all costs you reasonably incur in the defense of any such claim brought against you or in any such proceeding in which you are named as a party, including reasonable attorney's fees, provided that you have timely notified us of such claim or proceeding and you have otherwise

substantially complied with this Agreement. We have the right to approve any counsel employed by you in the defense of any such claim, and in the event we elect to defend any such claim, the fees and expenses of any separate counsel employed by you shall not be reimbursable.

5. RELATIONSHIP OF PARTIES/INDEMNIFICATION

A. Independent Contractors

It is understood and agreed that this Agreement does not create a fiduciary relationship between you and us, that we and you are and shall be independent contractors, and that nothing in this Agreement is intended to make either you or us a general or special agent, legal representative, joint venturer, partner or employee of the other for any purpose or to grant either you or us the right to direct or supervise the daily affairs of the other. You agree to identify yourself conspicuously in all dealings with customers, suppliers, public officials, Restaurant personnel and others as the owner of the Restaurant under a franchise granted by us. You also agree to place such other notices of independent ownership on forms, business cards, stationery, advertising and other materials as we may require from time to time. You acknowledge that no agreement we make with any third party is for your benefit. Neither we nor you will interfere with each other's contractual relations.

B. No Liability for Acts of Other Party

You agree that you will not employ any of the Marks in signing any contract, check, legal obligation, application for any license or permit, or in a manner that may imply that we are responsible, or which may result in liability to us for, any of your indebtedness or obligations. You further agree not to use the Marks in any way not expressly authorized by this Agreement. Except as expressly authorized in writing, neither we nor you may make any express or implied agreements, warranties, guarantees or representations, or incur any debt in the name of or on behalf of the other, or represent that our relationship is other than franchisor and franchisee, and neither we nor you will be obligated by or have any liability under any agreement or representations made by the other that are not expressly authorized in writing. We will not be obligated for any damages to any person or property directly or indirectly arising out of the operation of the Restaurant or your business.

C. Taxes

You agree that except for taxes which we are required to collect from you in connection with items you purchase from us, we will have no liability for any sales, use, service, occupation, excise, gross receipts, income, property or other taxes, whether levied upon you, the Restaurant, your property, use or the royalty fees which you pay to us, in connection with the sales made or business conducted by you. Payment of all such taxes will be your responsibility.

D. Indemnification

You agree, during and after the term of the Agreement, to indemnify, defend and hold us, our affiliated entities, and their and our shareholders, directors, partners, officers, employees, agents, representatives, successors and assignees harmless against and reimburse the Indemnities for all claims, obligations and damages described in Section 5B, any and all claims arising out of the use of the Marks in any manner not in accordance with this Agreement and all losses, liabilities, claims, taxes, demands, damages, causes of action, governmental inquiries and investigations, costs and expenses, including reasonable attorneys' and accountants' fees, consequently, directly and indirectly incurred, arising from, as a result of, or in connection with the operation of the Restaurant or any of your actions, errors, omissions, breaches or defaults under this Agreement or any acts or commissions alleged or proven to be a result of your negligence or willful misconduct. Except as provided above, Ladlessoups' and you shall indemnify, defend and hold each other harmless from claims, demands and causes of action asserted against the indemnitee by any person for personal injury or death or for loss of or damage to property and resulting from the indemnitor's active or passive negligence or willful misconduct. Where such injury, death, loss or damage is the result of joint active or passive negligence or willful misconduct, the duty of indemnification shall be in proportion to the allocable share of the joint active or passive negligence or willful misconduct. For purposes of this indemnification, "claims" shall mean and include all obligations, actual and consequential damages, expenses, losses, costs and other liabilities reasonably incurred in the defense of any claim against the Indemnities, including without limitation reasonable accountants', attorneys' and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses and travel, lodging and meal expenses incurred in litigation or preparation for litigation, whether or not litigation is filed. If the indemnities reasonably conclude that their

interests are not being adequately represented by your counsel, the indemnities will have the right to employ their own attorneys to defend any claim against them in the manner they deem appropriate or desirable in their sole discretion, and the indemnification hereunder shall apply to and include the costs incurred in any such defense. The obligation to indemnify the indemnities will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

6. CONFIDENTIAL INFORMATION

We possess certain confidential and proprietary information and trade secrets consisting of, but not limited to, the following categories of information, methods, techniques, procedures and knowledge we have developed (collectively, the "Confidential Information"):

- (1) methods and procedures related to the development and operation of Ladlessoups' Restaurants, whether contained in the Operations Manual or otherwise;
- (2) secret recipes of soups, menu analysis and methods of preparation of Products and services offered in Ladlessoups' Restaurants;
- (3) methods, procedures and techniques for preparing, packaging, marketing, selling and delivering Products and services offered in Ladlessoups' Restaurants;
- (4) knowledge of test programs, concepts and results relating to the planning, development and testing of the System and Products and services offered in Ladlessoups' Restaurants;
- (5) sources of purchase of food, beverages and other ingredients used by Ladlessoups' Restaurants;
- (6) marketing programs and image; and
- (7) methods, techniques, specifications, procedures, information, systems and knowledge of and experience in the development, licensing and operation of Ladlessoups' Restaurants.

We will disclose the Confidential Information to you during training, in the Operations Manual and training manuals, and in guidance and assistance furnished to

you during the term of this Agreement. You may also learn additional Confidential Information and trade secrets of ours during the term of this Agreement. You acknowledge and agree that you will not acquire any interest in the Confidential Information, other than the right to utilize it in the operation of the Restaurant, and that the use of the Confidential Information in any other business, or the disclosure of the Confidential Information to any other person or entity, would constitute an unfair method of competition with us and other Ladlessoups' Restaurant licensees.

We claim that the Confidential Information, which we have invested a substantial amount of money and time in developing, is a valuable asset of ours, includes trade secrets of ours, and will be disclosed to you solely on the condition that you agree, and you do hereby agree, that you:

- (1) will not use the Confidential Information in any other business or capacity;
- (2) will maintain the absolute secrecy and confidentiality of the Confidential Information during and after the term of this Agreement (except as authorized by this Agreement);
- (3) will not make unauthorized copies of any portion of the Confidential Information which is in written, audio, video or other reproducible form; and
- (4) will adopt and implement all reasonable procedures we prescribe from time to time to prevent unauthorized use or disclosure of the Confidential Information, including requiring your Restaurant Managers and other employees who have access to the Confidential Information to execute confidential agreements in the form we approve or prescribe prior to or during their employment. Furthermore, other than for consumption in the Restaurant or approved carry-out or retail sales programs, you agree not to sell or provide to any person or entity other than us or our designee, for use, testing or any other purpose, any mixes or formulations for preparation of Products you purchase from us or our designees.

Notwithstanding anything to the contrary contained in this Agreement, the restrictions on your disclosure and use of Confidential Information will not apply to the following: (i) information, processes or techniques which are or become generally known in the restaurant industry, other than through disclosure (whether deliberate or inadvertent) by you; and (ii) disclosure of Confidential Information in judicial or

administrative proceedings to the extent that you are legally compelled to disclose such information, provided that you have used your best reasonable efforts, and have afforded us the opportunity, to obtain an appropriate protective order or other assurance satisfactory to us of confidential treatment of the information required to be so disclosed.

You will fully and promptly disclose to us, all ideas, concepts, formulas, recipes methods and techniques relating to the development and/or operation of the Restaurant, conceived or developed by you and/or your employees during the term of this Agreement. You acknowledge that such ideas, concepts, formulas, recipes, methods and techniques shall be our sole property, and you shall not be entitled to any compensation whatsoever for the same.

7. FEES

A. Initial Franchise Fee

The initial franchise fee for your first franchise and second franchise is _____ each and the franchise fee for any additional franchises is _____ (collectively referred to as the "Fee"). The Fee is paid as follows: _____ dollars (\$ _____) upon submissions of an application for a franchise. If the application is approved, that portion of the Fee becomes non-refundable. If the application is withdrawn prior to a decision by Ladlessoups', or if the application is denied, the Fee (less Ladlessoups' costs and expenses in processing the application) is refunded without interest. _____ dollars (\$ _____) (or _____ dollars (\$ _____) in the case of the third or additional franchises) upon your execution of a Commitment Agreement ("Commitment Agreement").

B. Royalty Fee

You agree to pay to us a royalty fee equal to four percent (4%) of the Gross Sales (as defined in Subsection C of this Section) of the Restaurant. The royalty fee shall be payable by electronic funds transfer not later than the 21st day after the end of each calendar month, based on Gross Sales for the prior month. Upon the installation of an upgraded processing system by Franchisee, we may require that the royalty fee be payable by electronic funds transfer not later than the 14th day after the end of each calendar month. In any event, no default may be declared for late payment of the

royalty or marketing fees unless and until seven (7) days have elapsed from the date the payment was due.

C. Definition of Gross Sales

As used in this Agreement, the term "Gross Sales" shall mean gross sales of all food, beverage, other menu items, merchandise, and goods and other services sold or performed by or for you or the Restaurant, in, upon, or from the Premises, or through or by means of the business conducted at the Restaurant or the Premises, whether for cash or credit. Sales and service taxes collected from customers and paid to the appropriate taxing authority, all management or employee meals, and sale of cigars, cigarettes and newspapers as well as income from pay telephones shall not be included in Gross Sales. The discounted portion of menu prices whether by way of coupons, promotions or otherwise shall not be included in Gross Sales.

D. Interest on Late Payments

All royalty fees, Marketing Fund contributions (as described in Section 9 of this Agreement), amounts due for your purchases from us or our subsidiaries or affiliates, and other amounts which you owe to us or our subsidiaries or affiliates will bear interest beginning on the date due at the highest applicable legal rate for open account business credit, not to exceed one and one-half percent (1.5%) per month. This Section 7D does not constitute an agreement on our part to accept payments from you after the payments are due or our commitment to extend credit to, or otherwise finance your operation of, the Restaurant. Further, you acknowledge that your failure to pay all amounts when due may constitute grounds for termination of this Agreement, as provided in Section 14 of this Agreement, notwithstanding the provisions of this Section 7D.

E. Application of Payments

Notwithstanding your designation, we will have sole discretion to apply any of your payments to any of your past due indebtedness for initial or royalty fees, Marketing Fund contributions, purchases from us or our subsidiaries or affiliates, interest or any other outstanding indebtedness in such order and amounts as we may elect. The acceptance of a partial or late payment will not constitute a waiver of any of our rights or remedies contained in this Agreement.

8. RESTAURANT OPERATING STANDARDS

A. Condition, Appearance and Operation

Of the Restaurant

You agree that:

(1) neither the Restaurant nor the Premises will be used for any purpose other than the operation of a Ladlessoups' Restaurant in compliance with this Agreement, unless and until restaurant operations are appropriately discontinued on the site (pursuant to this Agreement or the terms of a Development Agreement);

(2) you will maintain the condition and appearance of the Restaurant, its equipment, furniture, furnishings, signs and the Premises in accordance with our specifications and standards as in effect from time to time and consistent with the image of a Ladlessoups' Restaurant as an efficiently operated business offering high quality food service and observing the highest standards of cleanliness and sanitation; and will, upon our reasonable request, add or alter such equipment in the Restaurant so as to efficiently and hygienically prepare and serve any new menu items approved for sale throughout the Ladlessoups' Restaurant system;

(3) you will perform all periodic maintenance with respect to the decor, equipment, furniture, furnishings and signs of the Restaurant and the Premises that is required from time to time to maintain such condition, appearance and efficient operation, including, without limitation:

(a) thorough cleaning, repainting and redecorating of the interior and exterior of the Premises at reasonable intervals;

(b) interior and exterior repair of the Premises; and

(c) repair or replacement of damaged, worn out or obsolete equipment, furniture, furnishings and signs.

(4) you will not make any material alterations to the Premises, or to the appearance of the Restaurant as originally developed, except as required by applicable real estate codes, local authorities or landlords, without our prior written approval, which approval shall not be unreasonably withheld;

(5) we have the right to require that you remodel, redecorate, re-equip, modernize and refurnish in a non-structural manner the Premises and the Restaurant not more than once in any five (5) year period and only after fifty percent (50%) of the Company-operated restaurants in the Ladlessoups' Restaurant system have been so remodeled, redecorated, re-equipped or modernized, to reflect any changes in Ladlessoups' Restaurants that we prescribe as our then-current standards and specifications. You understand that such remodeling, redecorating, re-equipping, modernization or refurnishing may require a substantial investment on your part and that we cannot make any guarantee of any particular return on that investment. We have the right to approve the layouts, designs, and new equipment, furniture and furnishings you use in any remodeling, redecorating and re-equipping, such approval not to be unreasonably withheld; and

(6) you will place or display at the Premises (interior and exterior) only such signs, emblems, lettering, logos and display and advertising materials that we from time to time approve, such approval not to be unreasonably withheld.

B. Restaurant Menu

You agree that the Restaurant will offer for sale all food and beverage products and services that we from time to time require. You agree that the Restaurant will sell only products that we have approved. You agree that the Restaurant will not sell any Products to any person for resale to any third person. The Restaurant must not offer for sale or sell at the Premises or any other location any unapproved products, or use the Premises for any purpose other than the operation of the Restaurant.

We have the right to approve the Restaurant's offering of Products or services on a test basis, which approval we may condition in any reasonable manner. We will have the right to stop the test at any time after its commencement, upon reasonable notice.

C. Approved Products, Distributors and Suppliers

The reputation and goodwill of Ladlessoups' Restaurants is based upon, and can be maintained only by, the sale of distinctive, high quality food products and beverages

and the presentation, packaging, service and delivery of such products in an efficient and appealing manner. We have developed various proprietary products which are prepared by or for us according to our proprietary and secret recipes and formulas. We have developed standards and specifications for food products, ingredients, seasonings, mixes, beverages, materials and supplies incorporated in or used in the preparation, cooking, serving, packaging and delivery of prepared food products authorized for sale at Ladlessoups' Restaurants. We have and will periodically approve suppliers and distributors of the foregoing products that meet our standards and requirements, including, without limitation, standards and requirements relating to product quality, prices, consistency, reliability, financial capability, labor relations and customer relations. You agree that for use in the Restaurant you will:

(1) purchase our proprietary soups, and other products developed by us from time to time pursuant to secret recipes or formulas, only from us or a third party licensed by us to prepare and sell such products; and

(2) purchase all other food products, ingredients, seasonings, mixes, beverages, materials and supplies used in the preparation of Products; menus, paper, glassware, china and plastic products; packaging or other materials, utensils and uniforms that meet our standards and specifications from suppliers we have approved.

You must at all times maintain an inventory of approved food products, beverages, ingredients and other products sufficient in quantity and variety to realize the full potential of the Restaurant.

We may approve a single distributor or other supplier for any Product and may approve a distributor or other supplier only as to certain of the Products. We may concentrate purchases with one (1) or more distributors or suppliers to obtain lower prices and/or the best advertising support and/or services for any group of Ladlessoups' Restaurants we license and/or operate. Approval of a distributor or other supplier may be conditioned on requirements relating to the frequency and delivery, standards of service, including prompt attention to complaints or other criteria, and concentration of purchases, as set forth above, and may be temporary, pending our further evaluation of such distributor or other supplier.

Notwithstanding the above, you have the right to request our approval of alternative suppliers or distributors and we will consider alternative suppliers and

distributors. Our evaluation of prospective suppliers and/or distributors will be conditioned upon payment of our reasonable evaluation costs of their products and/or services. You agree to notify us and submit to us all information, specifications and samples that we request if you propose to purchase any food products, mixes, seasonings, beverages, menus, paper, glassware, china or plastic products, packaging, uniforms or other materials or utensils from a distributor or other supplier who has not been previously approved by us. We will notify you within a reasonable time whether you are authorized to purchase such products from such distributor or other supplier.

We may, from time to time, conduct market research and testing to determine consumer trends and the marketability of new food products and services. You agree to cooperate and assist us by participating in our consumer surveys and market research programs, test marketing new food products and services in the Restaurant and providing us with timely reports and other relevant information regarding such customer surveys and market research.

You may from time to time conduct your own market research and testing to determine consumer trends and the marketability in your Trade Area of new food products or services. Prior to undertaking such market research or testing, you agree to provide us with written notice no less than thirty (30) days prior to the commencement of such research or testing for our approval of such research or testing, which approval shall not be unreasonably withheld.

D. Specifications, Standards and Procedures

You acknowledge that the operation of the Restaurant in compliance with our high standards is important to us and all other Ladlessoups' Restaurant licensees. You agree to cooperate with us by maintaining our high standards in the operation of the Restaurant. You further agree to comply with all mandatory specifications, standards and operating procedures relating to appearance, function, cleanliness, sanitation, safety, business hours, delivery services, new Products, purchasing or leasing new or different equipment for preparation and sale of new Products, compliance with the decor, format and image, including equipment, furniture, fixtures and signage, of a Laddlessoups' Restaurant. Mandatory specifications, standards and operating procedures we prescribe from time to time in the Operations Manual, or otherwise communicate to you in writing, will constitute provisions of this Agreement as if fully set forth in

this Agreement unless such provisions conflict with applicable laws or local ordinances. All references to this Agreement include all such mandatory specifications, standards and operating procedures. You agree that the Restaurant will conduct business in the ordinary course seven days a week (excluding holidays we specify if any) and 17 hours a day, except as we may otherwise authorize in writing. You acknowledge that approved restaurant hours may vary from one location to another depending on conditions in the market where the restaurant is located.

E. Compliance with Laws and Good Business Practices

You agree to secure and maintain in force in your name all required licenses, permits and certificates relating to the operation of the Restaurant. You further agree to operate the Restaurant in full compliance with all applicable laws, ordinances and regulations, including, without limitation, all government regulations relating to health and sanitation, workers' compensation insurance, unemployment insurance and withholding and payment of federal, state and local income taxes, social security taxes and sales taxes. All of your advertising must conform to applicable legal standards, be in good taste in our reasonable judgment and conform to the highest standards of ethical advertising. You agree that in all dealings with us, your customers, suppliers and public officials, you will adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct. You agree to refrain from any business or advertising practice which may be injurious to our business or to the goodwill associated with the Marks and other Laddlessoups' Restaurants.

You agree to notify us, by telephone within seventy-two (72) hours followed within five (5) days by written notification, including copies of any pleadings or process received of: (i) the commencement of any action, suit or proceeding relative to the Restaurant; (ii) the issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality which may adversely affect the operation or financial condition of the Restaurant; and (iii) any notice of violation of any law, ordinance or regulation relating to health or safety. You agree that you will not accept service of process for us and on our behalf.

F. Management and Personnel of the Restaurant

You agree that at all times you will (i) employ on terms reasonably satisfactory to us a General Manager who shall have principal operational responsibility for the

Restaurant and who shall have such qualifications and experience as we shall reasonably require and who shall have completed our training program and (ii) employ on a full-time basis a Manager and an Assistant Manager, each of whom has completed our training program (collectively, the General Manager and Manager and Assistant Manager are referred to as "Restaurant Managers"). The Restaurant shall during all business hours be under the direct on-premises supervision of a Restaurant Manager. You agree to hire all employees to maintain a neat and clean appearance and to conform to the standards of dress and/or uniforms that we specify from time to time for Ladlessoups' Restaurants. You shall not recruit or hire any of our employees or any employees of any Ladlessoups' Restaurant operated by us or by a Laddlessoups Restaurant licensee without obtaining our prior written permission or the prior written permission of the other licensee unless six months have expired since such employee's termination of employment with us or the licensee.

G. Insurance

During the term of the Franchise, you agree to comply with all insurance requirements related to the Restaurant's lease or mortgage and to maintain in force at all times, under policies of insurance issued by carriers we have approved:

(1) employer's liability and workers' compensation insurance as prescribed by applicable law;

(2) comprehensive general liability insurance (with products, completed operations and contractual liability and independent contractors and escalators coverage) and comprehensive motor vehicle liability insurance (for owned and non-owned vehicles) against claims for bodily and personal injury, death and property damage caused by or occurring in conjunction with the operation of the Restaurant (or otherwise in conjunction with your conduct of business pursuant to this Franchise) under one (1) or more policies of insurance, each on an occurrence basis, with single-limit coverage for personal and bodily injury, death and property damage of at least one million dollars (\$1,000,000.00) (or such other amount as we may reasonably require), with no less than a five million dollar (\$5,000,000.00) umbrella liability policy in force;

(3) All-risk building and contents insurance including flood and earthquake, vandalism and theft insurance for the replacement value of the Restaurant and its contents;

(4) business interruption insurance for a period adequate to reestablish normal business operations; and

(5) builders' risk insurance on a completed value non-reporting basis during the period of any remodeling of the Restaurant.

We may periodically increase the amounts of insurance you will be required to maintain, and we may require different or additional kinds of insurance at any time, including excess liability insurance, to reflect inflation, identification of new risks, changes in law or standards of liability, higher damage awards, or other relevant changes in circumstances. Each insurance policy must name us as an additional insured and must provide for thirty (30) days' prior written notice to us of any material modification, cancellation, termination or expiration of such policy.

Prior to the expiration of the term of each insurance policy, you agree to furnish us with a certificate of insurance or with a certified copy of each renewal or replacement insurance policy you will maintain for the immediately following term and evidence of the payment of the premium for the insurance policy. If you fail or refuse to maintain required insurance coverage, or to furnish satisfactory evidence of required insurance coverage and payment of the premiums we, at our option and in addition to our other rights and remedies under this Agreement, may obtain the required insurance coverage on your behalf. You must cooperate fully with us in our effort to obtain such insurance policies, promptly execute all forms or instruments required to obtain or maintain such insurance and pay to us, on demand any costs and premiums we incur.

Your obligations to maintain insurance coverage as described above will not be affected in any manner by reason of any separate insurance we maintain, nor will the maintenance of insurance relieve you of any obligation under Section 5 of this Agreement.

9. MARKETING

A. By Company

You agree that because of the value of advertising to the goodwill and public image of Ladlessoups' Restaurants, we may maintain and administer a marketing fund (the "Marketing Fund") for the marketing program that we deem necessary or appropriate, in our sole discretion. You agree to contribute to the Marketing Fund three percent (3%) of Gross Sales of the Restaurant calculated in the same manner as, and payable monthly together with, the royalty fees due under this Agreement.

You agree that we will direct all marketing programs financed by the Marketing Fund, and we will have sole discretion over the creative concepts, materials and endorsements used in the programs, and the geographic, market and media placement and allocation of the programs. You agree that the Marketing Fund may be used to pay the costs of preparing and producing video, audio and written advertising materials; administering multi-regional advertising programs, including, without limitation, purchasing direct mail and other media advertising, and employing advertising agencies to assist therewith; supporting public relations, market research, and menu development; and other advertising and marketing activities that we, in our sole discretion, deem appropriate.

The Marketing Fund will be accounted for separately from our other funds and will not be used to defray any of our general operating expenses, except for such reasonable salaries, administrative costs and overhead as we may incur in activities reasonably related to the administration of the Marketing Fund and its marketing programs including, without limitations, conducting market research and menu development, preparing advertising and marketing materials, and collecting and accounting for contributions to the Marketing Fund (including, but not limited to, attorneys' and accountants' fees and other expenses of litigation). You agree that we may spend in any fiscal year an amount greater or less than the aggregate contribution of all Ladlessoups' Restaurants to the Marketing Fund in that year and the Marketing Fund may borrow from us or from other lenders to cover deficits of the Marketing Fund or cause the Marketing Fund to invest any surplus for future use by the Marketing Fund. You authorize us to collect for the Marketing Fund any advertising or promotional monies or credits offered by any supplier based upon your purchases. All interest earned on monies contributed to the Marketing Fund will be used to pay the expenses of the Marketing Fund incurred in advertising and promotion, including the reasonable administrative expenses related thereto before other assets of the Marketing Fund are expended. We will prepare an annual statement of monies collected and costs incurred by

the Marketing Fund within one hundred twenty (120) days after the end of our fiscal year and will furnish this statement to you upon your written request. We have the right to cause the Marketing Fund to be incorporated or operated through a separate entity at such time as we deem appropriate, and if we do so, that entity will have all of our rights and duties pursuant to this Section 9A.

You understand and acknowledge that the Marketing Fund is intended to enhance recognition of the Marks and patronage of Ladlessoups' Restaurants and Ladlessoups' proprietary branded products. Although we will endeavor to utilize the Marketing Fund to develop advertising and marketing materials and programs, and to place advertising that will benefit all Ladlessoups' Restaurants, we undertake no obligation to ensure that expenditures by the Marketing Fund in or affecting any geographic area are proportionate or equivalent to the contributions to the Marketing Fund by Ladlessoups' Restaurants operating in that geographic area or that any Ladlessoups' Restaurant will benefit directly or in proportion to the contributions to the Marketing Fund from the development of advertising and marketing materials or the placement of advertising. Except as expressly provided in this Section 9A, we assume no direct or indirect liability or obligation to you with respect to our maintenance, direction or administration of the Marketing Fund. You acknowledge that we have the right and you hereby authorize us, to settle or otherwise compromise all disputes with regard to the Marketing Fund.

B. By Franchisee

Until such time as a Cooperative Marketing Fund is established and funded, you agree we may expend the marketing contribution less administrative expenses not to exceed one-half percent (1/2%) required in Section 9A in your DMA in accordance with marketing plans reviewed and approved by Ladlessoups'. Samples of any advertising and promotional material we have not prepared or previously approved must be submitted to us for approval prior to your use. You may not use any advertising or promotional materials that we have not approved or which we have disapproved. You agree to cooperate in the development of a Cooperative Marketing Fund and to coordinate any local or DMA advertising with Ladlessoups'. Local advertising programs approved by Ladlessoups' will be paid for or credited against the three percent (3%) marketing expenditure required hereunder at the option of Ladlessoups'.

C. By Cooperative

Unless your franchise is granted pursuant to a Development Agreement for an exclusive territory covering an entire DMA, Ladlessoups' reserves the right to form and you agree to join a cooperative marketing fund organized on a regional basis. Each franchisee within the affected region may contribute up to two percent (2%) of its Gross Sales to the cooperative marketing fund in addition to the marketing and advertising expense obligations under Section 9A and 9B of this Agreement. Each company operated restaurant within the region of the cooperative marketing fund shall likewise be required to contribute to the cooperative fund on a per restaurant basis equal to the franchisee's percentage of the Gross Sales contribution. Each franchised and company operated restaurant contributing to the cooperative shall have one (1) vote per restaurant in determining how the cooperative will apply the funds of such cooperative.

10. REPORTS, FINANCIAL STATEMENTS AND FINANCIAL CONDITION

Unless otherwise agreed to by us in writing, you agree to adopt the Company's financial and operational reporting chart of accounts format, as set forth in the Operations Manual or otherwise furnished to you, which may be amended from time to time. You also agree to maintain accurate books of account, governmental reports, register tapes, guest checks, daily reports and complete copies of all federal and state income tax returns, property and sales and use tax returns. Such records, reports and returns must be preserved for such periods of time as are reasonably specified by us from time to time in the Operations Manual or otherwise but not less than the minimum time prescribed by applicable law.

With respect to the operation and financial condition of the Restaurant, you agree to furnish us, in the form we from time to time prescribe:

(1) by the tenth (10th) day of each month for the preceding calendar month, a report of the Gross Sales of the Restaurant, other revenues generated at the Restaurant and other information which we may reasonably request that may be useful in connection with our marketing and other legitimate functions. This report must also include a statement computing amounts then due for royalty fees and Marketing Fund contributions and be certified by you or by your chief executive or financial officer;

(2) by the twentieth (20th) day of each month for the preceding calendar month, a profit and loss statement for the Restaurant and be certified by you or by your chief executive or financial officer;

(3) upon our request, such other data, information and supporting records for such periods as we from time to time reasonably require; and

(4) within one hundred twenty (120) days after the end of your fiscal year, a fiscal year-end balance sheet, income statement and statement of changes in financial position (cash flow) of the Restaurant for such fiscal year, reflecting all year-end adjustments (audited if available) and a statement of annual Gross Sales certifying that your Gross Sales for the immediately preceding fiscal year have been calculated and reported in compliance with the terms of this Agreement, each of which shall be certified by you or by your chief executive or financial officer.

If at any time you are delinquent in the payment of any amount owed to us or our affiliates, you agree: (1) upon our request, to furnish us income statements and balance sheets for such periods and as of such dates and all in such detail as we may request, for you and each entity affiliated with you, whether or not such entity conducts any business with the Restaurant, (2) that we may directly contact any lender, lessor, supplier or vendor for the purpose of obtaining information relating to the Restaurant and any lease or financial arrangements and you hereby authorize such persons to disclose all such information to us and, if you are an entity, you agree that we may contact any of your officers, directors, shareholders or partners for any purpose reasonably related to your undertakings contained in this Agreement and (3) to furnish, at our request, books of account, governmental reports, register tapes, guest checks, daily reports and complete copies of federal and state income tax returns, property and sales and use tax returns.

11. INSPECTIONS AND AUDITS

A. Company's Rights to Inspect the Restaurant

To determine whether you and the Restaurant are complying with this Agreement, and with specifications, standards and operating procedures we prescribe for the operation of Ladlessoups' Restaurants, we or our agents will have the right, at any reasonable time, to:

- (1) inspect the Restaurant and the Premises;
- (2) observe and video tape the operations of the Restaurant for such consecutive or intermittent periods as we deem necessary;
- (3) remove, in reasonable quantities, samples of any food and beverage product, material or other products for testing and analysis;
- (4) interview personnel of the Restaurant;
- (5) interview customers of the Restaurant; and
- (6) inspect and copy any books, records and documents relating to the operation of the Restaurant.

You agree to fully cooperate with us in connection with any such inspections, observations, videotaping, product removal and interviews. You agree to present to your customers any evaluation forms we periodically prescribe and to participate and/or request your customers to participate in any surveys performed by us or on our behalf.

B. Company's Right to Audit

We have the right at any time during the business hours, and without prior notice to you, to inspect and audit, or cause to be inspected and audited, the business records of the Restaurant and the books and records and tax returns of any entity which holds the Franchise granted under this Agreement. You must fully cooperate with our representatives and any independent accountants that we hire to conduct any such inspection or audit. If any such inspection or audit discloses an understatement of the Gross Sales of the Restaurant, you agree to pay to us, within fifteen (15) days after receipt of the inspection or audit report, the royalty fees and Marketing Fund contributions due on the amount of such understatement, plus interest (at the rate and on the terms provided in Section 7D of this Agreement) from the date originally due until the date of payment. Further, in the event such inspection or audit is made necessary due to your failure to furnish us with reports, supporting records, other information or financial statements, as required by this Agreement, or to furnish such reports, records, information or financial statements on a timely basis, or if an understatement of Gross Sales for the period of any audit is determined by any such audit or inspection to be greater than two percent (2%), you agree to reimburse us

promptly upon notice for the cost of the inspection or audit, including, without limitation, the charges of attorneys and independent accountants, and the reasonable travel, lodging and meal expenses and applicable per diem charges for our employees. The forgoing rights will be in addition to all other remedies and rights that we may have under this Agreement or under applicable law.

12. TRANSFER OF FRANCHISE

A. By Company

This Agreement is fully transferable by us and will inure to the benefit of any transferee or other legal successor to our interests in this Agreement.

B. Franchisee May Not Transfer Without Approval of Company

The rights and duties created by this Agreement are personal to you. We have granted the Franchise to you in reliance upon the individual and collective character, skill, aptitude, attitude, and business ability of the persons who will be engaged in the ownership and management of the Restaurant, your financial capacity and the representations and warranties made to us in the application and the Commitment Agreement, if applicable, and the representations, warranties and covenants contained in this Agreement. Accordingly, neither this Agreement nor the Franchise (or any interest therein), nor any part or all of the ownership of Franchisee (if an entity) or the Restaurant (or any interest therein), may be transferred, directly or indirectly, except by operation of legal merger with your corporate parent or other affiliate (subject to the successor merged entity having a net worth equal to the net worth of the Franchisee and corporate parent on the effective date hereof) without our prior written approval, and any attempted transfer without our prior written approval will constitute a breach of this Agreement and convey no rights to or interests in this Agreement or the Franchise. As used in this Agreement the term "transfer" means and includes the voluntary, involuntary, direct or indirect assignment, sale, gift, pledge, grant of security interest or other transfer by you of any interest in: (i) this Agreement or any related agreement between you and us; (ii) the Franchise; (iii) the Franchisee; (iv) the Restaurant or (v) the Premises. This Section 12B shall not apply to any interest in the Restaurant or the Premises conditionally transferred to any bona fide lender as collateral security for any loans to you or to any financing or refinancing structured as a sale-leaseback, provided that upon the sale of the

Restaurant, it is simultaneously leased back pursuant to a Lease Agreement which is subject to our rights under this Agreement.

C. Right of First Refusal

If at any time during the term of this Agreement and for a period of one (1) year thereafter, any interest in this Agreement or the Franchise is proposed to be sold, the seller shall obtain a bona fide, executed, written offer from a responsible and fully disclosed purchaser and shall submit an exact copy of such offer to us along with any other information that we may reasonably request to evaluate the offer and the identity of the proposed purchaser shall be disclosed to us. We shall have the right, exercisable by written notice delivered to you within thirty (30) days after the date of delivery of an exact copy of such offer and all requested information to us, to purchase such interest for the price and on the terms and conditions contained in such offer. Regardless of the terms of the offer, we may, in our discretion, structure the transaction as an asset purchase, rather than a stock purchase and to substitute cash for securities or other property as consideration. If less than the entire interest in this Agreement or the Franchise is proposed to be sold, we shall have the right to purchase the entire interest for a price equal to the proposed price plus a pro-rata increase based on the value of the interest to be purchased. Our credit shall be deemed equal to the credit of any proposed purchaser and we shall have not less than ninety (90) days to prepare for closing. We shall be entitled to all representations and warranties given by the seller to the proposed buyer. We shall not be obligated to pay any finder's or broker's fee or commission.

If we do not exercise our right of first refusal, the sale or other transfer may be completed pursuant to and on the terms of such offer, subject to our approval of the transfer as otherwise provided in this Agreement; provided, however, that if the proposed sale or other transfer is not completed within one hundred eighty (180) days after delivery of such offer to us, or if there is any change in the terms of the proposed transaction, we shall have an additional right of first refusal for an additional thirty (30) days.

Our right of first refusal shall not apply to the sale or transfer of an interest in this Agreement or the Franchise, to a member of Franchisee's immediate family or, if Franchisee is an entity, between or among the owners of Franchisee or their affiliates provided that such transfer is otherwise permissible under this Agreement.

D. Conditions for Approval of Transfer

The proposed transferee and its owners (if the proposed transferee is an entity) must meet our then applicable standards for Ladlessoups' Restaurant licensees. In addition, if the transfer is one of a series of transfers which in the aggregate constitute the transfer of the Franchise, all of the following conditions must also be met prior to, or concurrently with, the effective date of the transfer:

(1) the transferee must have sufficient business experience, aptitude and financial resources to operate the Restaurant;

(2) prior to the effective date of the transfer, you or the transferee must pay all royalty fees, Marketing Fund contributions and all other amounts owed to us or our subsidiaries and affiliates, which are then due and unpaid, and cure all defaults under this Agreement or any other agreement between you and us to our satisfaction (or make provision for their cure satisfactory to us);

(3) the transferee and its management personnel must have completed our training program to our satisfaction;

(4) the transferee must apply for a new license agreement in accordance with our then current standards for a term equal to the remaining term of this Agreement or for a full term. If the application is approved, we and the transferee will enter into a commitment agreement to govern the operation of the Restaurant until commencement of the new license agreement, provided that the transferee upgrades and modernizes the Restaurant to our then-current standards and meets the other requirements of the commitment agreement;

(5) you or the transferee must pay us the then current transfer fee to defray expenses incurred by us in connection with the transfer;

(6) you, and if you are an entity (and have signed the Entity Addendum (the "Entity Addendum")), your owners, officers and directors must execute a general release, in a form satisfactory to us, of any and all existing claims against us, our subsidiaries and affiliates, and our and their officers, directors, partners, employees and agents;

(7) we must approve the material terms and conditions of such transfer, including, without limitation, our determination that the price and terms of payment are not so

burdensome as to adversely affect the subsequent operation or financial results of the Restaurant;

(8) you and any guarantors must execute a non-competition covenant in favor of us and the transferee, containing the terms contained in Section 16A;

(9) the less or and lender, if any, of the Premises must give you its or their advance written consent to the transfer of the Premises, if required, and you must provide us with a copy of such consent; and

(10) you and any guarantors must guarantee the transferee's financial obligations to us in its commitment agreement and license agreement for two years from the date of transfer.

If the proposed transfer is to or among owners of you, subsection (5) of the above requirements shall not apply.

E. Transfer to a Wholly-owned Entity

If you are in full compliance with this Agreement, we will not unreasonably withhold our approval of a transfer to an entity which conducts no business other than the Restaurant (or other Ladlessoups' Restaurants), which is actually managed by you and in which you maintain management control and own and control one hundred percent (100%) of the equity and voting power of all issued and outstanding securities, provided that you (i) guarantee, in accordance with our then current form, the performance of such transferee's obligations under this Agreement, and (ii) execute our current form of Entity Addendum. Transfers of interests in such entity will be subject to the other provisions of this Section

12.

F. Effect of Consent to Transfer

Our consent to a transfer of this Agreement, the Franchise, the Restaurant or an interest in you will not constitute a waiver of any claims we may have against you (or your owners if you are an entity), nor shall it be deemed a waiver of our right to demand exact compliance with any of the terms or conditions of this Agreement by the transferee.

13. CONDEMNATION AND CASUALTY

You must give us immediate notice in writing of any proposed taking of the Restaurant or the Premises by eminent domain. If we agree that the Restaurant or the Premises (or substantial parts thereof) will be taken, we will give due and prompt consideration to transferring the License to a nearby location which you select within two (2) months of the taking. If we approve the location and authorize the transfer, and if you open a new restaurant at such location in accordance with our specifications within eighteen (18) months if the new restaurant does not have a drive-thru, or if the new restaurant does have a drive-thru, within two (2) years of the closing of the Restaurant, the new restaurant will henceforth be deemed to be the Restaurant under this Agreement. If a condemnation takes place and the new restaurant does not, for whatever reason, become the Restaurant under this Agreement in strict accordance with this Section 13 (or if it is reasonably evident that such will be the case), the Franchise and this Agreement will terminate as provided for in Section 14.

If the Restaurant is damaged by fire or other casualty, you will expeditiously repair the damage. If the damage or repair requires closing the Restaurant, you will immediately notify us, will repair or rebuild the Restaurant in accordance with our standards, will commence reconstruction within four (4) months after closing, and will reopen the Restaurant for continuous business operations as soon as practicable but in no event later than twelve (12) months after closing of the Restaurant, giving us ample advance written notice of the date of reopening. If the Restaurant is not reopened in accordance with this Section 13, the Franchise and this Agreement will terminate as prescribed in Section 14.

Nothing in this Section 13 will extend the term of this Agreement but you will not be required to pay us any royalty fee or Marketing Fund contribution payments for periods during which the Restaurant is closed by reason of condemnation or casualty.

14. TERMINATION OF THE FRANCHISE

A. Unless cured to our satisfaction, this Agreement shall terminate 30 days from the date notice is given to you in accordance with Section 19, if you or any guarantor:

(1) fail to report accurately the Gross Sales of the Restaurant or fail to make payments of any amounts due to us for royalty fees, Marketing Fund contributions, or any other amounts due to us, our affiliates or our subsidiaries;

(2) fail to comply with any other provision of this Agreement or any mandatory specification, standard or operating procedure we prescribe, unless such failure cannot reasonably be corrected within such thirty (30) day period and you undertake within ten (10) days after such written notice is delivered to you, and continue, efforts to bring the Restaurant and the Premises into full compliance, and furnish proof acceptable to us of such efforts and the date by which full compliance will be achieved;

(3) you or any person controlling you, controlled by you, or under common control with you is in default of any other agreement with us (for purposes of this clause control means the ownership by a person or entity, directly or indirectly, of ten percent (10%) or more of another person or entity or the power to affect the policies of another person or entity);

(4) in our good faith reasonable judgment, fail to use your reasonable efforts employ on a full time basis qualified Restaurant Managers with qualifications and experience acceptable to us.

(5) if you violate the Continuous Operation covenant set forth in Section 1B(3) of this Agreement, or there are three (3) or more breaches of any duration during any twelve-month period.

B. Unless we have notified you in writing to the contrary after discovering the relevant facts, this Agreement will terminate automatically and immediately without further action by us or notice to you, if you:

(1) become insolvent or are unable to pay your or their debts as they mature or make an assignment for the benefit of creditors or an admission of inability to pay obligations as they become due or file a voluntary petition in bankruptcy or any pleading seeking any reorganization, liquidation, dissolution or composition or other settlement with creditors under any law, or admit or fail to contest the material allegations of any such pleading filed against you, or are adjudicated a bankrupt or insolvent or a receiver or other custodian is appointed for a substantial part of your assets or the Restaurant or a final judgment remains unsatisfied or of record for ninety (90) days or longer (unless a supersedeas bond is filed), or if execution is levied against any substantial part of your assets or a tax levy is made, or suit to foreclose any lien or mortgage against you or the Restaurant is instituted and is not dismissed within ninety (90) days, or if a substantial part of your real or personal

property is sold after levy of judgment thereupon by any sheriff, marshal or constable, or the claims of your creditors are abated or subject to a moratorium under any law;

(2) except as provided in Section 13, discontinue operating the Restaurant as a Ladlessoups' Restaurant, or abandon, surrender or transfer control of the Restaurant without our prior approval;

(3) have made any material misrepresentation or omission in the application for the Franchise or in the Commitment Agreement or in this Agreement or in any other material submitted to us on which we have relied in determining whether to grant you the Franchise.

(4) are, or are discovered to have been, convicted of or plead no contest to a felony, or other crime or offense that is likely to have a material adverse effect on your reputation or the reputation of the Company, the System, or the Restaurant;

(5) make or attempt to make an unauthorized transfer in violation of Section 12;

(6) make any unauthorized use or disclosure of any Confidential Information or any portion of the Operations Manual;

(7) lose the right to possession of the Premises or a substantial part thereof, whether or not due to your fault, except as otherwise provided in Section 13 of this Agreement regarding condemnation and casualty;

(8) take action toward dissolving or liquidating the entity owning the Franchise, or any such action is taken against you, without providing us advance written notice or complying with Section 12 of this Agreement;

(9) deny our representatives the right to enter and inspect the Restaurant or to examine or audit its books and records pursuant to Section 11B of this Agreement;

(10) make any unauthorized use of the Marks or contest in any court or proceeding our ownership of the Marks or the System or any part thereof;

(11) fail on three (3) or more separate occasions, for which notices of default were given, within any period of twelve (12) consecutive months to comply with this Agreement whether or not such failures to comply are corrected after notice of default is given, or fail on two (2) or more separate occasions, for which notices of default

were given, within any period of twelve (12) consecutive months to comply with the same obligation under this Agreement whether or not such failures to comply are corrected after notice of default is given;

(12) you breach a material obligation, representation or warranty contained in this Agreement and such breach by its nature cannot be cured; or

(13) have made any material misrepresentation to us regarding your organizational or financial structure or financial condition.

In any judicial proceeding in which the validity of termination is at issue, we will not be limited to relying on the reasons for termination which are set forth in any notice sent to you in accordance with this Section 14.

C. You may terminate this Agreement at any time by giving us at least twelve (12) but not more than fifteen (15) months written notice.

D. Our rights to terminate this Agreement are in addition to all rights or remedies available at law or in equity in case of any breach, failure or default, or threatened breach, failure or default, all of which rights and remedies shall be cumulative and not alternative.

15. DAMAGES

Except as otherwise provided in this Agreement, if this Agreement and the Franchise granted hereby terminate under any of the provisions of Section 14 of this Agreement, you agree to promptly pay us (as liquidated damages for the loss of the benefit bargained for in this Agreement due to premature termination only, and not as a penalty or as damages for breaching this Agreement or in lieu of any other payment) a lump sum equal to the royalty fees and Marketing Fund contributions payable to us during the thirty-six (36) calendar months immediately preceding the termination. In the event the Restaurant shall not have been open for thirty-six (36) months prior to termination, the monthly average of such payments during such shorter period shall be multiplied by thirty-six (36) for purposes of this section. In the event there are fewer than thirty-six (36) months remaining in the term hereof, the amount that you agree to pay shall be equal to the number of months remaining in the term of this Agreement multiplied by the average monthly royalty fees and Marketing Fund contributions payable to us during the thirty-six (36) months immediately preceding

termination. In no event shall the damages for the termination of this Agreement, if any, exceed the greater of the liquidated damages set forth above or the actual damages proven by Ladlessoups'.

If we are unable to determine the amount payable to us by you by reason of your failure to submit some or all of your Gross Sales reports as required pursuant to Section 10 of this Agreement, you agree that we may estimate the Gross Sales of your Restaurant for the applicable periods described above for the purpose of computing the amount payable to us by you under this Section 15.

16. COVENANT NOT TO COMPETE; RIGHTS AND OBLIGATIONS OF COMPANY AND LICENSE
UPON TERMINATION OR EXPIRATION OF THE LICENSE

A. Covenant Not to Compete

You acknowledge and agree that we have invested a substantial amount of time and money in developing the System, the Marks, and the Confidential Information and that we would be unable to protect our System, the Marks, Confidential Information and trade secrets against unauthorized use or disclosure and would be unable to encourage a free exchange of ideas and information among us or our licensees if prospective licensees or licensees were permitted to hold interests in or perform services for any competing business and that the following restrictions are reasonably required in order to protect our information, marketing strategies, operating policies and other elements of the System from unauthorized appropriation. Therefore, you agree that during the term of this Agreement, you will not have any direct or indirect or beneficial interest or perform services as an officer, director, manager, employee or consultant or otherwise for or in any business which owns, operates, licenses, franchises or develops any restaurant concept which both (i) has sit down, table service, and (ii) is a mid-scale priced, family style restaurant, fast-food shop including but not limited to Zoup!, Soup Nazi, or similar. Notwithstanding the above, a restaurant concept which is a low to mid-scale priced family style restaurant will be deemed competitive if soup comprises more than five percent (5%) or more of the sales mix as measured on any six (6) month basis. You further agree that for a period of two (2) years after the termination or expiration of this Agreement, you and all of such persons will be subject to the same restriction on competing activities within the trade area (the "Trade Area") of the Restaurant or within the trade area (as reasonably

determined by us) of any Ladlessoups' Restaurant operated currently by us or any other licensee of ours, but in no event within a radius of three (3) miles from any such restaurant. You and all of such persons also agree during such periods of time not to offer to employ or employ any person who is then employed by us, our affiliates or any other licensee. You acknowledge and agree that the Trade Area is an area equal to a three (3) mile radius with its epicenter at the Restaurant.

You acknowledge that the determination of the Trade Area is based on many factors, some of which are subjective, and that the Trade Area as described in this Agreement is reasonable under the circumstances. The restrictions of this Section shall not be applicable to the ownership of a Ladlessoups' Restaurant operated pursuant to a License Agreement with us, to the ownership of shares of a class of securities listed on a stock exchange or traded on the over-the-counter market that represent five percent (5%) or less of the number of shares of that class of securities issued and outstanding, or to the ownership or operation of any restaurant franchised by Wendy's International to your corporate parent or affiliate.

You further acknowledge that this Agreement does not confer any rights of exclusivity on you with respect to your operation of a Laddlessoups' Restaurant within the Trade Area and will not prevent us from placing another Laddlessoups' Restaurant or other food service establishment within the Trade Area.

B. Payment of Amounts Owed to Company

You must pay to us within fifteen (15) days after the effective date of termination or expiration of this Agreement, or such later date that the amounts due to us are determined, all royalty fees, Marketing Fund contributions, amounts owed for your purchases from us or our subsidiaries and affiliates, predecessors, successors and assigns, interest due on any of the foregoing, and all other amounts owed to us or our subsidiaries and affiliates under this Agreement or otherwise.

C. Marks and System

You agree that immediately after the termination or expiration of this Agreement, you will:

(1) not directly or indirectly at any time or in any manner identify yourself or any business as a current or former Ladlessoups' Restaurant, or as a franchisee or

licensee of, or as otherwise associated with us, or use any Mark or any colorable imitation thereof in any manner or for any purpose, or utilize for any purpose any trade name, trade or service mark or other commercial symbol that suggests or indicates a connection or association with us;

(2) remove from the Premises, discontinue using for any purpose and return to us (or with our consent, destroy) any and all signs, menus, fixtures, furniture, furnishings, equipment, advertising, materials, stationary supplies, forms or other articles that display or contain any Mark or that otherwise identify or relate to a Laddlessoups' Restaurant;

(3) remove all Marks that are affixed to uniforms and/or, at our direction, cease to use all uniforms that have been used in the Restaurant;

(4) take such action as may be required to cancel all fictitious or assumed name or equivalent registrations relating to your use of any Mark;

(5) change the telephone number of the Restaurant and instruct all telephone directory publishers to modify all telephone directory listings of the Restaurant associated with any Marks when the directories are next published;

(6) take such action to alter the physical interior and exterior decor of the Restaurant as will effectively de-identify and distinguish the Premises from the System; and

(7) furnish to us, within thirty (30) days after the effective date of termination or expiration, evidence satisfactory to us of your compliance with the foregoing obligations.

In the event that you fail to take such actions as required above to our satisfaction within the thirty (30) days to termination or expiration of this Agreement, you grant us the right to enter the Premises to remove all items bearing the Marks and take such actions as we deem necessary to de-identify the Restaurant from the System without committing any trespass or incurring any liability for such actions. You acknowledge and agree that you will be responsible for all costs and expenses that we incur in taking such actions.

D. Confidential Information

You agree that upon termination or expiration of this Agreement, you will immediately cease to use in any business or otherwise any of our Confidential Information disclosed to, or otherwise learned or acquired by you, and that you will return to us all copies of the Operations Manual and all other Confidential Information which we have loaned or made available to you or which is otherwise in your possession. You must also provide us with any and all supplies of our proprietary frozen desserts and toppings for which you will be compensated at the lower of their costs or market value.

E. Continuing Obligations

All obligations of the Company and Licensee which expressly or by their nature survive the expiration or termination of this Agreement shall continue in full force and effect subsequent to and notwithstanding its expiration or termination and until they are satisfied in full or by their nature expire.

17. RENEWAL OF FRANCHISE

You understand that you have the conditional right to renew this Agreement one time to operate the Restaurant in the System for ten (10) years beyond the expiration date provided for in this Agreement. However, if you desire to obtain a new license upon the expiration of this Agreement, you must apply to us for a new license agreement at least ninety (90) days, but not more than twelve (12) months, before expiration of the term of this Agreement. Upon payment of a renewal fee, which will not exceed our then standard initial license fee, we will process your application in good faith and in accordance with our procedures, criteria and requirements regarding upgrading of facilities, credit, market feasibility and related criteria then being applied by us in issuing new licenses to use the System. If you fulfill our upgrading and other then-current requirements, we will grant you a new license in the form of agreement then in use by us. If you are granted a new license, you (and if you are an entity, your owners) will be required to execute a general release, in a form satisfactory to us, of any and all claims against us and our subsidiaries, affiliates, partners, agents, employees, representatives and servants, including claims arising under this Agreement and federal, state and local laws, rules and regulations. If you are not granted a new license, we will return the renewal fee less expenses incurred in processing your application.

During the pendency of your application for the issuance of a new license, royalty fees and Marketing Fund contributions will be paid at the rate specified in this Agreement. Upon issuance of the new license agreement, fees must be paid at the rates specified in the new license agreement, which may be greater than the rates specified in this Agreement.

18. ENFORCEMENT

A. Severability and Substitution of Valid Provisions

Except as expressly provided to the contrary, each section, paragraph, term and provision of this Agreement, and any portion thereof, shall be considered severable and if, for any reason, any such provision of this Agreement is held to be invalid, contrary to, or in conflict with any applicable present or future law or regulation in a final, unappealable ruling issued by any court, agency or tribunal with competent jurisdiction in a proceeding to which we are a party, that ruling shall not impair the operation of, or have any other effect upon, such other portions of this Agreement as may remain otherwise enforceable, all of which shall continue to be given full force and effect and bind the parties to this Agreement, although any portion held to be invalid shall be deemed not to be a part of this Agreement from the date the time for appeal expires, if you are a party thereto, or otherwise upon your receipt of a notice of non-enforcement thereof from us. To the extent that any provision of Section 12D(8) or Section 16A is deemed unenforceable by virtue of its scope in terms of area, business activity prohibited and/or length of time, but could be made enforceable by reducing any or all thereof, you and we agree that such provisions shall be enforced to the fullest extent permissible under the laws and public policies applied in the jurisdiction in which enforcement is sought. If any applicable and binding law or rule of any jurisdiction requires a greater prior notice of the termination of or refusal to renew this Agreement, than is required in this Agreement, or if under any applicable and binding law or rule of any jurisdiction, any provision of this Agreement or any specification, standard or operating procedure we prescribe is invalid or unenforceable, the prior notice and/or other action required by such law or rule shall be substituted for the comparable provisions of this Agreement, and we will have the right, in our sole discretion, to modify such invalid or unenforceable provision, specification, standard or operating procedure to the extent required to be valid and enforceable. You agree to be bound by any promise or covenant imposing the maximum duty permitted by law which is contained within the terms of any provision of this

Agreement, as though it were separately articulated in and made a part of this Agreement, that may result from striking from any of the provisions of this Agreement, or any specification, standard or operating procedure that we prescribe, any portion or portions which a court may hold to be unenforceable in a final decision to which we are a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court order. Such modifications to this Agreement shall be effective only in such jurisdiction, unless we elect to give them greater applicability, and shall be enforced as originally made and entered into in all other jurisdictions.

B. Waiver of Obligations

You and we may by written instrument unilaterally waive or reduce any obligation of or restriction upon the other under this Agreement, effective upon delivery of written notice thereof to the other or such other effective date stated in the notice of waiver. Any waiver granted by us shall be without prejudice to any other rights we may have, will be subject to continuing review by us, and may be revoked, in the good faith exercise of our sole discretion, at any time and for any reason, effective upon delivery to you of ten (10) days' prior written notice. You and we shall not be deemed to have waived or impaired any right, power or option reserved by this Agreement (including, without limitation, the right to demand strict compliance with every term, condition, and covenant herein, or to declare any breach thereof to be default and to terminate the License prior to the expiration of its term), by virtue of any custom or practice of the parties at variance with the terms hereof; any failure, refusal, or neglect by you or us to exercise any right under this Agreement or to insist upon exact compliance by the other with its obligations hereunder, including, without limitation, any mandatory specification, standard, or operating procedure; any waiver, forbearance, delay, failure, or omission by us to exercise any right, power, or option, whether of the same, similar or different nature, with respect to any other Ladlessoups' Restaurant; or the acceptance by us of any payments from you after any breach by you of this Agreement.

C. Force Majeure

Neither you nor we shall be liable for loss or damage or deemed to be in breach of this Agreement if a failure to perform particular obligations results from: (i) transportation shortages, inadequate supply or unavailability from the manufacturers

or suppliers of equipment, merchandise, supplies, labor, material, or energy, or the voluntary surrender of the right to acquire or use any of the foregoing in order to accommodate or comply with the orders, requests, regulations, recommendations, or instructions or any federal, state or municipal government or any department or agency thereof; (ii) compliance with any law, ruling, order, regulation, requirement or instruction of any federal, state or municipal government or any department or agency thereof; (iii) acts of God; (iv) fire, strikes, embargos, war or riot; or (v) any other similar event or cause.

Any delay resulting from any of such causes shall extend the time for performance or excuse performance, in whole or in part, as may be reasonable, except that such causes shall not excuse payments of amounts owed at the time of such occurrence or payment of any amounts due thereafter.

D. Injunctive Relief

You agree that we will have the right to preliminary injunctive relief to restrain any conduct by you in the development or operation of the Restaurant that could materially damage the goodwill associated with the System, the Marks and Ladlessoups' Restaurants. You further agree that we will not be required to post a bond to obtain injunctive relief.

E. Rights of Parties Are Cumulative

Your and our rights under this Agreement are cumulative and no exercise or enforcement by you or us of any right or remedy hereunder shall preclude the exercise or enforcement by you or either of us of any right or remedy hereunder or which you or we are entitled by law to enforce.

F. Costs and Attorneys' Fees

In any proceeding by either party to enforce or interpret any provision of this Agreement, or appeal thereof, the party prevailing in such proceeding shall be entitled to reimbursement of its costs and expenses, including but not limited to, reasonable accounting and attorneys' fees. Attorneys' fees shall include, without limitation, reasonable legal and expert witness fees, cost of investigation and proof of facts,

court costs, other litigation expenses and travel and living expenses, whether incurred prior to or in preparation for or in contemplation of the filing of any written demand or claim, action, hearing or proceeding. In any such proceeding involving more than one (1) allegation, issue or provision of this Agreement under circumstances where neither party prevails on all allegations or issues, the presiding court or other body may apportion costs and expenses between the parties.

G. Governing Law

EXCEPT TO THE EXTENT GOVERNED BY THE UNITED STATES TRADEMARK ACT OF 1946 OR THE FEDERAL LAW, THIS AGREEMENT AND THE LICENSE SHALL BE GOVERNED BY THE LAWS OF THE STATE OF SOUTH CAROLINA WITHOUT REGARD TO CONFLICT OF LAWS RULES.

H. Waiver of Punitive/Exemplary Damages:

Limitations of Actions

THE PARTIES HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT OR CLAIM TO ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER AND AGREE THAT IN THE EVENT OF A DISPUTE BETWEEN THEM EACH SHALL BE LIMITED TO THE RECOVERY OF ANY ACTUAL DAMAGES SUSTAINED. ANY AND ALL CLAIMS, EXCEPT CLAIMS FOR MONIES DUE US OR OUR AFFILIATES, ARISING FROM OR RELATING TO THIS AGREEMENT OR THE RELATIONSHIP AMONG THE PARTIES SHALL BE BARRED UNLESS AN ACTION OR LEGAL PROCEEDING IS COMMENCED WITHIN ONE (1) YEAR FROM THE DATE THE CLAIMANT KNEW OR SHOULD HAVE KNOWN OF THE FACTS GIVING RISE TO SUCH CLAIMS.

I. Venue and Jurisdiction

YOU AGREE THAT WE MAY INSTITUTE ANY ACTION AGAINST YOU TO ENFORCE THE PROVISIONS OF THIS AGREEMENT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE COUNTY OF CHARLESTON, STATE OF SOUTH CAROLINA AND YOU IRREVOCABLY SUBMIT TO THE JURISDICTION AND VENUE OF SUCH COURTS AND WAIVE ANY OBJECTION YOU MAY HAVE TO EITHER THE JURISDICTION OR VENUE OF SUCH COURTS. YOU AGREE THAT ANY ACTION BROUGHT BY YOU TO ENFORCE ANY PROVISION OF THIS AGREEMENT WILL BE BROUGHT AND MAINTAINED ONLY IN A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF SOUTH CAROLINA.

J. Waiver of Jury Trial

THE PARTIES HEREBY IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF THEM.

K. Binding Effect

This Agreement is binding upon the parties hereto and their respective executors, administrators, heirs, assigns and successors in interest, and shall not be modified except by written agreement signed by both you and us.

L. Interpretation

The preambles and exhibits are a part of this Agreement, which together with the Commitment Agreement and the Development Agreement, if any, constitutes the entire agreement of the parties, and there are no other oral or written understandings or agreements between the Company and the Franchisee relating to the subject matter of this Agreement except for the Commitment Agreement, certain portions of which survive the execution and delivery of this Agreement. In the event of a conflict between this Agreement and the Commitment Agreement (if applicable), the provisions of this Agreement shall control. In the event of a conflict between this Agreement and the Purchase and Sale Agreement or the Development Agreement, the provisions of the Purchase and Sale Agreement shall first control the interpretation, with the Development Agreement also superseding this Agreement. This Agreement may be modified only by a writing signed by both you and us. Nothing in this Agreement is intended, nor shall be deemed, to confer any rights or remedies upon any person or legal entity not a party hereto. Except where this Agreement expressly obligates the Company to reasonably approve or not unreasonably withhold its approval of any action or request of the Franchisee, the Company has the absolute right to refuse any request by the Franchisee or to withhold its approval of any action or omission by the Franchisee. The headings of the several sections and paragraphs hereof are for convenience only and do not define, limit or construe the contents of such sections or paragraphs. The term "attorneys' fees" shall include, without limitation, reasonable legal fees, whether incurred prior to, in preparation for or in contemplation of the filing of any written demand or claim, action, hearing or proceeding, including appellate proceedings, to enforce the obligations of this Agreement. The term "family member" as used herein refers to parents, spouses, offspring and siblings, and the spouses of parents and siblings. The term "affiliate" as used herein means any person or entity that directly or indirectly owns or controls, or is owned or controlled by, or is under

common ownership or control with, another person or entity. References to a "controlling interest" in the Franchisee means fifty-one (51%) or such lesser percentage that may have the power to control the management and affairs of the Restaurant or the Licensee. The term "Franchisee" as used herein is applicable to one (1) or more persons, a corporation or a partnership or other entity, as the case may be, and the singular usage includes the plural and the masculine and neuter usages include the other and the feminine. If two or more persons are at any time the Franchisee hereunder, whether or not as partners or joint venturers, their obligations and liabilities to the Company shall be joint and several. This Agreement may be executed in counterparts, each of which shall be deemed an original.

M. Time

Time is of the essence of this Agreement

19. NOTICES AND PAYMENTS

All written notices and reports permitted or required to be delivered hereunder shall be deemed so delivered at the time delivered by hand, the day of transmission by facsimile or other electronic system, one (1) business day after being placed in the hands of a commercial courier service for overnight delivery, or three (3) business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid and addressed to the party to be notified at its most current principal business address of which the notifying party has been notified. All payments and reports required by this Agreement shall be directed to the Company at the address notified to the Franchisee from time to time, or to such other persons and places as the Company may direct from time to time. Any required payment or report not actually received by the Company during regular business hours on the date due (or postmarked by postal authorities at least two (2) days prior thereto) shall be deemed delinquent.

20. ACKNOWLEDGEMENTS

Contemporaneously with the execution of this Agreement, you have carefully reviewed and executed the Disclosure Acknowledgement Statement attached and incorporated into this Agreement as Exhibit A.

You acknowledge that, due to the length of time we have been granting licenses to operate Ladlessoups' Restaurants or other food service concepts using the Marks, there is more than one form of license agreement in effect between us and our various licensees and that such agreements contain provisions that may be materially different from the provisions contained in this Agreement and that you are not entitled to rely on any provision of any other such agreement, whether to establish course of dealing, waiver, estoppel or for any other purpose.

IN WITNESS WHEREOF the parties hereto have executed and delivered this Agreement as of the Agreement Date.

FRANCHISOR:

FRANCHISEE:

Ladlessoups' Franchising Inc.

By: _____

By: _____

Its: _____

Its: _____

STATE OF SOUTH CAROLINA,

COUNTY OF CHARLESTON

CRAIG CHAPPELL, on behalf of himself and
Others similarly situated,

Plaintiff(s),

v.

Ladies Soup-James Island LLC; Ladlessoups,
LLC; Ladles Soup At Cane Bay, LLC; Ladles
Soups at Citadel Mall LLP; Ladles Soups
Calhoun LLC; Ladles Soups Cane Bay LLC;
Ladles Soups Coosaw LLC; Ladles Soups
Downtown Charleston, LLC; Ladlessoups
Fresh Fields LLC; Ladles Soups @ Freshfields
Village, LLC; Ladlessoups Mainstreet, LLC;
Ladles Soups Moncks Corner LLC; Ladles
Franchise Development, LLC; Ladles Franchising,
Inc.; Ladles Fort Mill, LLC; Ladles Knightsville
LLC; Ladies West Ashley; Teri Owens; Sue Allen,
Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke
Stan Sutton, Carol Sutton, Jack Dalter, Kellie
Henderson; Jane Doe 1-25 (Unknown Operating
Company and Management Company Owners);
John Doe 25-40 (Management Personnel).

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2018-CP-10-00785

AFFIDAVIT OF TRACY ALLEN

BY

JULIE J. ALLEN, 2018
CLERK OF COURT

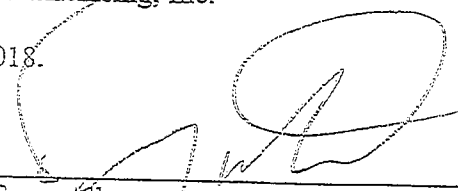
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Personally appeared before me, *TRACY ALLEN*, who first being duly sworn, depose and
say as follows:

1. Since 2017, I have been President of Ladles Franchising, Inc.

2. That I am the husband of Sue Allen.
3. That I am personally familiar with the business of Ladles Franchising, Inc. since its incorporation in 2010.
4. That Ladles Franchising, Inc. has never employed waiters, servers, cashiers or other tipped employees.
6. That I have never been an officer, member, agent or manager of any of the entities which are Defendants in this action other than Ladles Franchising, Inc.

This 9th day of November, 2018.

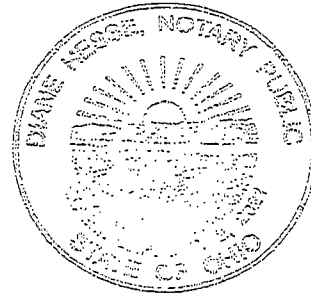


Tracy Allen

SWORN to and subscribed before me
this 9th day of November, 2018.



Printed Name of Notary: Diane Hesse
Notary Public for Ohio
My Commission Expires: 5-2-2021



STATE OF SOUTH CAROLINA,

COUNTY OF CHARLESTON

CRAIG CHAPPELL, on behalf of himself and
Others similarly situated,

Plaintiff(s),

v.

Ladies Soup-James Island LLC; Ladlessoups,
LLC; Ladles Soup At Cane Bay, LLC; Ladles
Soups at Citadel Mall LLP; Ladles Soups
Calhoun LLC; Ladles Soups Cane Bay LLC;
Ladles Soups Coosaw LLC; Ladles Soups
Downtown Charleston, LLC; Ladlessoups
Fresh Fields LLC; Ladles Soups @ Freshfields
Village, LLC; Ladlessoups Mainstreet, LLC;
Ladles Soups Moncks Corner LLC; Ladles
Franchise Development, LLC; Ladles Franchising,
Inc.; Ladles Fort Mill, LLC; Ladles Knightsville
LLC; Ladles West Ashley; Teri Owens; Sue Allen,
Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke
Stan Sutton, Carol Sutton, Jack Dalter, Kellie
Henderson; Jane Doe 1-25 (Unknown Operating
Company and Management Company Owners);
John Doe 25-40 (Management Personnel).

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2018-CP-10-00785

AFFIDAVIT OF SUE ALLEN

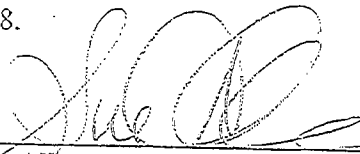
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JULIE J. ARMSTRONG
CLERK OF COURT

Personally appeared before me, *SUE ALLEN*, who first being duly sworn, depose and say
as follows:

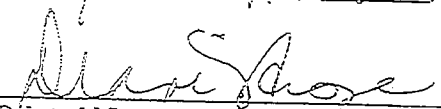
1. That I am the CEO of Ladles Franchising, Inc.

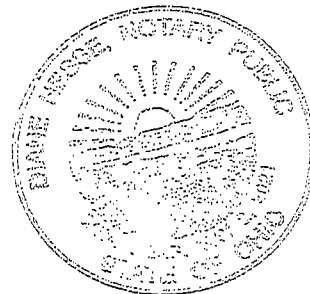
2. That I am the wife of Tracy Allen.
3. That I am personally familiar with the business of Ladies Franchising, Inc. since its incorporation in 2010.
4. That Ladies Franchising, Inc. has never employed waiters, servers, cashiers or other tipped employees.
5. Since 2017, my husband Tracy Allen has been President of Ladies Franchising, Inc.
6. My husband has never been an officer, member, agent or manager of any of the entities which are Defendants in this action other than Ladies Franchising, Inc.

This 9 day of November, 2018.


Sue Allen

SWORN to and subscribed before me
this 9th day of November, 2018.


Printed Name of Notary: Diane Hesse
Notary Public for Ohio
My Commission Expires: 5-2-2021



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

NINTH JUDICIAL CIRCUIT

CRAIG CHAPPELL)

CASE NO.: 2018-CP-10-785

Plaintiff,)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

vs.)

LADLES SOUPS JAMES ISLAND LLC, ET)
AL.)

Defendant.)

Plaintiff's Attorney:

David D. Ashley, Bar No. 76206

Address:

708 S. Shelmore Blvd, Suite 202

Mount Pleasant, SC 29464

Phone: 843-722-3523 Fax 843-352-2977

E-mail: david@leclercqlaw.com Other:

debbie@leclercqlaw.com

Defendant's Attorney:

Paul B. Ferrara, Bar No. 70511

Address:

8887 Old University Blvd, Suite 200, North

Charleston, SC 29406

Phone: 843-569-5111 Fax 843-569-5411

E-mail: paul@ferraralawfirm.net 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 for Class Certification

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

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: \$ _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON
PLEAS
FOR THE NINTH JUDICIAL
CIRCUIT

CASE NO.: 2018-CP-10-785

CRAIG CHAPPELL, on behalf of himself and
others similarly situated,

Plaintiff(s),

v.

Ladles Soups – James Island LLC;
Ladlessoups, LLC; Ladles Soups At Cane Bay
LLC; Ladles Soups At Citadel Mall LLP;
Ladles Soups Calhoun LLC; Ladles Soups
Cane Bay LLC; Ladles Soups Coosaw LLC;
Ladles Soups Downtown Charleston, LLC;
Ladlessoups Fresh Fields, LLC; Ladles Soups
@ Freshfields Village, LLC; Ladlessoups
Mainstreet, LLC; Ladles Soups Moncks
Corner LLC; Ladlessoups Mount Pleasant,
LLC; Ladles Franchise Development, LLC;
Ladles Franchising Inc.; Ladles Fort Mill,
LLC; Ladles Knightsville LLC; Ladles West
Ashley; Teri Owens; Sue Allen, Tracy Allen,
Steve Traeger, Erik Dyke, Julie Dyke, Stan
Sutton, Carol Sutton, Jason Dalter, Kellie
Henderson; Jane Doe 1-25 (Unknown
Operating Company and Management
Company Owners); John Doe 25-40
(Management Personnel)

Defendants.

**NOTICE OF MOTION, MOTION
FOR CLASS CERTIFICATION,
AND MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR
CLASS CERTIFICATION**

2019 SEP 11 PM 3:58
CLERK OF COURT
B

**TO: PAUL B. FERRARA, III, ESQ., P. BRANDT SHELBOURNE, ESQ., KERRY
KOON, ESQ., AND M. EVAN LACKE, ESQ., ATTORNEYS FOR THE
DEFENDANTS:**

The Plaintiffs, by and through their undersigned counsel, within ten (10) days or hence
sooner if the Court so allows hereby request the Court for an order certifying a class action pursuant
to Rule 23. South Carolina Rules of Civil Procedure (SCRCP), South Carolina case law, persuasive

federal precedent, and the memorandum of law incorporated below as well as allegations contained within the Complaint. As demonstrated herein, the proposed class meets all the requirements for class certification under Rule 23, SCRCP, and thus, class treatment is appropriate in this case. Plaintiffs reserve the right to submit a supplemental Memorandum and affidavits in support of its motion prior to the hearing.

INTRODUCTION

This is an action for relief under the South Carolina Payments of Wages Act, S.C. Code § 41-10-10 et seq. ("Wages Act"). Plaintiff also alleges breach of contract and conversion, and is requesting leave to amend to add additional claims and description of fraudulent behavior by Defendants discovered not through good faith participation in discovery by Defendants, as required under the South Carolina Rules of Civil Procedure, but during the course of counsel's investigation. Plaintiff alleges that Defendants wrongfully and intentionally withheld credit card tips that were rightly intended for Plaintiff. Defendants allege to be separate franchise operations under license from a common franchisor, and Plaintiff class alleges that the illegal conversion by Defendants of credit card tips wrongfully withheld from Plaintiff class is a common scheme or policy of Defendants, that Defendants knowingly permitted or actively participated in this deceptive scheme, had the actual power to prevent the unlawful action, and/or are otherwise liable employers under the Wages Act.

To date, a substantial number of Defendants have failed to make any attempt whatsoever to respond to Plaintiffs' First Interrogatories and First Requests for Production. Despite these Defendants' abject failure to comply with discovery rules, counsel through its own investigation has determined the existence of additional class member Plaintiffs, and files herewith a motion to amend to, *inter alia*, add additional Plaintiff Lani Charpia. Plaintiff respectfully submits that when

all Defendants actually comply fully with their discovery obligations under the South Carolina rules, additional class members from additional locations will be revealed, and possibly additional claims as well. A motion to compel those responses is currently pending with this Court. *See, Plaintiffs' Motion to Compel, attached to Motion as Exhibit A.* As for the Defendants who have made at least some attempt at responding to Plaintiffs' discovery requests, they have failed to respond to certain interrogatories and requests for production with the bare minimum information to identify former and present employees which may be similarly situated as the named Plaintiff.

SUMMARY OF ARGUMENT

This action should be certified as a class action because all requirements of Rule 23(a) (numerosity, commonality, typicality, adequacy, and \$100 threshold) have been met. Additionally, although not required under Rule 23(a), SCRCP, questions of fact and law common to the class predominate over any individualized questions. The class members' claims are virtually identical: each Plaintiff claims simply that Defendants have wrongfully converted and withheld credit card tips which rightly belong to the Plaintiffs. Further, a class action is the superior method for the fair and efficient adjudication of this controversy. This Court does not need to have one hundred or more identical trials when management of this class claim is unlikely to present difficulties. Food and beverage industry workers are well known for moving frequently, and therefore identifying all plaintiffs poses challenges, further buttressing the need for a class action.

STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

A.) Statement of Facts

This is a lawsuit brought by a former employee of Ladles Soups – James Island, LLC, Craig Chappell, as well as putative additional Plaintiff Lani Charpia, on behalf of themselves and others similarly situated, alleging causes of action for failure to pay wages under the South Carolina Payment of Wages Act, breach of contract, conversion, and quantum meruit. Plaintiff alleges that Defendants wrongfully and intentionally withheld credit card tips that were rightly intended for Plaintiff and that the illegal conversion by Defendants of credit card tips is a common scheme or policy of Defendants. The existence of the policy not to pay employees credit card tips came to light when on May 6, 2016, Plaintiff Chappell discovered a handwritten ledger kept at the James Island restaurant and subsequently learned that such policy is a Ladles “group-wide” policy. The very next day Plaintiff Chappell confronted his manager, Teri Owens who is also an owner, telling her he thought it was wrong for an employer to retain credit card tips. Plaintiff Chappell was immediately terminated when he complained about the Defendants’ retention of employee tips.

B.) Procedural Background

On February 14, 2018, Plaintiff commenced this action by Summons and Complaint which asserted a number of claims against the Ladles Defendants including failure to pay wages under the South Carolina Payment of Wages Act, breach of contract, and conversion. Plaintiffs encountered substantial challenges getting all the defendants served. For example, on May 31, 2018, Mr. Ferrara refused to accept service on multiple Defendants he is currently representing. After Plaintiffs were unable to effect service on all parties, on June 13, 2018 Plaintiff filed a Motion for Extension of Time to Serve Summons and Complaint and Petition for Order of

Publication which was granted by this Court on July 20, 2018. On or about June 20, 2018, three Defendants filed Answers to the Complaint. Next, an additional sixteen Defendants filed Answers on or about July 18, 2018. Finally, four additional Defendants filed Answers on or about August 1, 2018.

Subsequent to Answers being filed by Defendants, a number of motions were filed. On July 24 and 28, 2018, sixteen Defendants' Motion to Disallow Class Certification, Motion to Dismiss Improper Parties, and Motion to Dismiss based on Rule 12(b)(6) were filed. In the interim, a Consent Order exempting this matter from ADR under SCADR Rule 5(e) due to scheduling issues of all counsel was filed on December 18, 2018. Next, a hearing on Defendants' motions was held and all three motions were denied by Orders of this Court dated January 29, 2019. On February 14, 2019, a Motion to Reconsider the January 29, 2019 Order denying Defendants' Motion to Dismiss was filed on behalf of sixteen Defendants and denied by an Order of this Court dated March 6, 2019. Undersigned counsel thought it prudent, as in federal court, to await the determination of these motions before beginning discovery, and did not, for example, want to involve the court in discovery disputes for parties that might ultimately have been dismissed. Currently, Defendants' Motions for Summary Judgment and Plaintiffs' Motion to Compel, Motion for Continuance, and Motion to Intervene are pending with this Court.

PROPOSED CLASS

The class Plaintiffs request this Court to certify is defined as follows:

All employees who worked for Defendants in Ladles restaurant locations, and were paid an hourly wage plus tips, during the three (3) years prior to the filing of this lawsuit.

Excluded from the Class are all persons who properly execute and file a timely request for exclusion from the Class.

Plaintiffs propose an opt-out class be certified. *See Salmonsens v. CGD, Inc.*, 377 S.C. 442, 459-60, 661 S.E. 2d 81, 91 (2008) (concluding the adoption of opt-out class action and notification is the exclusive method of class action litigation in this state).

CLASS ACTION PRINCIPLES

In the interest of judicial economy, South Carolina courts give Rule 23 an expansive, rather than a restrictive construction, adopting a standard of flexibility in application which best serves the affected parties and promotes efficiency in a particular case. *Littlefield v. S.C. Forestry Comm'n*, 337 S.C. 348, 354-55, 523 S.E.2d 781, 784 (1999) (recognizing Rule 23, SCRCP, “endorses a more expansive view of class action availability”). In fact, the South Carolina Supreme Court recently touted Rule 23’s expansive nature and the benefits in liberally applying Rule 23 so as to grant class certification where a court finds all of Rule 23(a)’s prerequisites are satisfied. *Grazia v. S.C. State Plastering, LLC*, 390 S.C. 562, 576, 703 S.E.2d 197, 204 (2010) (“this Court has expressed the viewpoint that class actions are favored in this state . . .”).

A.) While Required to Employ a Rigorous Analysis, this Court Retains Significant Discretion in Granting Class Certification

South Carolina courts enjoy significant discretion in reviewing a motion for class certification, and a court may certify a class if, following a “rigorous analysis,” the court finds the Rule 23(a) requirements have been met. *Waller v. Seabrook Island Prop. Owners Assoc.*, 300 S.C. 465, 467, 388 S.E.2d 799, 801 (1990) (“[A] trial judge’s ruling on whether an action is properly maintainable as a class action is within his discretion . . . It is imperative the court apply a rigorous analysis to assure the prerequisites of Rule 23(a) have been satisfied . . .”); *see also In re Whirlpool Corp. Front-Loading Washer Products Liability Litigation* (“*Whirlpool II*”), *F.3d* 838, 851 (6th Cir. 2013) *cert denied*, *Whirlpool Corp. v. Glazer*, __ S. Ct. __, 2014 WL 684065, at *1 (Feb. 24, 2014); *Comcast Corp. v. Behrend*, __ U.S. __, 133 S. Ct. 1426, 1432 (2013) (noting same).

Although the term “rigorous analysis” is not specifically defined by our courts, the Supreme Court’s formulation in *Falcon* (repeated in *Dukes*) requires the court to find: (1) the satisfaction of Rule 23 prerequisites; and (2) this satisfaction of Rule 23 prerequisites is *actual* as opposed to *presumed*. *Falcon*, 457 U.S. at 157-58; *Wal-Mart Stores, Inc. Dukes*, ___ U.S. ___, 131 S. Ct. 2541, 2552-53 (2011). Depending upon the case, the determination of whether Rule 23 prerequisites are “actually” satisfied *may* “entail *some* overlap with the merits of the plaintiff’s underlying claim.” *Id.* However, in instances where the court deems it necessary to probe behind pleadings, the court’s permissible inquiry into the merits of the plaintiffs’ claims at the class certification stage is specifically restricted:

Rule 23 grants no license to engage in free-ranging merits inquiries at the certification stage. Merits questions may be considered to the extent - but only to the extent - that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied.

Amgen Inc. v. Connecticut Retirement Plans & Trust Funds, ___ U.S. ___, 133 S.Ct. 1184, 1194-95 (2013) (citations omitted).

Thus, it is fair to conclude a court performs a “rigorous analysis” by working through each of the five Rule 23(a) requirements for class certification. If Plaintiffs’ evidentiary proof of a Rule 23 requirement overlaps with a merits contention, the court may, at its discretion, touch upon the merits, but only to the extent necessary. Conversely, if Plaintiffs’ evidentiary proof of a Rule 23 requirement does not overlap with a merits contention, the court may, at its discretion, not touch upon the merits at all. *See, e.g., Whirlpool II*, 722 F.3d at 851-52 (“... courts may not turn the class certification proceedings into a dress rehearsal for the trial on the merits.”) (internal citations omitted); *Amgen*, ___ U.S. ___, 133 S.Ct. at 1194-95 (limiting inquiry into a case’s merits where the class certification inquiry touches upon an indispensable element of the claim and on which a failure of proof would end the case).

B.) The Burden is on the Plaintiff to Prove Satisfaction of Rule 23 's Requirements

Under our jurisprudence, Plaintiffs bear the burden of proving the five Rule 23(a) prerequisites necessary for maintaining a class action. *Waller*, 300 S.C. at 467, 388 S.E.2d at 801 (noting the "proponent of class certification bears the burden of proving five prerequisites under South Carolina law "); see also *Dukes*, _ U.S. ___, 131 S. Ct. at 2551 (noting the plaintiff must "affirmatively demonstrate his compliance with the Rule - that is, he must be prepared to prove [that], in fact, [the requirements of Rule 23 are satisfied.]"

Specifically, under South Carolina's Rule 23(a), the Plaintiffs must demonstrate:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the class representatives are typical of the claims or defenses of the class;
- (4) the class representatives will fairly and adequately protect the interests of the class; and
- (5) the amount in controversy exceeds one hundred dollars per class member.

South Carolina's Rule 23(a) is nearly identical to its federal counterpart, and accordingly, South Carolina looks favorably on federal precedent interpreting this language. *Waller*, 300 S.C. at 467, 388 S.E.2d at 801 (noting Rule 23(a), SCRCF, is principally drawn from Rule 23(a), FRCP). South Carolina's Rule 23 is materially different from the Federal Rule, however, in that it does not require Plaintiffs satisfy any predominance, superiority or ascertainability requirement in order to achieve class certification - class certification, under South Carolina law, only requires Plaintiffs satisfy the five, above-listed prerequisites. *Littlefield*, 337 S.C. at 355, 523 S.E.2d at 784 ("Our state class action rule differs significantly from its federal counterpart. The drafters of Rule

23, [SCRCP] intentionally omitted from our state rule the additional requirements found in [Rule 23(b), FRCP].").

DISCUSSION

This Court should grant Plaintiffs' Motion for Class Certification because Plaintiffs satisfy each of the five prerequisites necessary to maintain this class action, even under a rigorous analysis of the same, and therefore, class certification is appropriate under Rule 23(a), SCRCP.

1.) Numerosity

To satisfy Rule 23(a)'s numerosity requirement, Plaintiffs must demonstrate "the class is so numerous that joinder of all members is impracticable." Rule 23(a)(1), SCRCP. Numerosity is "not dependent on a specific number of class members," and "[t]here is no mechanical test for determining whether in a particular case the requirement of numerosity has been satisfied." *Brady v. Thurston Motor Lines*, 726 F.2d 136, 145 (4th Cir. 1984) quoting *Cypress v. Newport News Gen. & Nonsectarian Hosp. Ass'n*, 375 F.2d 648,653 (4th Cir. 1967); *Kelley v. Norfolk & W Ry. Co.*, 584 F.2d 34, 35 (4th Cir. 1978) ("The issue [of numerosity] is one primarily for the [c]ourt, to be resolved in light of the facts and circumstances of the particular case."). Indeed, "numerosity" is really a question of "impracticable joinder" which "depends on many factors, including, for example, the size of the class, ease of identifying its numbers and determining their addresses, facility of making service on them if joined and their geographic dispersion." *George v. Duke Energy Ret. Cash Balance Plan*, 259 F.R.D. 225, 231 (D.S.C. 2009) (citations omitted).

Here, the record contains sufficient documentation evidencing the size of the proposed class is potentially so numerous that joinder is impractical. Simply stated, there are at least seventy-five current and former food service employees of the Defendants, all of whom qualify as potential class members because the named Plaintiff alleges there was a policy in place at most or

all of the Defendant franchises allowing the management at the different restaurants to keep the credit card tips the hourly food service employees were entitled to in violation of the South Carolina Wage Payment Act. In his affidavit, Mr. Chappell attests that “[w]hile I was employed at Ladles James Island, there were approximately seven hourly food service employees.” Additionally, in her affidavit, Ms. Charpia attests that “In the year and a half that I have worked at Ladles West Ashley, I have seen approximately more than ten hourly paid food service employees come and go.” **See, Complaint and Affidavits of Craig Chappell and Lani Charpia, attached to Motion as Exhibits B, C, and D.** This policy has not only affected past and present employees but will certainly affect future employees as well. *See, e.g., Cypress*, 375 F.2d at 652-54 (Fourth Circuit approving certification of class containing 18 potential members). Given that there are over seventy-five hourly food service employees who did not receive their credit card tips due to the policy in place at the Defendant franchises, there are clearly enough plaintiffs to satisfy any “numerosity” requirement for class certification.

An example of another hourly food service employee is Lani Charpia whose motion to intervene is currently pending in this Court. **See, Lani Charpia’s Motion to Intervene, attached to Motion as Exhibit E.** Ms. Charpia has been employed as a server at Ladles West Ashley since approximately February, 2018, and has attested to the same allegations made by the named Plaintiff in the Complaint. Specifically, Ms. Charpia attests that her Defendant employer withholds her credit card tips and the credit card tips of all hourly food service employees – “I am an hourly paid food service employee at Ladles West Ashley and all of my credit card tips are withheld,” “Ladles West Ashley has a policy of withholding all credit card tips from all hourly paid food service employees.” **See, Affidavit of Lani Charpia.**

Furthermore, Plaintiff also satisfies the impractical joinder analysis given that the joinder of seventy-five hourly food service employees, some dispersed throughout a sizable geographic area, is difficult and impractical to achieve, and difficult to manage if achieved. *See, e.g., City of Ann Arbor Employees' Retirement Sys. v. Sonoco Prods. Co.*, 270 F.R.D. 247, 251 (D.S.C. 2010) (granting plaintiff's class certification motion, in part, on the basis that "[g]iven the number and likely geographical dispersion of potential class members, joinder would be impracticable). The class is composed of every tipped employee that worked at Defendants' locations in the three years prior to the filing of this lawsuit. This class likely consists of over seventy-five persons geographically dispersed throughout the state of South Carolina and in other states, the joinder of whom in one action is impractical. This is particularly the case here and is evidenced by the fact that the Ladles Defendants have locations all throughout the state of South Carolina and because service in the food and beverage industry is transient by nature, restaurants require numerous employees, and Defendants are likely the sole source of contact information for members of the Plaintiff class.

Moreover, the refusal by the majority of Defendants to respond at all to Plaintiffs' discovery requests and the refusal of the other Defendants to respond to Plaintiffs' requests for basic information to identify their employees has substantially impeded Plaintiffs' attempts to further develop the class members. This information would further show that such a class would likely be composed of a substantial number of people further fulfilling the numerosity requirement.

2.) Commonality

South Carolina's Rule 23 commonality requirement is satisfied if at least one common legal or factual question exists among Class members. *McGann v. Mungo*, 287 S.C. 561, 568, 340 S.E.2d 154, 157 (Ct. App. 1986) (noting "a single, common question" can fulfill the Rule 23(a)(2),

SCRCP, commonality requirement) (citations omitted); *see also Dukes*, _ U.S._, 131 S. Ct. at 2556 (noting Rule 23(a) does not require that all questions of law or fact raised in the litigation be common; indeed, even a single question of law or fact common to the members of the class will satisfy the commonality requirement.); *Nagareda*, *The Preexistence Principle and the Structure of the Class Action*, 103 Colum. L. Rev. 149, 176, n. 110 (2003) (For purposes of Rule 23(a)(2), "even a single common question will do."). "A question is ordinarily understood to be a subject or point open to controversy ... [t]hus, a question common to the class must be a dispute, either of fact or of law, the resolution of which will advance the determination of the class members' claims." *Dukes*, _ U.S._, 131 S. Ct. at 2562. (dissent). Similarly stated, what is necessary for certification are common issues, the resolution of which will advance the litigation. *McGann*, 287 S.C. at 568, 340 S.E.2d at 157 ("Ultimately, commonality is a judgment that the issues are sufficiently similar so that the class action will be a more efficient means of resolving the problem ... ") (citations omitted); *Dukes*, _ U. S._, 131 S. Ct. at 2551 (noting commonality requires "a common contention of such a nature that it is capable of class-wide resolution -- which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke."); *Nagareda*, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U.L. Rev. 97, 132 (2009) ("What matters to class certification ... is not the raising of common questions ... but, rather the capacity of a class wide proceeding to generate common answers apt to drive the resolution of the litigation.")

Here, Plaintiffs demonstrate as least five primary questions, all of which will produce answers central to the validity of Plaintiffs' claims:

- (1) Whether class members worked as service employees in Ladles restaurants;
- (2) Whether class members were paid on an hourly basis plus tips;

- (3) Whether Defendants illegally refused to pay Plaintiff and class members credit card tips they earned, instead unlawfully retaining and converting the same;
- (4) Whether Defendants have acted or refuse to act on grounds generally applicable to the class; and
- (5) Whether Plaintiffs and the class members are entitled to damages from the Defendants.

In addition to raising common questions, Plaintiffs' claims also arise from a common nucleus of facts given there was a policy in place in the Defendant franchises allowing the management at the different restaurants to keep the credit card tips the service employees were entitled to. These common facts affirmatively establish both (a) the Plaintiffs' common injury – they all were subject to the Defendants' policy which is in violation of the South Carolina Wages Act; and (b) the Plaintiffs' common damages – the loss of income from credit card tips. *See, Complaint and Affidavits of Craig Chappell and Lani Charpia.*

Because Plaintiffs' claims are essentially based upon the same contentions (i.e., violation of the South Carolina Wages Act), and the evidence confirms these contentions are common among Plaintiffs, it follows said contentions are "of such nature that [they] are capable of class-wide resolution." *Dukes, __ U.S. __, 131 S. Ct. at 2551.* In other words, proof of loss of credit card tips due to the Defendants withholding of credit card tips exist as to the named Plaintiff, and therefore, class certification is appropriate because the class action vehicle best serves to resolve such "common" issues "in one stroke" for all members of the class. *Jd.*

3.) Typicality

In addition to satisfying Rule 23(a)'s commonality requirement, Plaintiffs also sufficiently satisfy Rule 23(a)'s typicality requirement. Typicality is satisfied if "the claims or defenses of the [class representative] are typical of the claims or defenses of the class." Rule 23(a)(3), SCRCF. Typical does not mean identical, and Rule 23(a)'s typicality requirement is satisfied if the class

members' claims are "fairly encompassed by the named plaintiffs' claims." *Whirlpool II*, 722 F.3d at 852. In other words, the principal "typicality" inquiry is whether the class representative's claims have the same essential characteristics as the claims of the other members of the class. As the Supreme Court observed in *Dukes*, the typicality analysis aids courts in "determining whether under the particular circumstances maintenance of a class action is economical and whether the named Plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." *Dukes*, ___ U.S. ___, 131 S.Ct. at 2551, n.5 quoting *Falcon*, 457 U.S. at 157-158, n.13.

The practice of withholding the employees' credit card tips was not just limited to one employee. It was a widespread policy applied across the board and that has affected and continues to affect several past and present employees. Mr. Chappell attests that "[w]hile I was employed at Ladles James Island, it had a policy of withholding all credit card tips from all hourly paid food service employees." Additionally, Ms. Charpia attests that "Ladles West Ashley has a policy of withholding all credit card tips from all hourly paid food service employees." ***See, Affidavits of Craig Chappell and Lani Charpia.*** And because it was a common practice that affected a substantial number of employees, the named Plaintiff was not the only one affected and his claims are representative of the claims of the entire class.

In light of the foregoing, Plaintiffs clearly satisfy Rule 23(a)'s typicality requirement because the claims asserted by the named Plaintiff are typical of the claims of the class. Specifically, the named Plaintiff shares attributes typical of each proposed class member. Indeed, the named Plaintiff's claims are based upon a common nucleus of operative facts arising out of Defendants' common course of conduct which directly involved the employment of the class members and the improper withholding of charged tips from them. Accordingly, the named

Plaintiff's claims arise from the same practice giving rise to the claims of the Class - Defendants' policy of improperly withholding charged tips. Accordingly, the named Plaintiff and the proposed class necessarily pursue the same legal theories: the named Plaintiff was employed by the Defendants and the Defendants improperly withheld his credit card tips. Exactly like the named Plaintiff, the proposed class are or have been employed by the Defendants and the Defendants have or currently are improperly withholding their charged tips. Where, as here, the named Plaintiff and all class members have had their credit card tips improperly withheld and they advance the same legal theories regarding that practice, the typicality requirement is satisfied.

In sum, Plaintiffs' claims are legally and factually consistent with those sought on behalf of the proposed class, and thus, the named Plaintiff's claims are typical of the class members' claims under Rule 23(a). *See In Re: Cox Enterprises, Inc. Set-Top Cable Television Box Antitrust Litigation*, 2014 WL 104964 at *4 (W.D. Ok. 2014) ("Differing fact situations of class members do not defeat typicality under Rule 23(a)(3) so long as the claims of the class representative and class members are based on the same legal or remedial theory.") (citations omitted).

4.) Adequacy

The principal factor in determining the adequacy of a class representative is whether the named Plaintiff has the ability and commitment to prosecute the action vigorously. *South Carolina Nat'l Bank v. Stone*, 139 F.R.D. 325, 329-30 (D.S.C. 1991). There are two criteria to which courts look in determining whether the class representative adequately protects the interests of the class: (1) The class representatives should not have any significant antagonistic or conflicting interests to the unnamed class members; and (2) it must appear the class representatives will vigorously prosecute the interests of the class through qualified counsel. *Runion v. US Shelter*, 98 F.R.D. 3_13, 316 (D.S.C. 1983); *Nat 'l Ass 'n of Regional Med. Programs, Inc. v. Matthews*, 551 F.2d

340, 345 (D.C. Cir. 1976), cert. denied, 431 U.S. 954 (1977). In addition, it must appear the class representatives voluntarily accept the fiduciary relationship towards all the members of the putative class. *Id.*

As a former employee of a Ladles Defendant that had a policy of withholding credit card tips, the named Plaintiff "possess the same interest and suffers the same injury as the class members." *Gunnells v. Healthcare Services, Inc.*, 348 F.3d 417, 425 (4th Cir. 2003). Indeed, no material conflict exists between the named Plaintiff (former employee of Defendants) and the class members he seeks to represent (also former and current employees of Defendants). Moreover, the named Plaintiff and his counsel are committed to aggressively pursuing this litigation on behalf of the other class members who had credit card tips improperly withheld from them. **See, Affidavit of Craig Chappell.** Notably, Plaintiff's counsel has practiced before this Court, as well as federal court, in a number of complex commercial commercial, employment, FLSA and consumer actions, and thus, the Court is aware of counsel's competency in litigating complex actions.

5.) Amount in Controversy

The final Rule 23(a) prerequisite requires the "amount in controversy" to exceed one hundred dollars for each member of the proposed class. This amount is based on the amount claimed by the Plaintiffs, and where Plaintiffs claim damages greater than one hundred dollars per class member, the "amount in controversy" requirement is satisfied. *Gardner v. Newsome Chevrolet-Buick*, 404 S.E.2d 200,201 (S.C. 1991). In this case it will be the total amount of the credit card tips Defendants withheld from each employee combined with the damages each employee is entitled to under the law, which, under the South Carolina Payment of Wages Act, is three times the amount of the credit card tip each employee did not receive. In his affidavit, Mr. Chappell attests that "[b]ased on my knowledge and experience working at Ladles James Island, I

believe that well over \$100.00 in charged credit card tips were withheld from each hourly food service employee.” Additionally, in her affidavit, Ms. Charpia attests that “I have worked at Ladles West Ashley for approximately a year and half. I regularly see the end of day credit card reports and they show the amount of charged tips for the entire day. On a typical day, the amount of charged tips for the day is at least \$100.” ***See, Affidavits of Craig Chappell and Lani Charpia.*** Thus, based upon those rules, meeting the jurisdictional hundred dollars threshold is feasible for each Plaintiff in the case.

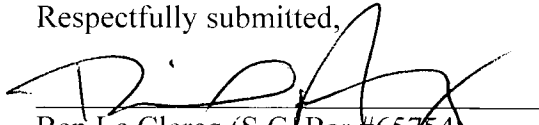
CONCLUSION

Based upon the foregoing, Plaintiffs affirmatively satisfies the requirements of Rule 23(a), SCRPC, and therefore, class certification is appropriate. Class certification streamlines the adjudication of a large unknown and to date unknowable number of claims concerning Defendants’ illicit conversion of wages and credit card tips intended for Plaintiffs, and provides a superior avenue for much needed relief to all similarly situated class members. Accordingly, Plaintiffs respectfully request the Court issue an Order:

- (1) Certifying this action as a class action;
- (2) Appointing Plaintiffs, Craig Chappell and Lani Charpia, as class representatives;
- (3) Appointing Ben Le Clercq as class counsel; and
- (4) Authorizing class counsel to provide opt-out notice to the class.

WHEREFORE, Plaintiffs respectfully request that this Court grant this Motion for Class Certification.

Respectfully submitted,



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David D. Ashley (S.C. Bar #76206)
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Phone (843) 722-3523
Counsel for Plaintiffs

September 11, 2019
Mt. Pleasant, South Carolina

CERTIFICATE OF SERVICE

I, Debbie Mathews, certify that on September 11, 2019, a true and correct copy of the foregoing **NOTICE OF MOTION, MOTION FOR CLASS CERTIFICATION, AND MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR CLASS CERTIFICATION** was served upon counsel for Defendants, via electronic mail as follows:

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Debbie Mathews

A

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-785

CRAIG CHAPPELL, on behalf of himself and
others similarly situated,

Plaintiff(s),

v.

Ladles Soups – James Island LLC;
Ladlessoups, LLC; Ladles Soups At Cane Bay
LLC; Ladles Soups At Citadel Mall LLP;
Ladles Soups Calhoun LLC; Ladles Soups
Cane Bay LLC; Ladles Soups Coosaw LLC;
Ladles Soups Downtown Charleston, LLC;
Ladlessoups Fresh Fields, LLC; Ladles Soups
@ Freshfields Village, LLC; Ladlessoups
Mainstreet, LLC; Ladles Soups Moncks
Corner LLC; Ladlessoups Mount Pleasant,
LLC; Ladles Franchise Development, LLC;
Ladles Franchising Inc.; Ladles Fort Mill,
LLC; Ladles Knightsville LLC; Ladles West
Ashley; Teri Owens; Sue Allen, Tracy Allen,
Steve Traeger, Erik Dyke, Julie Dyke, Stan
Sutton, Carol Sutton, Jason Dalter, Kellie
Henderson; Jane Doe 1-25 (Unknown
Operating Company and Management
Company Owners); John Doe 25-40
(Management Personnel)

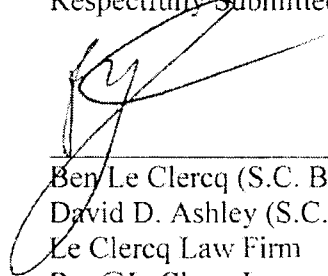
Defendants.

**PLAINTIFFS' MOTION TO COMPEL
DISCOVERY RESPONSES TO
PLAINTIFS' FIRST
INTERROGATOES AND FIRST
REQUESTS FOR PRODUCTION FROM
DEFENDANTS LADLES SOUPS –
JAMES ISLAND, LLC; LADELES
SOUPS FRESH FIELDS, LLC; LADLES
SOUPS @ FRESHFIELDS VILLAGE,
LLC; LADLES FRANCHISE
DEVELOPMENT, LLC; LADLES SOUP
DOWNTOWN CHARLESTON, LLC;
LADLES FORT MILL, LLC; LADLES
SOUPS MONCK'S CORNER, LLC;
LADLES KNIGHTSVILLE, LLC;
LADLES WEST ASHLEY; LADLES
SOUPS COOSAW, LLC; DAN SUTTON;
CAROL SUTTON; STEVEN TRAEGER;
AND KELLI HENDERSON**

Plaintiffs, by and through undersigned counsel, move this Honorable Court to order that
Defendants Ladles Soups – James Island LLC; Ladles Soups Coosaw LLC; Ladles Soups
Downtown Charleston, LLC; Ladlessoups Fresh Fields, LLC; Ladles Soups @ Freshfields Village,
LLC; Ladles Soups Moncks Corner LLC; Ladles Franchise Development, LLC; Fort Mill, LLC;
Ladles Knightsville LLC; Ladles West Ashley; Teri Owens; Steve Traeger; Stan Sutton; Carol

Sutton; and Kellie Henderson, ("Defendants"), respond fully to Plaintiffs' discovery requests. Defendants, through their attorney, Paul B. Ferrara, III, have failed to respond at all since being served with the requests on May 24, 2019. **Ex. A (Email serving First Interrogatories and First Requests for Production); Ex. A.2 (First Interrogatories and First Requests for Production).** Pursuant to SCRP Rule 11, Plaintiffs' counsel communicated with Defendants' counsel by email on July 12, 2019 and August 14, 2019 to resolve the issue. **Ex. B (emails to counsel for Defendants).** Ninety days have elapsed without Defendants producing any response at all and without Defendants even requesting an extension. Plaintiffs also ask the Court to find that Defendants have waived objections to all such requests due to its failure to provide these discovery responses.

Respectfully Submitted,



Ben Le Clercq (S.C. Bar #65754)
David D. Ashley (S.C. Bar #76206)
Le Clercq Law Firm
Ben@LeClercLaw.com
David@LeClercLaw.com
708 South Shelmore Blvd. #202
Mount Pleasant, SC 29464
Phone (843) 722-3523
Counsel for Plaintiff

August 22, 2019
Mt. Pleasant, South Carolina

CERTIFICATE OF SERVICE

I, Debbie Mathews, certify that on August 22, 2019, a true and correct copy of the foregoing
**PLAINTIFF'S MOTION TO COMPEL DISCOVERY RESPONSES TO PLAINTIFFS'
FIRST INTERROGATORIES AND FIRST REQUESTS FOR PRODUCTION FROM
DEFENDANTS** was served upon counsel for Defendants, via electronic mail as follows:

Kerry Koon - kerrykoon@hotmail.com
M. Evan Lacke - elacke@lackelawfirm.com
147 Wappoo Creek Drive, Suite 204
Charleston, SC 29412

Paul B. Ferrera, III - paul@ferraralawfirm.net
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P. Brandt Shelbourne -- brandt@shelbournelaw.com
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131 E. Richardson Avenue
Summerville, SC 29483


Debbie Mathews

B

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CRAIG CHAPPELL, on behalf of himself and
others similarly situated,

Plaintiff(s),

v.

Ladles Soups – James Island LLC; Ladlessoups,
LLC; Ladles Soups At Cane Bay LLC; Ladles
Soups At Citadel Mall LLP; Ladles Soups
Calhoun LLC; Ladles Soups Cane Bay LLC;
Ladles Soups Coosaw LLC; Ladles Soups
Downtown Charleston, LLC; Ladlessoups
Fresh Fields, LLC; Ladles Soups @ Freshfields
Village, LLC; Ladlessoups Mainstreet, LLC;
Ladles Soups Moncks Corner LLC;
Ladlessoups Mount Pleasant, LLC; Ladles
Franchise Development, LLC; Ladles
Franchising Inc.; Ladles Fort Mill, LLC;
Ladles Knightsville LLC; Ladles West Ashley;
Teri Owens; Sue Allen, Tracy Allen, Steve
Traeger, Erik Dyke, Julie Dyke, Stan Sutton,
Carol Sutton, Jason Dalter, Kellie Henderson;
Jane Doe 1-25 (Unknown Operating Company
and Management Company Owners); John
Doe 25-40 (Management Personnel)

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.:

VERIFIED COMPLAINT TO RECOVER
MISAPPROPRIATED TIPS

(Class Action)

(Jury Trial Demanded)

FILED
2018 FEB 14 AM 10:07
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW PLAINTIFF, CRAIG CHAPPELL, ("Plaintiff"), individually, and on
behalf of all others similarly situated, complaining of the Defendants named herein, and
respectfully alleges and would show the Court as follows:

PARTIES, JURISDICTION & VENUE

1. Plaintiff CRAIG CHAPPELL is and at all times relevant herein was an individual resident of the City of Charleston, in Charleston County.

2. Plaintiff and proposed class member Plaintiffs are hourly paid employees who worked for Defendants within the last three (3) years at Defendants' Ladles restaurants as cooks, servers, wait staff, hostesses and other restaurant service type employees (hereinafter "servers" or "Class Members"), who were unlawfully deprived of payment of tips by Defendants' illegal and unlawful actions, and who respectfully seek relief under the South Carolina Payment of Wages Act, S.C. Code § 41-10-10 et seq. ("Wages Act") and other applicable law.

3. Plaintiff files this Complaint against Defendants, who generally fall in several categories: a) Company/Corporate Restaurant Defendants that own or run Ladles Soups restaurants, some of which may be franchises; b) Individual Owners of Ladles Company/Corporate entities and/or franchises with supervision, control and/or direction of employee compensation; c) High level management/officers/employees of "a" with supervision, control and/or direction of employee compensation; d) "Jane Doe" and "John Doe" Defendants, indicating Defendants for whom Plaintiff has not yet been able to determine the identity without the aid of discovery.

4. Operating Company Defendants. Plaintiff has identified the following companies and/or corporations which, upon information and belief, currently or previously own and/or operate Ladles restaurants (sometimes referred to collectively as "Operating Company Defendants"):

a. Ladles Soups – James Island LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 1175A Folly Road Charleston, SC 29412.

b. Ladlessoups, LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 3125 Bees Ferry Road, Charleston, SC 29414.

c. Ladles Soups At Cane Bay LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which had its principal place of business (but is now closed) as a Ladles restaurant located at 1724 State Road, Summerville, SC 29483. It was formed May 9, 2013.

d. Ladles Soups At Citadel Mall LLP, which upon information and belief is a company organized and dissolved under the laws of South Carolina, and which had its principal place of business as a Ladles restaurant located on Sam Rittenberg Blvd., just south of the Citadel Mall, Charleston, SC 29412.

e. Ladles Soups Calhoun LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which had its principal place of business as a Ladles restaurant located at 141 Calhoun Street, Charleston, SC 29401, and/or 68 Cannon Street, Charleston, SC 29401.

f. Ladles Soups Cane Bay LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which had its principal place of business (but is now closed) as a Ladles restaurant located at 1724 State Road, Summerville, SC 29483. It was formed January 26, 2015.

g. Ladles Soups Coosaw LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 8600 Dorchester Road Ste. 101, North Charleston, SC 29420.

h. Ladles Soups Downtown Charleston, LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 68 Cannon Street, Charleston, SC 29403.

i. Ladlessoups Fresh Fields, LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 190 Gardeners Circle, Johns Island, SC 29455.

j. Ladles Soups @ Freshfields Village, LLC, which upon information and belief is a company organized and dissolved under the laws of South Carolina, and which had its principal place of business located at 190 Gardeners Circle, Johns Island, SC 29455.

k. Ladlessoups Mainstreet, LLC, which upon information and belief is a company organized and dissolved under the laws of South Carolina, and which had its principal place of business as a Ladles restaurant located at 100 W. Richardson Ave., Summerville, SC 29483.

l. Ladles Soups Moncks Corner LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 636 Rembert C. Dennis Blvd., Moncks Corner, SC 29461.

m. Ladlessoups Mount Pleasant, LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 1164 Basketweave Drive, Mount Pleasant, SC 29466.

n. Ladles Fort Mill, LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 526 Mercantile Place, Fort Mill, SC 29715.

o. Ladles Knightsville LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 1585 Central Avenue, Summerville, SC.

p. Ladles West Ashley, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 3125 Bees Ferry Road, Charleston, SC 29414.

5. Management Company Defendants. Plaintiff has identified the following companies and/or corporations, which, upon information and belief, developed and/or required tipping policies upon information and belief common to all Ladles restaurants described more fully herein (such parties sometimes referred to herein as "Management Company Defendants").

a. Ladles Franchise Development, LLC, is a South Carolina company licensed to conduct and in upon information and belief in fact conducting business in the State of South Carolina, and at all material times during Plaintiffs' employment, acting as an employer under applicable law.

b. Ladles Franchising Inc. is a South Carolina corporation licensed to conduct and in upon information and belief in fact conducting business in the State of South Carolina, and at all material times during Plaintiffs' employment, acting as an employer under applicable law.

6. Individual Defendants. Plaintiff has identified the following individuals (sometimes referred to collectively herein as "Individual Defendants"), who, upon information and belief, are individual owners of the Operating Company Defendants, the Management Company Defendants,

and/or individuals: i) with supervisory, management, and/or other responsibility for employee compensation, including payment or non-payment of tips to employees; ii) that knowingly permitted or allowed the actions complained of herein, iii) that are agents and/or officers of the Operating Company Defendants and/or the Management Company Defendants of herein, iv) that actively participated in the unlawful action complained of herein, v) that had the actual power to prevent or allow the unlawful action complained of herein, or vi) that are employers of Plaintiff Class Members under applicable law.

a. Susan "Suzie" Allen, who upon information and belief resides and/or conducts business at the address of 2345 Brevard Road, Charleston, SC 29414, and is a founder of the Lades soup restaurant concept, an originator and/or architect of the unlawful actions complained of herein and an owner of one or more Operating Company Defendants and/or Management Company Defendants;

b. Teri Owens, Manager of Ladles Soups – James Island LLC.

c. Tracy Allen, who upon information and belief resides and/or conducts business at the address of 2345 Brevard Road, Charleston, SC 29414, and is a founder of the Lades soup restaurant concept, an originator and/or architect of the unlawful actions complained of herein and an owner of one or more Operating Company Defendants and/or Management Company Defendants;

d. Steve Traeger, Owner of Franchise Development, Ladles Soups Franchising, LLC.

e. Erik Dyke, Owner of Ladlessoups Mount Pleasant, LLC.

f. Julie Dyke, Owner of Ladlessoups Mount Pleasant, LLC.

g. Stan Sutton, Owner of Ladlessoups Fresh Fields, LLC and Ladles Soups @ Freshfields Village, LLC.

h. Carol Sutton, Owner of Ladlessoups Fresh Fields, LLC and Ladles Soups @ Freshfields Village, LLC.

i. Jason Dalter, Owner of Ladlessoups Mainstreet, LLC.

j. Kellie Henderson, Owner of Ladles Soups Coosaw LLC.

7. Jane Doe 1-25 (Operating Company and Management Company Owners) (hereinafter "Jane Doe 1-25 Defendants"), are Operating Company and/or Management Company owners, members, and/or franchisees, whose identities are unknown at this time: i) with supervisory, management, and/or other responsibility for employee compensation, including payment or non-payment of tips to employees; ii) that knowingly permitted or allowed the actions complained of herein, iii) that are agents and/or officers of the Operating Company Defendants and/or the Management Company Defendants herein, iv) that actively participated in the unlawful action complained of herein, v) that had the actual power to prevent or allow the unlawful action complained of herein, or vi) that are employers of Plaintiff Class Members under applicable law.

8. John Doe 25-40 (Management Personnel) (hereinafter "John Doe 25-40 Defendants"), are management officers and/or employees of Operating Company and/or Management Company Defendants, whose identities are unknown at this time: i) with supervisory, management, and/or other responsibility for employee compensation, including payment or non-payment of tips to employees; ii) that knowingly permitted or allowed the actions complained of herein, iii) that are agents and/or officers of the Operating Company Defendants and/or the Management Company Defendants of herein, iv) that actively participated in the unlawful action

complained of herein, v) that had the actual power to prevent or allow the unlawful action complained of herein, or vi) that are employers of Plaintiff Class Members under applicable law.

NATURE OF CASE

9. Defendants' conduct as alleged herein is in violation of the Wages Act, and other applicable law relating to *inter alia* breach of contract and conversion.

10. This action is to recover from Defendants damages and reasonable attorneys' fees and costs. This action is intended to include each and every hourly paid employee who worked for Defendants at any time within the past three (3) years.

11. This Court has jurisdiction and venue over this Complaint as certain Defendants' principal addresses and places of business are in Charleston County, South Carolina, and since actions giving rise to this Complaint occurred in Charleston County, South Carolina.

GENERAL FACTUAL ALLEGATIONS

12. Plaintiff and the Class Members were paid an hourly wage, plus tips.

13. However, though Plaintiff and the Class Members worked for and earned cash tips as well as tips paid by credit card, Defendants' company wide policy, upon information and belief, was and has been at all times relevant herein, to allow Plaintiff and Class Members to retain some cash tips, but for Defendants to retain the credit card tips which rightly belong to Plaintiff and the Class Members.

14. For example, at Plaintiff Craig Chappell's location, Ladles Soups—James Island, LLC ("Ladles James Island"), the employer's practice was to distribute cash tips to all employees, but to retain tips charged on credit cards.

15. At the original location in West Ashley (business name Ladlessoups, LLC) ("Ladles West Ashley") at 3125 Bees Ferry Road, the employer's practice was upon information

and belief to distribute a day's cash tips amongst all employees working that day, but retain tips charged by customers to credit cards.

16. The policy at Ladles West Ashley was promulgated by the store owner who is, on information and belief, a founder of Ladles restaurant concept, Defendant Sue Allen.

17. Sue Allen is the registered agent for Ladles West Ashley according to the S.C. Secretary of State website.

18. At all material times, Operating Company Defendants and Management Company Defendants were enterprises subject to the Wages Act and other applicable common law of South Carolina.

19. Defendants are in the business of providing food and drinks to the general public.

20. Defendants employed Plaintiff and the Class Members in the last three (3) years.

21. Defendants controlled and/or were responsible for the work of Plaintiff and the Class Members.

22. Plaintiff and the Class Members perform a specific job, i.e., ensuring that all food and products are consistently prepared and served according to the restaurant's policies, and controlling cash and other receipts by adhering to cash handling and reconciliation procedures in accordance with restaurant policies and procedures, which was/is an integral part of the restaurant business of Defendants.

23. Plaintiff and the Class Members worked for and earned tips in addition to their hourly wage, and such tips constitute an important part of Plaintiff and the Class Members' total wages and compensation. Plaintiffs are entitled to all tips they earn, under applicable law, including contract law.

24. The majority of the tips were paid by credit cards, and upon information and belief, only a small minority of tips were paid by Defendants' customers in cash.

25. Defendants' customers reasonably understood and expected that by paying tips via credit card, that Plaintiff and other Class Members would receive those tips.

26. Plaintiff and the Class Members worked for, earned and in fact received cash tips during each shift.

27. However, by contrast Defendants illegally failed to pay Plaintiff and the Class Members the credit card charge tips, and instead retained them for the benefit of Defendants.

28. All tips are the property of the servers and other employees such as Plaintiff and the Class Members.

29. As a result of these common policies, Plaintiff and the Class Members are entitled to repayment of all tips that were illegally retained by Defendants.

30. During their employment, Plaintiff or one or more of the Class Members complained about the illegal practices to Defendants' management, and Defendants took no action to stop the illegal practices.

31. On or about Friday, May 6, 2016, Plaintiff or one or more of the Class Members discovered that the owner of Defendant Ladles James Island was not paying employees charged tips, by virtue of discovering a handwritten ledger kept at the James Island restaurant. Plaintiff subsequently learned that such policy is a Ladles "group-wide" policy.

32. At Ladles James Island on or about Saturday, May 7, 2016, Plaintiff Chappell confronted his manager, Teri Owens, who upon information and belief is an owner of Ladles James Island, telling her he thought it was wrong for employer to pay employees only cash tips but retain charged tips.

33. Defendant Ladles James Island immediately terminated Mr. Chappell when he complained about Defendants' retention of employee tips, in retaliation for Mr. Chappell's attempting to claim tips that are and were rightfully his (and that of other similarly situated Class Members), such rights to the same being guaranteed to Mr. Chappell and Class Members by applicable law.

34. The additional persons who are Class Member plaintiffs in this action are employees with positions similarly situated to Plaintiff and who have suffered from the same pay practices of unlawfully misappropriated, converted tips.

CLASS ACTION ALLEGATIONS

35. Pursuant to the common law of South Carolina and SCRCP 23, Plaintiff brings this action both individually and as a proposed class action against Defendants on behalf of himself and all other similarly situated persons and entities, who were employed by Defendants and were paid an hourly wage plus tips.

36. The class of similarly situated employees or potential Class Members sought to be certified under SCRCP 23 is defined as:

All employees who worked for Defendants in Ladles restaurant locations, and were paid an hourly wage plus tips, during the three (3) years preceding this lawsuit.

The claims under the Payment of Wages Act may be prosecuted on behalf of similarly situated Plaintiffs unless they opt out.

37. *Numerosity.* The class is upon information and belief composed of in excess of seventy-five persons geographically dispersed throughout the state of South Carolina and in other states, the joinder of whom in one action is impractical. In particular, service in the food

and beverage industry is transient by nature; restaurants require numerous employees, and Defendants are likely the sole source of contact information for members of the Plaintiff class.

38. *Commonality.* Questions of law and fact common to the class exist as to all members of the class and predominate over any questions affecting only individual members of the class. These common legal and factual issues include the following:

- a. Whether Class Members worked as service employees in Ladles restaurants;
- b. Whether Class Members were paid on an hourly basis plus tips;
- c. Whether Defendants illegally refused to pay Plaintiff and Class Members credit card tips they earned, instead unlawfully retaining and converting the same;
- d. Whether Defendants have acted or refuse to act on grounds generally applicable to the class;
- e. Whether Plaintiffs and the Class Members are entitled to damages, prejudgment interest, attorney's fees and costs from Defendants.

39. *Typicality.* Plaintiff Chappell's claims are typical of the claims of the members of the class, as all such claims arise out of Defendants' wrongful conduct in illegally refusing to pay their hourly employees tips earned by them and paid by Defendants' customers via credit card, and instead wrongfully, deliberately and deceitfully withholding them. It would be difficult to meaningfully distinguish the claims of Plaintiff Class Members *inter se*.

40. *Adequate Representation.* Plaintiff Chappell will fairly and adequately protect the interests of the members of the class and has no interests antagonistic to those of the class. Plaintiff has retained counsel experienced in the prosecution of employment claims and complex litigation, including collective actions.

41. *Predominance and Superiority.* Because Defendants' treatment of Plaintiff Class Members is narrowly focused on a single specific issue—Defendants' unlawful misappropriation and conversion of charged tips—this class action is appropriate for certification because questions of law and fact common to the members of the class predominate over questions affecting only individual members. For the same reason, the class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the class is impractical. Should individual members of the class be required to bring separate actions, this court would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties in the court system, this class-action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single Court.

42. *Defendants have acted on grounds generally applicable to the class.* Class certification is appropriate under South Carolina law because Defendants engaged in a uniform and common practice—they misappropriated and unlawfully converted charged tips which rightfully belong to Plaintiff Class Members. In doing so, Defendants acted in a manner consistently vis-à-vis Plaintiff Class Members. All Class Members have the same legal right and interest in redress for damages associated with the illegal retention of credit card tips paid by Defendants' customers, which rightly belong to Plaintiff and the other Class Members.

43. Plaintiff envisions no unusual difficulty in the management of this action as a class action.

44. Per SCRCP 23(a), each plaintiff's damages exceeds \$100.

45. The amount of money at stake for each class member is not sufficient for each member to hire their own counsel and bring their own action, which constitutes additional grounds making the class action appropriate here.

COUNT I

(Class Action – Nonpayment of wages under S.C. Code § 41-10-40)

46. Plaintiff realleges and reincorporates all previous allegations as if fully incorporated herein.

47. Plaintiff and Class Members seek damages under the Wages Act as a class action.

48. Tips are wages under the act because, per S.C. Code § 41-10-10(2), they are amounts at which Plaintiffs' labor rendered is recompensed, and because it was both the policy of Defendants, and a term of Plaintiffs' employment agreements with Defendants, to pay Plaintiffs the tips customers gave them—especially evidenced by the Defendants' practice of letting Plaintiffs keep their cash tips.

49. Each tip was the property of each Plaintiff to whom a customer had given the tip, and such tips constitute wages and remain due and owing to the Plaintiffs under the Wages Act.

50. Defendants were not permitted to divert or withhold tips because upon information and belief they failed to give written notice to Plaintiffs of the amounts and terms of deductions, as required by S.C. Code § 41-10-30(A).

51. Defendants upon information and belief failed to give employees itemized statements showing the retention or diversion of credit card tips for each pay period, as required by S.C. Code § 41-10-31(C).

52. Operating Company Defendants and Management Defendants were responsible for paying Plaintiffs. Moreover, Individual Defendants, Jane Doe 1-25 Defendants and John Doe 25-40 Defendants i) with supervisory, management, and/or other responsibility for employee

compensation, including payment or non-payment of tips to employees; ii) that knowingly permitted or allowed the actions complained of herein, iii) that are agents and/or officers of the Operating Company Defendants and/or the Management Company Defendants herein, iv) that actively participated in the unlawful action complained of herein, v) that had the actual power to prevent or allow the unlawful action complained of herein, or vi) that are employers of Plaintiff Class Members under applicable law, were similarly responsible for paying Class Members.

53. The Ladles West Ashley policy was promulgated upon information and belief by the store owner, founder Sue Allen, to store employees via the store's manager. As such, Sue Allen knowingly permitted the tip policy, actively participated in it, and had actual power to pay employees, since she decided what the terms of their tip compensation were.

54. This pattern has upon information and belief been repeated for all other Ladles locations: the owner was instructed by Ladles franchisor(s) regarding common compensation practices, and would thereafter promulgate the tip policies through the location manager. As such, each location's owner and manager knowingly permitted the tip policy, actively participated in it, and had actual power to pay employees, since they decided what the terms of their tip compensation were and executed the same daily.

55. Plaintiffs' damages are *inter alia* triple the amount of all tips not paid to them over the past three years, plus interest.

56. Defendants also should be required to pay Plaintiffs' costs and reasonable attorneys' fees for this claim.

COUNT II
(Class Action -- Breach of Contract)

57. Plaintiffs reallege and reincorporate all previous allegations as if fully incorporated herein.

58. Defendants had upon information and belief common hiring policies for Plaintiff Class Members.

59. Plaintiff Class Members each had an employment agreement with their respective Defendant Ladles restaurant locations, with upon information and belief identical terms.

60. Under said agreement, each Defendant was to pay its respective Plaintiffs wages consisting of an hourly wage plus their cash and charged tips.

61. Defendants breached their obligation to pay Plaintiffs charged tips.

62. Defendants' breaches proximately caused Plaintiffs to lose wages they were due.

63. Plaintiffs' damages consist in the charged tips Defendants failed to pay.

COUNT III
(Class Action -- Conversion)

64. Plaintiffs reallege and reincorporate all previous allegations as if fully incorporated herein.

65. As earners of charged tips, Plaintiffs had an interest in the tips Defendants withheld.

66. Defendants converted Plaintiffs' charged tips and retained them for their own gain.

67. Defendants did so without Plaintiffs' permission.

68. Plaintiffs' damages consist of the amounts of charged tips Defendants withheld plus interest from the dates of conversion.

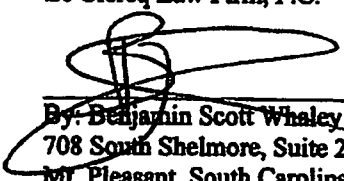
WHEREFORE, Plaintiff, CRAIG CHAPPELL, on behalf of himself and Class Members, demands judgment against Defendants for unpaid tips, treble damages where applicable under applicable law, punitive damages, consequential damages, reasonable attorneys' fees and costs incurred in this action, and any and all further relief this Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff on behalf of himself and Class Members hereby demands a trial by jury.

Respectfully submitted, this 14th day of February, 2018.

Le Clercq Law Firm, P.C.

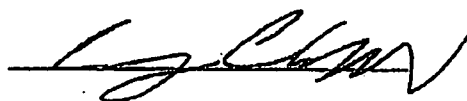


By: Benjamin Scott Whaley Le Clercq
708 South Shelmore, Suite 202
Mt. Pleasant, South Carolina 29464
Phone: 843 722-3523
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South Carolina Bar No. 65754

VERIFICATION

I, Craig Chappell hereby consent to be party plaintiff in this action, and hereby declare under penalty of perjury, that I have reviewed all of the allegations contained in the Complaint, and that these allegations are true and correct to the best of my knowledge, understanding and belief.

Date: February 2, 2018

A handwritten signature in black ink, appearing to read "Craig Chappell", written over a horizontal line.

C

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-785

CRAIG CHAPPELL, on behalf of himself
and others similarly situated,

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v.

Ladles Soups – James Island LLC;
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LLP; Ladles Soups Calhoun LLC; Ladles
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Teri Owens; Sue Allen, Tracy Allen, Steve
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Sutton, Carol Sutton, Jason Dalter, Kellie
Henderson; Jane Doe 1-25 (Unknown
Operating Company and Management
Company Owners); John Doe 25-40
(Management Personnel)

Defendants.

AFFIDAVIT

I. Craig Chappell, declare under penalty of perjury the following:

1. I was an hourly paid employee at Ladles Soups – James Island, LLC, (“Ladles James Island”) located at 1175A Folly Road Charleston, SC 29412 from approximately February, 2015 to April 2015, and then from approximately August, 2015 to May, 2016.

2. While I was employed at Ladles James Island, there were approximately seven hourly food service employees.
3. While I was employed at Ladles James Island, it had a policy of withholding all credit card tips from all hourly paid food service employees.
4. I was an hourly paid food service employee at Ladles James Island and all of my credit card tips were withheld.
5. I became aware of this policy because I saw a ledger at Ladles James Island showing that credit card tips were not being paid to any hourly food service employees.
6. Based on my communications with other Ladles restaurant hourly food service employees, I believe withholding credit card tips from hourly food service employees is a policy at other Ladles locations as well.
7. I began pursuing this lawsuit in approximately May, 2016 and I am capable and committed to aggressively pursuing this litigation on behalf of the other class members who had credit card tips improperly withheld from them.
8. I am not aware of, nor can I imagine, any conflicts I could have with the interests in this lawsuit of any current or former Ladles employees who had credit card tips improperly withheld from them.
9. I could not be more pleased with my counsel, Ben LeClercq, Esq. In my experience working with him, he has been very knowledgeable and is always on top of everything. Mr. LeClercq was recommended to me by another attorney and I am aware of Mr. LeClercq's handling of other class action lawsuits.
10. I worked at Ladles James Island for approximately a year to a year and half. While I was working at Ladles James Island I viewed a ledger that showed that for an eleven day

period, there was a total of approximately \$800.00 in credit card tips that should have gone to the hourly food service employees but did not.

11. Based on my knowledge and experience working at Ladles James Island, I believe that well over \$100.00 in charged credit card tips were withheld from each hourly food service employee.

FURTHER AFFIANT SAYETH NAUGHT.

September 8, 2019


Craig Chappell

D

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-785

CRAIG CHAPPELL, on behalf of himself and
others similarly situated,

Plaintiff(s),

v.

Ladles Soups – James Island LLC; Ladlessoups,
LLC; Ladles Soups At Cane Bay LLC; Ladles
Soups At Citadel Mall LLP; Ladles Soups
Calhoun LLC; Ladles Soups Cane Bay LLC;
Ladles Soups Coosaw LLC; Ladles Soups
Downtown Charleston, LLC; Ladlessoups
Fresh Fields, LLC; Ladles Soups @ Freshfields
Village, LLC; Ladlessoups Mainstreet, LLC;
Ladles Soups Moncks Corner LLC;
Ladlessoups Mount Pleasant, LLC; Ladles
Franchise Development, LLC; Ladles
Franchising Inc.; Ladles Fort Mill, LLC;
Ladles Knightsville LLC; Ladles West Ashley;
Teri Owens; Sue Allen, Tracy Allen, Steve
Traeger, Erik Dyke, Julie Dyke, Stan Sutton,
Carol Sutton, Jason Dalter, Kellie Henderson;
Jane Doe 1-25 (Unknown Operating Company
and Management Company Owners); John
Doe 25-40 (Management Personnel)

Defendants.

AFFIDAVIT

I, Lani Charpia, declare under penalty of perjury the following:

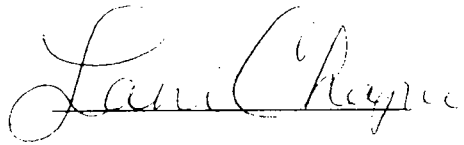
1. I have been employed as an hourly paid employee at Ladles West Ashley located at 3125 Bees Ferry Rd., Charleston, SC 29414 since approximately February, 2018.

2. Currently, there are approximately five hourly paid food service employees at Ladles West Ashley.
3. In the year and a half that I have worked at Ladles West Ashley, I have seen approximately more than ten hourly paid food service employees come and go.
3. Ladles West Ashley has a policy of withholding all credit card tips from all hourly paid food service employees.
4. I am an hourly paid food service employee at Ladles West Ashley and all of my credit card tips have been withheld.
5. I am aware of the policy to withhold credit card tips because I have discussed the policy with other hourly paid employees at our regularly scheduled team meetings and they acknowledge that they do not receive credit card tips.
6. I have been instructed by my manager not to tell customers that servers do not get the tips.
7. I am capable and committed to aggressively pursuing this litigation on behalf of the other class members who had credit card tips improperly withheld from them.
8. I am not now aware of, nor do I believe I will later have, any conflicts with the interests in this lawsuit of any current or former Ladles employees who had credit card tips improperly withheld from them.
9. I have had regular communications with Ben LeClercq, Esq. regarding this lawsuit and my role in it and I believe that he has the competence and experience to adequately represent the interests of the Plaintiff class.
10. I have worked at Ladles West Ashley for approximately a year and half. I regularly see the end of day credit card reports and they show the amount of charged tips for the entire day. On a typical day, the amount of charged tips for the day is at least \$100.

11. Based on my knowledge and experience working at Ladles West Ashley, I believe that well over \$100.00 in charged credit card tips were withheld from each hourly food service employee.

FURTHER AFFIANT SAYETH NAUGHT.

September 9th, 2019

A handwritten signature in cursive script, appearing to read "Lani Charpia", written over a horizontal line.

Lani Charpia

E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-785

CRAIG CHAPPELL, on behalf of himself and
others similarly situated,

Plaintiff(s),

LANIE CHARPIA,

Applicant for Intervention

v.

Ladles Soups – James Island LLC; Ladlessoups,
LLC; Ladles Soups At Cane Bay LLC; Ladles
Soups At Citadel Mall LLP; Ladles Soups
Calhoun LLC; Ladles Soups Cane Bay LLC;
Ladles Soups Coosaw LLC; Ladles Soups
Downtown Charleston, LLC; Ladlessoups
Fresh Fields, LLC; Ladles Soups @ Freshfields
Village, LLC; Ladlessoups Mainstreet, LLC;
Ladles Soups Moncks Corner LLC;
Ladlessoups Mount Pleasant, LLC; Ladles
Franchise Development, LLC; Ladles
Franchising Inc.; Ladles Fort Mill, LLC;
Ladles Knightsville LLC; Ladles West Ashley;
Teri Owens; Sue Allen, Tracy Allen, Steve
Traeger, Erik Dyke, Julie Dyke, Stan Sutton,
Carol Sutton, Jason Dalter, Kellie Henderson;
Jane Doe 1-25 (Unknown Operating Company
and Management Company Owners); John
Doe 25-40 (Management Personnel)

Defendants.

MOTION TO INTERVENE

Lanie Charpia, (“Ms. Charpia”), by and through her undersigned attorneys, hereby moves
this Court, pursuant to Rule 24 of the South Carolina Rules of Civil Procedure, for an Order in this

action allowing Ms. Charpia to intervene as a party for the purpose of protecting her right and interests in and to the subject matter of the pending litigation. This motion is based on Rule 24 and South Carolina case law confirming Ms. Charpia's entitlement to intervene in this action as a matter of right and in the alternative, as a matter of permission.

Rule 24(b)(2) of S.C.R.C.P. provides that anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a question of law or fact in common [...]. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

To warrant intervention under rule 24(b)(2), the applicant should ordinarily show he has a claim or defense involving a question of law or fact common with the main action. *South Carolina Tax Com. v. Union County Treasurer*, 295 S.C. 257, 368 S.E.2d 72 (1988). Under Fed. R. Civ. P. 24(b), which is identical to the South Carolina Rule of Civil Procedure in all relevant respects, permissive intervention is wholly discretionary with a trial court, and a trial court will be reversed on appeal only for abuse of discretion. *Id.* In determining whether a party has a right to intervene in a suit, the court should consider the pragmatic consequences of the decision to permit or deny intervention and must examine each case in the context of its unique facts and circumstances). *Berkeley Elec.*, 302 S.C. at 189, 394 S.E.2d at 714. In exercising its discretion, the trial judge must be guided by the public policy underlying the rules of intervention which is that sound administrative procedure encourages the disposition of all claims or defenses in one action rather than a multiplicity of actions. *South Carolina Tax Com.*, 295 S.C. at 257, 368 S.E.2d at 72. As explained earlier, whether granting a motion to intervene will delay or prejudice the rights of existing parties depends upon the timeliness of the motion, and the timeliness is assessed according

to the stage to which the action has progressed. *R & G Mortg. Corp. v. Fed. Home Loan Mortg. Corp.*, 584 F.3d 1, 8 (1st Cir. 2009)

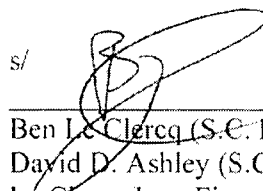
Here, Ms. Charpia's claim and the main action have in common the following question of law: Ms. Charpia and other putative class members were entitled to credit card tips paid by customers and intended by customers for the staff, although wrongfully and deceptively withheld by the employers, which employers did not pay them their wage tips. By doing so, the employers violated the South Carolina Payment of Wages Act, and other applicable law, which law entitled them to the recovery of their earned wages in addition to damages. Also, Ms. Charpia's claim and the main action have in common a question of fact because the existing plaintiffs and Ms. Charpia worked for the same restaurant concept, Ladles Soup, though at different locations. See attached affidavit of Ms. Charpia, which confirms these facts, and also that Ladles directed its employees to lie to and deceive customers.

Moreover, intervention is important in this instance because defendants have previously attempted to obtain dismissal of one or more Ladles locations, and the addition of plaintiffs from other locations is important in establishing plaintiffs basis to proceed as a class, pursuant to a motion for class certification to be filed subsequently. Defendants have thwarted plaintiffs discovery requests, and have not responded to discovery, which seeks rightfully to discover additional facts, circumstances and employees who had credit card tips wrongfully withheld.

The granting of the permissive motion to intervene under rule 24(b)(2) will not unduly delay or prejudice the rights of the original parties since filing the motion at this stage of the proceeding when the parties are still in the discovery process can be considered timely. If it is timely, it cannot be deemed prejudicial to the rights of existing parties. Ms. Charpia respectfully request that this Court grant this Motion to Intervene as a party Plaintiff.

Respectfully submitted,

s/



Ben LeClerc (S.C. Bar #65754)
David D. Ashley (S.C. Bar #76206)
LeClerc Law Firm
Ben@LeClercLaw.com
David@LeClercLaw.com
708 South Shelmore Blvd. #202
Mount Pleasant, SC 29464
Phone (843) 722-3523
Counsel for Plaintiff

August 22, 2019
Mt. Pleasant, South Carolina

CERTIFICATE OF SERVICE

I, Debbie Mathews, certify that on August 22, 2019, a true and correct copy of the foregoing
MOTION FOR CONTINUANCE was served upon counsel for Defendants, via electronic mail
as follows:

Kerry Koon - kerrykoon@hotmail.com
M. Evan Lacke - elacke@lackelawfirm.com
147 Wappoo Creek Drive, Suite 204
Charleston, SC 29412

Paul B. Ferrera, III - paul@ferreralawfirm.net
Janel Ferrara - janel@ferreralawfirm.net
Jessica Weiss - j.weiss@ferreralawfirm.net
2300 Otranto Road
North Charleston, SC 29406

P. Brandt Shelbourne - brandt@shelbournelaw.com
Yvonne Franklin - civlit@shelbournelaw.com

131 E. Richardson Avenue
Summerville, SC 29483

Debbie Mathews
Debbie Mathews

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-785

CRAIG CHAPPELL, on behalf of himself
and others similarly situated,

Plaintiff(s),

v.

Ladles Soups - James Island LLC;
Ladlessoups, LLC; Ladles Soups At Cane
Bay LLC; Ladles Soups At Citadel Mall
LLP; Ladles Soups Calhoun LLC; Ladles
Soups Cane Bay LLC; Ladles Soups
Coosaw LLC; Ladles Soups Downtown
Charleston, LLC; Ladlessoups Fresh Fields,
LLC; Ladles Soups @ Freshfields Village,
LLC; Ladlessoups Mainstreet, LLC; Ladles
Soups Moncks Corner LLC; Ladlessoups
Mount Pleasant, LLC; Ladles Franchise
Development, LLC; Ladles Franchising
Inc.; Ladles Fort Mill, LLC; Ladles
Knightsville LLC; Ladles West Ashley;
Teri Owens; Sue Allen, Tracy Allen, Steve
Traeger, Erik Dyke, Julie Dyke, Stan
Sutton, Carol Sutton, Jason Dalter, Kellie
Henderson; Jane Doe 1-25 (Unknown
Operating Company and Management
Company Owners); John Doe 25-40
(Management Personnel)

Defendants.

AFFIDAVIT

I, Lani Charpia, having been duly sworn, declare under penalty of perjury the following:

1. I have been employed as a server at Ladles West Ashley since
approximately February, 2018, located at 3125 Bees Ferry Rd, Charleston, SC 29414.

2. I was hired "on the spot" when I walked in the location at that time, and this has been my first job.

3. I started working for probably 15 hours a week, and have worked as much as 30 hours a week since I started.

4. Normally all of the employees do everything -- everybody pitches in a little bit. Specifically, employees work in the kitchen, help out with serving, and also handle the register. I believe this is a common practice for all Ladles locations.

5. One night, approximately 6 or 7 months ago (after the filing of this action) I was working at the register, and a female customer asked me words to the effect of "who gets the tip if I leave it on a credit card?" I responded "I don't know -- all I know is that all I get are the cash tips." The customer appeared to me to be upset, saying words the fact that she thought that was misleading. She said that she wanted to speak to the manager. I did not hear the conversation between the customer and the manager, as I was in a back room talking with one of the other managers.

6. The other manager told me "don't ever tell a customer that the servers don't get the tips."

7. It must've been a heated conversation between the customer and the manager, Taylor, because Taylor was crying when she came back into the back.

8. I have had other customers ask me words to the effect of "who gets the credit card tips." That of course makes me feel very uncomfortable, and I usually will say words to the effect of "I'm not allowed to say."

FURTHER AFFIANT SAYETH NAUGHT.

August 22, 2019

A handwritten signature in cursive script that reads "Lani Charpia". The signature is written in black ink and is positioned above the printed name.

Lani Charpia

59

STATE OF SOUTH CAROLINA,)
)
COUNTY OF CHARLESTON)
)

CRAIG CHAPPELL, on behalf of himself and)
Others similarly situated,)
)

Plaintiff(s),)
v.)
)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2018-CP-10-00785

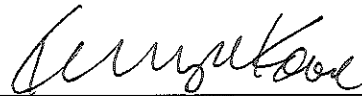
***DEFENDANT LADLESSOUPS, LLC'S
RESPONSES TO PLAINTIFF'S FIRST
REQUEST FOR ADMISSIONS***

Ladles Soup-James Island LLC; Ladlessoups,)
LLC; Ladles Soup At Cane Bay, LLC; Ladles)
Soups at Citadel Mall LLP; Ladles Soups)
Calhoun LLC; Ladles Soups Cane Bay LLC;)
Ladles Soups Coosaw LLC; Ladles Soups)
Downtown Charleston, LLC; Ladlessoups)
Fresh Fields LLC; Ladles Soups @ Freshfields)
Village, LLC; Ladlessoups Mainstreet, LLC;)
Ladles Soups Moncks Corner LLC; Ladles)
Franchise Development, LLC; Ladles Franchising,)
Inc.; Ladles Fort Mill, LLC; Ladles Knightsville)
LLC; Ladles West Ashley; Teri Owens; Sue Allen,)
Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke)
Stan Sutton, Carol Sutton, Jack Dalter, Kellie)
Henderson; Jane Doe 1-25 (Unknown Operating)
Company and Management Company Owners);)
John Doe 25-40 (Management Personnel).)
)

Defendants.)
)

The Defendant Ladlessoups, LLC hereby responds to Plaintiff's first Request for Admissions as follows:

1. Deny. Defendant had no such policy; prior to September 1, 2017, employees were allowed to elect to take a lower hourly wage plus tips or a higher hourly wage.
2. Deny. Defendant had no such policy; prior to September 1, 2017, employees were allowed to elect to take a lower hourly wage plus tips or a higher hourly wage.
3. Deny as this Defendant had no such policy; see responses to request to admit numbers 1 & 2.
4. Deny.
5. Deny.
6. Deny as this Defendant currently has no employees. Prior to September 1, 2017, employees divided cash tips.
7. Deny as this Defendant currently has no employees. Prior to September 1, 2017, denied.
8. Deny as this Defendant currently has no employees. Prior to September 1, 2017, denied as credit card tips were not deducted from employee wages.
9. Deny as this Defendant currently has no employees. Prior to September 1, 2017, denied as no employee elected to work for tips in lieu of the higher hourly wage.
10. Deny. See Employment Handbook (Open Door Policy).



Kerry W. Koon, Esq.
147 Wappoo Creek Drive, Ste. 203
Charleston, South Carolina 29412
Phone: (843) 795-7000
Fax: (843) 762-5276
Attorney for Defendants Ladles Franchising, Inc.,
Ladlessoups, LLC, Sue Allen and Tracy Allen

Charleston, South Carolina
9-19, 2019.

STATE OF SOUTH CAROLINA,	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2018-CP-10-00785
	)	

CRAIG CHAPPELL, on behalf of himself and	)
Others similarly situated,	)

Plaintiff(s),	)
v.	)

CERTIFICATE OF SERVICE

Ladles Soup-James Island LLC; Ladlessoups,	)
LLC; Ladles Soup At Cane Bay, LLC; Ladles	)
Soups at Citadel Mall LLP; Ladles Soups	)
Calhoun LLC; Ladles Soups Cane Bay LLC;	)
Ladles Soups Coosaw LLC; Ladles Soups	)
Downtown Charleston, LLC; Ladlessoups	)
Fresh Fields LLC; Ladles Soups @ Freshfields	)
Village, LLC; Ladlessoups Mainstreet, LLC;	)
Ladles Soups Moncks Corner LLC; Ladles	)
Franchise Development, LLC; Ladles Franchising,	)
Inc.; Ladles Fort Mill, LLC; Ladles Knightsville	)
LLC; Ladles West Ashley; Teri Owens; Sue Allen,	)
Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke	)
Stan Sutton, Carol Sutton, Jack Dalter, Kellie	)
Henderson; Jane Doe 1-25 (Unknown Operating	)
Company and Management Company Owners);	)
John Doe 25-40 (Management Personnel).	)

Defendants.	)

I, Megan Mitchum, an employee of Kerry W. Koon, Esq., hereby certify that on September 19, 2019, I served a copy of Defendants Ladles Franchising, Inc., Ladlessoups, LLC, Sue Allen and Tracy Allen's Responses to Plaintiff's First Request for Admissions, in the above

captioned case, by depositing the same in the U.S. Mail and via electronic mail, addressed to the following:

David Ashley, Esq.
LeClerc Law Firm
708 S. Shelmore Blvd., Ste. 202
Mt. Pleasant, SC 29464
david@leclercqlaw.com

Benjamin LeClerc, Esq.
LeClerc Law Firm
708 S. Shelmore Blvd., Ste. 202
Mt. Pleasant, SC 29464
ben@leclercqlaw.com

Paul B. Ferrara, III, Esq.
2300 Otranto Road
North Charleston, SC 29406
paul@ferraralawfirm.net

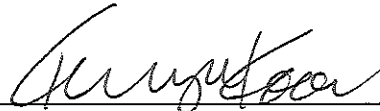
Peter B. Shelbourne, Esq.
131 E. Richardson Avenue
Summerville, SC 29483
brandt@shelbournelaw.com



STATE OF SOUTH CAROLINA,	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2018-CP-10-00785
	)	
CRAIG CHAPPELL, on behalf of himself and	)	
Others similarly situated,	)	
	)	
Plaintiff(s),	)	
v.	)	
	)	DEFENDANT LADLES FRANCHISING, INC.'S
	)	RESPONSES TO PLAINTIFF'S FIRST
	)	REQUEST FOR ADMISSIONS
Ladles Soup-James Island LLC; Ladlessoups,	)	
LLC; Ladles Soup At Cane Bay, LLC; Ladles	)	
Soups at Citadel Mall LLP; Ladles Soups	)	
Calhoun LLC; Ladles Soups Cane Bay LLC;	)	
Ladles Soups Coosaw LLC; Ladles Soups	)	
Downtown Charleston, LLC; Ladlessoups	)	
Fresh Fields LLC; Ladles Soups @ Freshfields	)	
Village, LLC; Ladlessoups Mainstreet, LLC;	)	
Ladles Soups Moncks Corner LLC; Ladles	)	
Franchise Development, LLC; Ladles Franchising,	)	
Inc.; Ladles Fort Mill, LLC; Ladles Knightsville	)	
LLC; Ladles West Ashley; Teri Owens; Sue Allen,	)	
Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke	)	
Stan Sutton, Carol Sutton, Jack Dalter, Kellie	)	
Henderson; Jane Doe 1-25 (Unknown Operating	)	
Company and Management Company Owners);	)	
John Doe 25-40 (Management Personnel).	)	
	)	
Defendants.	)	
	)	

The Defendant Ladles Franchising, Inc. hereby responds to Plaintiff's first Request for Admissions as follows:

1. Deny.
2. Deny.
3. Deny as this Defendant has no such policy.
4. Deny.
5. Deny.
6. Not applicable as this Defendant has no "customers".
7. Not applicable as this Defendant has no "customers".
8. Not applicable.
9. Not applicable as this Defendant has no tipping customers.
10. Deny. See Employment Handbook (Open Door Policy).



Kerry W. Koon, Esq.
147 Wappoo Creek Drive, Ste. 203
Charleston, South Carolina 29412
Phone: (843) 795-7000
Fax: (843) 762-5276
Attorney for Defendants Ladles Franchising, Inc.,
Ladlessoups, LLC, Sue Allen and Tracy Allen

Charleston, South Carolina
9-19, 2019.

STATE OF SOUTH CAROLINA,	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2018-CP-10-00785
	)	
CRAIG CHAPPELL, on behalf of himself and	)	
Others similarly situated,	)	
	)	
Plaintiff(s),	)	
v.	)	
	)	CERTIFICATE OF SERVICE
Ladles Soup-James Island LLC; Ladlessoups,	)	
LLC; Ladles Soup At Cane Bay, LLC; Ladles	)	
Soups at Citadel Mall LLP; Ladles Soups	)	
Calhoun LLC; Ladles Soups Cane Bay LLC;	)	
Ladles Soups Coosaw LLC; Ladles Soups	)	
Downtown Charleston, LLC; Ladlessoups	)	
Fresh Fields LLC; Ladles Soups @ Freshfields	)	
Village, LLC; Ladlessoups Mainstreet, LLC;	)	
Ladles Soups Moncks Corner LLC; Ladles	)	
Franchise Development, LLC; Ladles Franchising,	)	
Inc.; Ladles Fort Mill, LLC; Ladles Knightsville	)	
LLC; Ladles West Ashley; Teri Owens; Sue Allen,	)	
Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke	)	
Stan Sutton, Carol Sutton, Jack Dalter, Kellie	)	
Henderson; Jane Doe 1-25 (Unknown Operating	)	
Company and Management Company Owners);	)	
John Doe 25-40 (Management Personnel).	)	
	)	
Defendants.	)	
	)	

I, Megan Mitchum, an employee of Kerry W. Koon, Esq., hereby certify that on August 21, 2019, I served a copy of Defendants Ladles Franchising Inc., Ladlessoups, LLC, Sue Allen and Tracy Allen's Answers to Plaintiff's First Interrogatories & Responses to First Request for

Production of Documents which are contained on a CD provided herewith, in the above captioned case, by depositing the same in the U.S. Mail, addressed to the following:

Benjamin LeClercq, Esq.
708 S. Shelmore Blvd., Ste. 202
Mt. Pleasant, SC 29464

Peter B. Shelbourne, Esq.
131 E. Richardson Avenue
Summerville, SC 29483

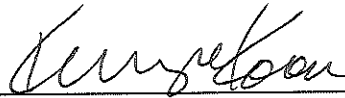
Paul B. Ferrara, III, Esq.
2300 Otranto Road
North Charleston, SC 29406



STATE OF SOUTH CAROLINA,	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2018-CP-10-00785
	)	
CRAIG CHAPPELL, on behalf of himself and	)	
Others similarly situated,	)	
	)	
Plaintiff(s),	)	
v.	)	
	)	DEFENDANTS SUE ALLEN & TRACY ALLEN'S
	)	RESPONSES TO PLAINTIFF'S FIRST
	)	REQUEST FOR ADMISSIONS
Ladles Soup-James Island LLC; Ladlessoups,	)	
LLC; Ladles Soup At Cane Bay, LLC; Ladles	)	
Soups at Citadel Mall LLP; Ladles Soups	)	
Calhoun LLC; Ladles Soups Cane Bay LLC;	)	
Ladles Soups Coosaw LLC; Ladles Soups	)	
Downtown Charleston, LLC; Ladlessoups	)	
Fresh Fields LLC; Ladles Soups @ Freshfields	)	
Village, LLC; Ladlessoups Mainstreet, LLC;	)	
Ladles Soups Moncks Corner LLC; Ladles	)	
Franchise Development, LLC; Ladles Franchising,	)	
Inc.; Ladles Fort Mill, LLC; Ladles Knightsville	)	
LLC; Ladles West Ashley; Teri Owens; Sue Allen,	)	
Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke	)	
Stan Sutton, Carol Sutton, Jack Dalter, Kellie	)	
Henderson; Jane Doe 1-25 (Unknown Operating	)	
Company and Management Company Owners);	)	
John Doe 25-40 (Management Personnel).	)	
	)	
Defendants.	)	
_____	)	

The Defendants Sue Allen & Tracy Allen hereby respond to Plaintiff's first Request for Admissions as follows:

1. Deny.
2. Deny.
3. Deny as these Defendants have no such policy.
4. Deny.
5. Deny.
6. Not applicable as these Defendants have no "customers".
7. Not applicable as these Defendants have no "customers".
8. Not applicable.
9. Not applicable as these Defendants have no customers.
10. Deny. See Employment Handbook (Open Door Policy).



Kerry W. Koon, Esq.
147 Wappoo Creek Drive, Ste. 203
Charleston, South Carolina 29412
Phone: (843) 795-7000
Fax: (843) 762-5276
Attorney for Defendants Ladles Franchising, Inc.,
Ladlessoups, LLC, Sue Allen and Tracy Allen

Charleston, South Carolina

9-19, 2019.

STATE OF SOUTH CAROLINA,	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2018-CP-10-00785
	)	
CRAIG CHAPPELL, on behalf of himself and	)	
Others similarly situated,	)	
	)	
Plaintiff(s),	)	
v.	)	
	)	<i>CERTIFICATE OF SERVICE</i>
Ladles Soup-James Island LLC; Ladlessoups,	)	
LLC; Ladles Soup At Cane Bay, LLC; Ladles	)	
Soups at Citadel Mall LLP; Ladles Soups	)	
Calhoun LLC; Ladles Soups Cane Bay LLC;	)	
Ladles Soups Coosaw LLC; Ladles Soups	)	
Downtown Charleston, LLC; Ladlessoups	)	
Fresh Fields LLC; Ladles Soups @ Freshfields	)	
Village, LLC; Ladlessoups Mainstreet, LLC;	)	
Ladles Soups Moncks Corner LLC; Ladles	)	
Franchise Development, LLC; Ladles Franchising,	)	
Inc.; Ladles Fort Mill, LLC; Ladles Knightsville	)	
LLC; Ladles West Ashley; Teri Owens; Sue Allen,	)	
Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke	)	
Stan Sutton, Carol Sutton, Jack Dalter, Kellie	)	
Henderson; Jane Doe 1-25 (Unknown Operating	)	
Company and Management Company Owners);	)	
John Doe 25-40 (Management Personnel).	)	
	)	
Defendants.	)	
	)	

I, Megan Mitchum, an employee of Kerry W. Koon, Esq., hereby certify that on August 21, 2019, I served a copy of Defendants Ladles Franchising Inc., Ladlessoups, LLC, Sue Allen and Tracy Allen's Answers to Plaintiff's First Interrogatories & Responses to First Request for

Production of Documents which are contained on a CD provided herewith, in the above captioned case, by depositing the same in the U.S. Mail, addressed to the following:

Benjamin LeClercq, Esq.
708 S. Shelmore Blvd., Ste. 202
Mt. Pleasant, SC 29464

Peter B. Shelbourne, Esq.
131 E. Richardson Avenue
Summerville, SC 29483

Paul B. Ferrara, III, Esq.
2300 Otranto Road
North Charleston, SC 29406



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

NINTH JUDICIAL CIRCUIT)

COUNTY OF CHARLESTON)

CASE NO.: 2018-CP-10-785)

CRAIG CHAPPELL)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,)

vs.)

LADLES SOUPS JAMES ISLAND LLC, ET
AL.)

Defendant.)

Plaintiff's Attorney:

Ben Le Clercq, Bar No. 65754

Address:

708 S. Shelmore Blvd, Suite 202

Mount Pleasant, SC 29464

Phone: 843-722-3523 Fax 843-352-2977

E-mail: ben@leclercqlaw.com Other:

debbie@leclercqlaw.com

Defendant's Attorney:

Paul B. Ferrara, Bar No. 70511

Address:

8887 Old University Blvd, Suite 200, North

Charleston, SC 29406

Phone: 843-569-5111 Fax 843-569-5411

E-mail: paul@ferraralawfirm.net 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: Amended Motion to Compel Discovery Responses

Estimated Time Needed: 15 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

October 4, 2019

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: \$ _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-785

CRAIG CHAPPELL, on behalf of himself and
others similarly situated,

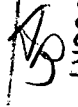
Plaintiff(s),

v.

Ladles Soups – James Island LLC;
Ladlessoups, LLC; Ladles Soups At Cane Bay
LLC; Ladles Soups At Citadel Mall LLP;
Ladles Soups Calhoun LLC; Ladles Soups
Cane Bay LLC; Ladles Soups Coosaw LLC;
Ladles Soups Downtown Charleston, LLC;
Ladlessoups Fresh Fields, LLC; Ladles Soups
@ Freshfields Village, LLC; Ladlessoups
Mainstreet, LLC; Ladles Soups Moncks
Corner LLC; Ladlessoups Mount Pleasant,
LLC; Ladles Franchise Development, LLC;
Ladles Franchising Inc.; Ladles Fort Mill,
LLC; Ladles Knightsville LLC; Ladles West
Ashley; Teri Owens; Sue Allen, Tracy Allen,
Steve Traeger, Erik Dyke, Julie Dyke, Stan
Sutton, Carol Sutton, Jason Dalter, Kellie
Henderson; Jane Doe 1-25 (Unknown
Operating Company and Management
Company Owners); John Doe 25-40
(Management Personnel)

Defendants.

**PLAINTIFFS' AMENDED MOTION TO
COMPEL DISCOVERY RESPONSES TO
PLAINTIFFS' FIRST
INTERROGATOIRES AND FIRST
REQUESTS FOR PRODUCTION FROM
ALL DEFENDANTS**

FILED
2019 OCT -4 PM 12:33
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

Plaintiffs, by and through undersigned counsel, amend its previously filed Motion to Compel to include all Defendants and move this Honorable Court to order that all Defendants respond fully to Plaintiff's discovery requests.

Defendants Ladles Soup – James Island LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston, LLC; Ladlessoups Fresh Fields, LLC; Ladles Soups@ Freshfields Village,

LLC; Ladles Soups Moncks Corner LLC; Ladles Fort Mill, LLC; Ladles Knightsville LLC; Ladles West Ashley; Terri Owens; Steve Traeger; and Kellie Henderson, through their attorney, Paul B. Ferrara, III, have failed to respond at all since being served with the requests on May 24, 2019.

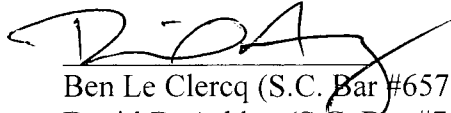
Ex. A (Email serving First Interrogatories and First Requests for Production); Ex. A.2 (First Interrogatories and First Requests for Production). Pursuant to SCRP Rule 11, Plaintiffs' counsel communicated with Defendants' counsel by email on July 12, 2019 and August 14, 2019 to resolve the issue. **Ex. B (emails to counsel for Defendants).** Over 120 days have elapsed without Defendants producing any response at all and without Defendants even requesting an extension. Plaintiffs also ask the Court to find that Defendants have waived objections to all such requests due to its failure to provide these discovery responses.

Defendant Ladlessoups, Mount. Pleasant, LLC; Erik Dyke; and Julie Dyke through their attorney, Brandt Shelbourne, have failed to fully answer or provide valid objections to the First Set of Interrogatories and Requests for Production served on Defendants by Plaintiff. **Ex. C (Defendant's Answers and Responses to Plaintiff's First Set of Interrogatories and Requests for Production).**

Defendants Ladles Franchising, Inc.; Ladles Franchise Development, LLC; Ladlessoups, LLC; Sue Allen; and Tracy Allen through their attorneys, Kerry Koon and Evan Lacke, have failed to fully answer or provide valid objections to the First Set of Interrogatories and Requests for Production served on Defendants by Plaintiff. **Ex. D (Defendant's Answers and Responses to Plaintiff's First Set of Interrogatories and Requests for Production).**

[SIGNATURE BLOCK ON NEXT PAGE]

Respectfully Submitted,



Ben Le Clercq (S.C. Bar #65754)
David D. Ashley (S.C. Bar #76206)
Le Clercq Law Firm
Ben@LeClercLaw.com
David@LeClercLaw.com
708 South Shelmore Blvd. #202
Mount Pleasant, SC 29464
Phone (843) 722-3523
Counsel for Plaintiff

October 4, 2019
Mt. Pleasant, South Carolina

CERTIFICATE OF SERVICE

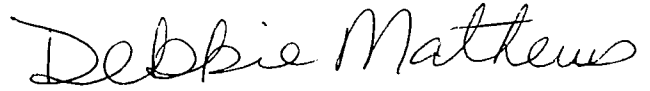
I, Debbie Mathews, certify that on October 4, 2019, a true and correct copy of the foregoing **PLAINTIFF'S AMENDED MOTION TO COMPEL DISCOVERY RESPONSES TO PLAINTIFFS' FIRST INTERROGATORIES AND FIRST REQUESTS FOR PRODUCTION FROM DEFENDANTS** was served upon counsel for Defendants, via electronic mail as follows:

Kerry Koon - kerrykoon@hotmail.com
M. Evan Lacke - elacke@lackelawfirm.com
147 Wappoo Creek Drive, Suite 204
Charleston, SC 29412

Paul B. Ferrera, III - paul@ferraralawfirm.net
Janel Ferrara - janel@ferraralawfirm.net

Jessica Weiss - j.weiss@ferraralawfirm.net
2300 Otranto Road
North Charleston, SC 29406

P. Brandt Shelbourne – brandt@shelbournelaw.com
Yvonne Franklin - civlit@shelbournelaw.com
131 E. Richardson Avenue
Summerville, SC 29483


Debbie Mathews

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CRAIG CHAPPELL, on behalf of himself and
others similarly situated,

Plaintiff(s),

v.

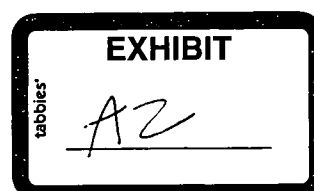
Ladles Soups – James Island LLC; Ladles
Soups, LLC; Ladles Soups At Cane Bay LLC;
Ladles Soups At Citadel Mall LLP; Ladles
Soups Calhoun LLC; Ladles Soups Cane Bay
LLC; Ladles Soups Coosaw LLC; Ladles Soups
Downtown Charleston, LLC; Ladles Soups
Fresh Fields, LLC; Ladles Soups @ Freshfields
Village, LLC; Ladles Soups Mainstreet, LLC;
Ladles Soups Moncks Corner LLC; Ladles
Soups Mount Pleasant, LLC; Ladles Franchise
Development, LLC; Ladles Franchising Inc.;
Ladles Fort Mill, LLC; Ladles Knightsville
LLC; Ladles West Ashley; Teri Owens; Sue
Allen, Tracy Allen, Steve Traeger, Erik Dyke,
Julie Dyke, Stan Sutton, Carol Sutton, Jason
Dalter, Kellie Henderson; Jane Doe 1-25
(Unknown Operating Company and
Management Company Owners); John Doe
25-40 (Management Personnel)

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-785

PLAINTIFF'S FIRST REQUESTS FOR
PRODUCTION



PLAINTIFFS' FIRST REQUESTS FOR PRODUCTION

We hereby propound the following Requests for Production ("RFP") to each Defendant ("Respondent") listed in the above styled matter, to be answered separately, fully and completely by each such Defendant in accordance with Rule 34 of the South Carolina Rules of Civil Procedure, and within 30 days. These RFPs are submitted in conjunction with our Interrogatories.

INSTRUCTIONS AND DEFINITIONS

1. You must produce a written response within thirty (30) days after service of this request to Le Clercq Law Firm, 708 South Shelmore, Suite 202, Mt. Pleasant, South Carolina 29464. Your response must state that production and related activities will be permitted as requested or that the requested production is objected to, in which event the reasons for your objection must be stated.

2. Documents produced for inspection must be produced as they are kept in the usual course of business or be organized and labeled to correspond with the categories in this request. In particular, PDF files must be produced with OCR engaged, as a searchable file, and not simply as an image which is not searchable.

3. Electronic Data and Electronically stored information (ESI) must be produced in its native format with all metadata preserved.

4. Every RFP herein shall be deemed a continuing RFP and Respondent must supplement production promptly, if, and when he obtains relevant documents in addition to his initial production in accordance with the applicable Rules of Civil Procedure.

5. Should privilege be claimed with regard to any production requested herein, the answer must, in each instance, state specifically the production sought, the privilege claimed, and the grounds on which the claim of privilege is based. Should Respondent be unable for reasons other than privileged to provide production requested herein, the answer must, in each such instance, indicate specifically the production sought, the reason such production is presently unavailable and an estimate of the time within which such production will be presented to the undersigned.

6. If Respondent objects to any portion of an RFP on the ground that it seeks privileged information, identify all persons to whom such information has been disclosed, the nature of the privilege asserted and the dates of any communication for which privilege is asserted.

7. If Respondent objects to an RFP on the ground that it is too broad (i.e., that it calls for production which is relevant to the subject matter of the action and that which is not),

Respondent should provide such production which is concededly relevant. If Respondent objects to an RFP on the ground that providing an answer would constitute an undue burden, Respondent provide such requested production as can be supplied without undertaking an undue burden. For those portions of any RFP to which Respondent objects or otherwise declines to answer, state the reason for such objection or declination.

8. The term “person(s)” includes a natural person, firm, association, partnership, business, trust, corporation, or public entity.

9. The word “you” or “your” means Respondent singularly or jointly and/or all past or present officers, directors, employees, agents, representatives, general partners, attorneys, or other persons acting or purporting to act for, on behalf of, or with Respondent. “You” or “your” also means any affiliate, parent, or subsidiary of Respondent.

10. “Computer” shall include, but is not limited to, microcomputers (also known as personal computers or desktops), laptop computers, portable computers, personal digital assistants, Blackberrys, minicomputers and mainframe computers.

11. “Document” or “media” means recorded material in any form, including the original and all non-identical copies (whether different from the originals by reason of any notation made on such copies or otherwise), including, without limitation, correspondence, memoranda, notes, desk calendar, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, invoices, statements, receipts, returns, warranties, guaranties, summaries, pamphlets, books, interoffice and intraoffice communications, offers, notations of any sort of conversations, telephone calls, voice mails, chat rooms, meetings or other communications, bulletins, bulletin boards, magazines, publications, printed matter, photographs, video, computer stored or generated information, teletypes, telefax, invoices, worksheets and all drafts, alterations, modifications, changes and amendments of any of the foregoing, tapes, tape recording transcripts, graphic or aural records or representations of any kind, of which you have knowledge or which are or were formally in your actual or constructive possession, custody, or control. .

12. “Electronic data” means all information stored in a digital format. Electronic data includes, but is not limited to, electronic mail messages and attachments, contacts, journal entries, calendar entries, word processing documents, spreadsheets, databases including all records and fields and structural information, charts, graphs, and any and all miscellaneous files responsive to the following requests. The responding party is expected to search for any and all information stored on hard disks, floppy disks, CDs, DVDs, USB devices, Smart Phones and Personal Digital Assistants (such as Palm Pilots, Blackberrys and iPhones), and in any other vehicle for digital data storage and/or transmittal. The term electronic data also includes the file, folder tabs and/or containers and labels appended to, or associated with, any physical storage device associated with the information described above.

13. “Person” or “entity” means any natural person, firm, corporation, partnership, proprietorship, joint venture, organization, group of natural persons or other association separately identifiable, whether or not such association has a separate juristic existence in its own right.

14. These RFPs are for all documents in Respondent's "Possession, custody or control," including the joint or several possession, custody or control not only by the person to whom these interrogatories and requests are addressed, but also the joint or several possession, custody or control by each or any other person or entity acting or purporting to act on behalf of the person, whether as employee, attorney, accountant, agent, sponsor, spokesman or otherwise.

15. The term "relating to" as used herein means referred or referring to, alluded or alluding to, related or relating to, tending to support or refute the existence of, concerned or concerning with, connected with, regarding, describing, or reflecting.

REQUESTS FOR PRODUCTION

1. All documents identified, described, referenced, or referred to in your responses to our First Interrogatories or to our First Requests for Production.

2. Any and all written communications, correspondence, memoranda, documents, and things relating to, supporting, refuting, or involving any of the facts and claims alleged in Plaintiff's Complaint and/or any answer by a Defendant.

3. Any and all written communications and/or documents relating to or involving the Plaintiff and/or any Defendant.

4. All statements given by respondent or any witness identified by Respondent or other witness to the facts relevant to this case that are in the possession of Respondent or his counsel, whether written or recorded, that relate in any way to the allegations of the complaint in this matter, or an answer by any Defendant.

5. Any and all written communications, documents, and things relating to, supporting, refuting, or involving any of the averments and defenses set forth in any pleading you have submitted in this matter.

6. Copies of all documents produced by third parties pursuant to subpoenas issued in this case or any request made pursuant to the Freedom of Information Act or other request by Respondent or Respondent's counsel.

7. Any and all documents identified in response to Interrogatory number 8, relating to expert witnesses.

8. All e-mails, faxes, letters, text messages and other written communication between each and every Defendant and each and every Plaintiff.

9. If Respondent is a legal entity, produce all internal communications relating to this matter, including without limitation all e-mails, faxes, letters, text messages and other written communications between and among Respondent's employees, officers, directors, agents and counsel.

10. Provide for inspection all computers, electronic devices, and telephones containing relevant production, ESI, or electronic data, including those described in response to Interrogatory number 12.

11. Produce a complete, itemized accounting and financial summary of all amounts paid and/or owed to you by any other party to this action for the period January 1, 2015 to present.

12. All federal and state tax returns, income statements, balance sheets, and profit/loss statements for Respondent during the last five years, up through and including the date of trial.

13. All Respondent's bank statements from the last five years, up through and including the date of trial.

14. For any individual Respondent, produce any resume or curriculum vitae you have created or used from the last five years, up to and including the date of trial.

15. Any and all documents evidencing or relating to postings, blogs, whether statements on any Internet were social media site in which you discuss any matter or issue arising from or relating to this action.

16. Produce each and every post, note, mention, story, document, or other item made

by Respondent during the last seven years, up through and including the date of trial, on any and all membership-based Internet websites which relates to or in any way references any party or witness to this action, or any issue or claim in this matter, and/or the allegations set forth in the complaint or any answer filed in this matter. For purposes of this RFP, “membership-based Internet websites” shall include social media websites (including but not limited to Myspace, Flickr, YouTube, Facebook, classmates, Bebo, Deviant Art, LinkedIn, Meetup, Gather, My Yearbook, Friendster, Google Plus, or Web Shots), blogging websites (including but not limited to Blogger, Live Journal, twitter, Windows Live Spaces, WordPress, Blogspot, Vox, or Xanga), dating websites (including but not limited to Adult Friend Finder, Ok Cupid, eHarmony, match, or Fubar), and any other personal websites for which Respondent has created, used, or maintained a personal account, username, or profile at any time for the last seven years up to the present.

17. Organization charts for all of Respondent’s businesses relating to this matter, including the name, work address, and telephone number of all employees providing computer support functions within any of the organizations.

18. All Respondent’s employee handbooks and other materials disseminating policies and procedures to individual employees.

19. All Respondent’s hard copy or electronic calendars for the last five years, up through and including the date of trial.

20. Lists of all employees since January 1st, 2015, up through and including the date of trial.

21. A description of your payroll process, whether you are doing it in-house or whether you are using third-party vendor.

22. A copy of Respondent's each and every profit and loss statement, income statement, and balance sheet since January 1, 2015.

23. Any and all accounting, payroll, banking, or other records relating to salary payments, tips, wages, employment tax records, since January 1, 2015.

24. All W-2s, 1099s, and other employee and/or independent contractor records since Respondent's creation.

25. A copy of each and every piece of written communication, email, text, fax, letter, or otherwise, arising from or relating to Respondent's policy of retaining credit card tips rather than pay them to employees. As described above, every RFP herein shall be deemed a continuing RFP and Respondent must supplement his answers promptly, if and when he obtains relevant production in addition to, or in any way inconsistent with, his initial production in accordance with the applicable Rules of Civil Procedure.

26. A copy of each and every complaint or discussion or document described in response to Interrogatory #30-40.

27. A copy of each and every complaint and/or administrative proceeding in which Respondent has been involved.

Respectfully submitted,

s/Ben Le Clercq

Ben Le Clercq
(S.C. Bar #65754, U.S. District Court # 7453)
Scott Riddell
(S.C. Bar #102809, U.S. District Court #12543)
Le Clercq Law Firm
708 South Shelmore Blvd. #202
Mount Pleasant, SC 29464
Phone (843) 722-3523
Fax (843) 352-2977
Ben@LeClercLaw.com
Scott@LeClercLaw.com
Counsel for Plaintiff

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, Debbie Mathews, certify that on May 24, 2019 a true and correct copy of the foregoing **FIRST INTERROGATORIES** was served upon counsel for Defendants, via email.

s/Debbie Mathews

Debbie Mathews

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

CASE NO.: 2018-CP-10-785

CRAIG CHAPPELL, on behalf of himself and
others similarly situated,

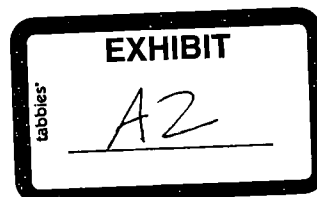
PLAINTIFF'S FIRST INTERROGATORIES

Plaintiff(s),

v.

Ladles Soups – James Island LLC; Ladles
Soups, LLC; Ladles Soups At Cane Bay LLC;
Ladles Soups At Citadel Mall LLP; Ladles
Soups Calhoun LLC; Ladles Soups Cane Bay
LLC; Ladles Soups Coosaw LLC; Ladles Soups
Downtown Charleston, LLC; Ladles Soups
Fresh Fields, LLC; Ladles Soups @ Freshfields
Village, LLC; Ladles Soups Mainstreet, LLC;
Ladles Soups Moncks Corner LLC; Ladles
Soups Mount Pleasant, LLC; Ladles Franchise
Development, LLC; Ladles Franchising Inc.;
Ladles Fort Mill, LLC; Ladles Knightsville
LLC; Ladles West Ashley; Teri Owens; Sue
Allen, Tracy Allen, Steve Traeger, Erik Dyke,
Julie Dyke, Stan Sutton, Carol Sutton, Jason
Dalter, Kellie Henderson; Jane Doe 1-25
(Unknown Operating Company and
Management Company Owners); John Doe
25-40 (Management Personnel)

Defendants.



PLAINTIFFS' FIRST INTERROGATORIES

We hereby propound the following Interrogatories to to each Defendant ("Respondent") listed in the above styled matter, to be answered separately, fully and completely by each such Defendant in accordance with Rule 34 of the South Carolina Rules of Civil Procedure, and within 30 days. These RFPs are submitted in conjunction with our First Requests for Production.

INSTRUCTIONS AND DEFINITIONS

1. ***Respondent's interrogatory responses must be signed by Respondent, and objections signed by counsel, as required by SCRCP 33.***

2. Every Interrogatory herein shall be deemed a continuing Interrogatory and Respondent must supplement his answers promptly, if and when he obtains relevant information in addition to, or in any way inconsistent with, his initial answer to any such Interrogatory in accordance with the applicable Rules of Civil Procedure.

3. Should privilege be claimed with regard to any information requested herein, the answer must, in each instance, state specifically the information sought, the privilege claimed, and the grounds on which the claim of privilege is based. Should Respondent be unable for reasons other than privileged to provide any information requested herein, the answer must, in each such instance, indicate specifically the information sought, the reason such information is presently unavailable and an estimate of the time within which such information will be presented to the undersigned.

4. If Respondent objects to any portion of an interrogatory on the ground that it seeks privileged information, identify all persons to whom such information has been disclosed, the nature of the privilege asserted and the dates of any communication for which privilege is asserted.

5. If Respondent objects to an interrogatory on the ground that it is too broad (i.e., that it calls for information which is relevant to the subject matter of the action and information which is not), Respondent should provide such information which is concededly relevant. If Respondent objects to an interrogatory on the ground that providing an answer would constitute an undue burden, Respondent provide such requested information as can be supplied without undertaking an undue burden. For those portions of any interrogatory to which Respondent objects or otherwise declines to answer, state the reason for such objection or declination.

- a. If you cannot answer all or part of any interrogatory in full after exercising due diligence to secure the full information to do so, so state and answer to the extent possible, specifying your inability to answer the remainder, stating whatever

information or knowledge you have concerning the unanswered portion, and detailing what you did in attempt to secure the unknown information.

6. The term “person(s)” includes a natural person, firm, association, partnership, business, trust, corporation, or public entity.

7. The word “you” or “your” means Respondent singularly or jointly and/or all past or present officers, directors, employees, agents, representatives, general partners, attorneys, or other persons acting or purporting to act for, on behalf of, or with Respondent. “You” or “your” also means any affiliate, parent, or subsidiary of Respondent.

8. The word “document(s)” means all written, printed, recorded or graphic matter, photographic matter, sound reproductions, or other retrievable data (whether recorded, taped, or coded electrostatically, electromagnetically or otherwise), from whatever source derived and however and by whomever, produced, reproduced, disseminated or made; without limiting the generality of the foregoing, the word “document(s)” includes the original and any non-identical copy and also every draft and proposed draft of all correspondence, memoranda, text messages, instant messages, emails, notes of meetings, telegram, telexes, facsimiles, reports, transcripts or notes of telephone conversations, diaries, notebooks, minutes, notes, tests, reports, analyses, studies, testimony, speeches, worksheets, maps, charts, diagrams, computer programs, information kept in computerized storage, computer printouts, and any other writings or documentary material of any nature whatsoever, whether or not divulged to persons other than you, together with any attachments thereto and enclosures therewith.

9. The term “identify” when used with respect to a natural person means to state the following: (1) the full name of the person, (2) his or her current business address and telephone number, (3) his or her position, and (4) a description of his or her responsibilities and knowledge of the substance of the question asked.

10. The term “identify” when used with respect to a person other than a natural person means to state the following: (1) its full name; (2) whether it is a firm, association, business, corporation, partnership, trust, or other entity; (3) the address of its principal place of business; and (4) the subdivision or part of the person most immediately involved with the subject matter of the interrogatory in question.

11. The term “identify” when used with respect to a document means to state the following: (1) the type of document (*e.g.*, letter, article, photograph, computer printout); (2) its date or approximate date; (3) its author or authors; (4) its recipient or recipients, including those persons who received copies of the document; (5) its general subject matter; and (6) its present location or custodian (or the last known location or custodian), or in lieu thereof, attach a copy of the document.

12. The term “identify” when used with respect to a communication or a statement means to: (1) state the mode of communication or statement (*e.g.*, by telephone, electronic mail, oral conversation); (2) state its date or approximate date; (3) identify its author or speaker; (4)

identify its recipient or recipients; (5) describe its general subject matter; and (6) identify any and all documents memorializing the communication or statement.

13. The term “identify” when used with respect to a meeting means to: (1) state the location of the meeting; (2) state the date of the meeting; (3) identify who attended the meeting; (4) describe the subject matter of the meeting; and (5) identify any and all documents memorializing the discussions at the meeting.

14. When an interrogatory requires you to “state” or to “state the basis” of a particular claim, contention, allegation, or defense, identify in your answer each and every verbal communication, meeting, and document that you believe supports, refers to, or evidences such a claim, contention, allegation, or defense, and identify every person having knowledge thereof.

15. When an interrogatory requires you to “describe” a particular matter, give a detailed account, narration, recitation, and report of the question asked.

16. Respondent is requested to provide *separate written responses* to these Interrogatories for each Respondent named.

17. The terms “you,” “Plaintiff,” or “Defendant” include every individual party and include your agents, employees, your attorneys, your accountants, your investigators, and anyone else acting on your behalf.

18. The term “relating to” as used herein means referred or referring to, alluded or alluding to, related or relating to, tending to support or refute the existence of, concerned or concerning with, connected with, regarding, describing, or reflecting.

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.

2. Does Respondent have liability insurance, or is there any other form of indemnity or bond, through which Respondent is or might be insured in any manner for the damages, claims, or actions that are the subject of the pleadings? If so, please provide the following information for each policy:

a. The kind of insurance, indemnity or bond;

- b. The name of the company or companies, including any excess or umbrella carriers, which you claim provide coverage;
- c. The policy number or policies numbers of any applicable policy;
- d. The limit or limits of liability of each policy.
- e. The named insured of each policy.
- f. Whether the insurance carrier has accepted or denied coverage.
- g. Whether you are being defended by the insurance carrier under a reservation or rights.

3. 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.

4. Identify each and every person who aided in answering these Interrogatories or the request for production of documents issued here with.

5. State all facts upon which you rely in support of each and every defense to Plaintiffs' Complaint in this matter.

6. State the factual basis as you understand it to each factual allegation in Plaintiffs' Complaint in this matter.

7. Set forth a list of photographs, plats, sketches, or other prepared documents in your possession that relate to a claim or defense in this case.

8. In connection with each expert witness whom Respondent proposes to use as a witness at the trial of this case, please list the following:

- a. the expert's name, address, in field of expertise;

- b. detailed summary of the expert's opinions regarding this case and the basis for them;
- c. summary of the expert's knowledge, skill, experience, training, or education as it applies to the specific field of expertise alleged in this case;
- d. description of the claims and lawsuits in which the expert has given opinions, including the names and addresses of the parties and their attorneys, and the location of any depositions and recorded statements the expert has given in cases other than this one;
- e. the percentage of expert's practice devoted to consulting work in legal claims, the percentage attributable to the claimant/plaintiff as opposed to the defendant, and the amount of income derived from such consulting in the last 2 years;
- f. the specifics of any publication in speaking engagements given by the expert on matters relating to the expert's profession; and
- g. the names of publications considered by the expert to be learned treatises as described in the Federal or South Carolina rule of evidence 803(18).

9. If Respondent or any other party with whom Respondent is familiar is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and/or pleading reflecting the correct information.

10. If Respondent is a legal entity, describe the type of entity, list all members and/or shareholders, directors, officers, and describe its constitutive documents. Describe which specific individuals at Respondent worked on or participated in the issues and facts described in this action? Give their names, contact details, and email addresses.

11. If Respondent is not a legal entity, give the names and contact details for all individuals with whom Respondent worked or with whom Respondent was affiliated arising from or related to this matter.

12. Describe and give the current location of all electronic equipment, including computers, handheld devices, mobile telephones, pagers, and/or PDAs that each person identified in the previous two Interrogatories has used. For each device, specify which people used it and for which subpart from the previous Interrogatory each person used it.

13. What does Respondent allege are the most important communications and meetings in this matter?

14. Does Respondent contend there is an oral contract? If so, please state what Respondent believes to be the terms and provisions of all such oral contract(s) in detail and state the name, address and contact information of all persons you believe have knowledge or information relating to the terms or provisions of the oral contract(s).

15. Identify any and all social media sites of which Respondent is/was a member or in which Respondent participated/subscribed from January 1st, 2015 to the day of trial. Please state whether you have a Facebook, LinkedIn, Twitter, or other social media page or site, and if so, please provide the login information and password necessary to access such site or page.

16. List and describe each and every document, drawing, map, diagram, model or other documentary material or tangible object that you intend to rely on to support your allegations/ defenses in this action, regardless of whether you intend to offer the same into evidence or merely use as a demonstrative aid at the trial of this action.

17. State whether you have been a party to a civil lawsuit. If so, for each lawsuit, please provide the following information:

- a. How were you named in the lawsuit (e.g. plaintiff, defendant, intervenor, etc.)?
 - b. What was the nature of each claim and defense?
 - c. The date, location, and title of the court in which the action was commenced.
 - d. The names of all the parties other than yourself involved in the action.
18. Please identify and describe every charge, administrative proceeding, arbitration and/or other legal proceeding brought against Respondent, and please identify the person making said allegations.
19. State your gross income for the years January 1, 2014 through the current date. Do you regularly produce profit and loss statements, balance sheets and income statements?
20. State the name and contact details of your tax preparer, accountant, and bookkeeper.
21. For each defendant that is a limited liability company, please state:
- a. The name listed in the current articles of organization;
 - b. All of the names used by the company during the past 10 years and the dates each was used;
 - c. The name and address of each member;
 - d. The name and address of each manager;
 - e. The date and place of formation;
 - f. The address of the principal place of business; and
 - g. The states in which it is registered to do business.
22. Set forth for each and every Defendant, individually, any and all real and personal property owned, whether individually, collectively, or otherwise owned including with other third parties, including but not limited to the following:

- a. all financial accounts, including bank, checking, savings, money market, investment, and/or securities accounts currently held by or for your benefit, and state current balances, location of the accounts, and name on accounts;
- b. any and all certificates of deposit, stock certificates in any publicly held or closely held corporation, as well as any bonds owned by each and every Defendant, membership interest in any and all limited liability companies, partnership interest in any and all partnerships, and any and all interest in any other form of business entity, including joint ventures, whether domestic or offshore, detailing without limitation and with particularity percentages of ownership, amount of revenue generated for each entity, etc.
- c. any and all titles to vehicles, mobile homes, or watercraft owned by each and every Defendant, detailing a description of each item including year, model, serial number, vehicle identification number, present value and the amount of any lien thereon;
- d. any and all deeds, mortgages, notes, contracts of sale, and settlement or closing statements relating to any real estate transactions involving each and every Defendant;
- e. any and all real property, including without limitation (county, state, jurisdiction), whether domestic or offshore for each and every Defendant;
- f. any and all life insurance policies owned by each and every Defendant, along with any information pertaining to any loans outstanding on any such policies;
- g. any and all items of jewelry or art owned by each and every Defendant, including a description of each item and its most recent appraised valuation;

- h. any and all leases of realty or personalty in favor of each and every Defendant;
- i. any and all books, records, documents, or writings concerning the financial status of Defendants not herein before specified, including any and all interest in any form of trust; and
- j. any and all tax receipts, tax returns or supplemental forms, and any and all other documents, forms or letters filed with United States Internal Revenue Service, and any other state tax authority within the last 5 years.

23. State the name and location of each and every Ladles' franchisee, and name the owners of that franchise.

24. What is the bank and account number for the account used to pay employees?

25. Do you use a third-party payroll processing service? Describe all documents received from them since January 1, 2015.

26. State the name, telephone number, including mobile phone number, email address, and street address for every employee of Respondent since January 1, 2015, and list whether they still work with Respondent, and if not, why they left.

27. How did Respondent come to be a Ladles Franchisee? Name and describe the Franchisor of Ladles ("Franchisor"), and describe Respondent's relationship with any such Franchisor, and the nature of the documents establishing such franchise relationship. Describe all communications, written or oral with such franchisor since January 1, 2015.

28. Since January 1, 2015, state each and every employee, member, and/or officer of Respondent that has had any responsibility for: i) payroll; ii) signing or disbursing paychecks and/or wages; iii) handling tips/tip policy; iv) accounting and credit card receipts; v) bookkeeping/accounting; vi) hiring and firing employees

29. Does Respondent have an employee handbook?
30. Since January 1, 2015, describe all payroll and salary documents provided to employees and or independent contractors, including W-2s and 1099s.
31. Who decided on behalf of Respondent that Respondent would retain credit card tips rather than pay them to employees? Did any other Defendant, or employee/agent/officer of another Defendant, share in the responsibility for that decision, agree with or suggest, counsel, or otherwise state that Respondents should retain credit card tips rather than pay them to employees?
32. When and how did Respondent decide that the credit card tip policy described in the prior paragraph would be Respondent's policy?
33. Describe each and every written and oral communication with any person, including employees, officers, agents, or individuals affiliated with other franchisees or franchisor, or otherwise arising from or related to Respondent's policy of retaining credit card tips. In particular, describe any and all emails relating to such policy.
34. Describe any and all meetings with any other franchisees, their agents, members, officers or employees, and/or with Franchisor its agents, members, officers or employees, discussing or describing Respondent or other Franchisee or Franchisor policy relating to tips.
35. What has been Respondent's policy as to cash tips since January 1, 2015? Has that policy ever changed?
36. Who fired Craig Chappell? Why was he fired?
37. Describe Respondent's accounting software.
38. Describe Respondent's management structure for employee operations. Describe the types of employees and their functions in Respondent's operations.

39. Describe any and all written communications were notices with Respondent's customers and clients notifying them as to any tip policy of Respondent, and in particular, Respondent's policy of retaining credit card tips rather than paying them to employees.

40. Have any employees complained or raised concerns about Respondent's tipping policies? Describe each and every such complaint or discussion, and whether the same is documented in any written communications.

As described above, every Interrogatory herein shall be deemed a continuing Interrogatory and Respondent must supplement his answers promptly, if and when he obtains relevant information in addition to, or in any way inconsistent with, his initial answer to any such Interrogatory in accordance with the applicable Rules of Civil Procedure

Respectfully submitted,

s/Ben Le Clercq

Le Clercq Law Firm
Ben Whaley Le Clercq
SC Bar # 65754
Scott Riddell
SC Bar #102809
708 S. Shelmore, Suite 202
Mt. Pleasant, SC 29464
843-722-3523
ben@leclercqlaw.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, Debbie Mathews, certify that on May 24, 2019 a true and correct copy of the foregoing **FIRST INTERROGATORIES** was served upon counsel for Defendants, via email.

s/Debbie Mathews

Debbie Mathews



Debbie Mathews <debbie@leclercqlaw.com>

Chappell v Ladles Defendants Discovery Responses

1 message

Debbie Mathews <Debbie@leclercqlaw.com>

Fri, Jul 12, 2019 at 9:23 AM

To: Paul Ferrara <paul@ferraralawfirm.net>, Janel Ferrara <janel@ferraralawfirm.net>, Jessica Weiss <j.weiss@ferraralawfirm.net>

Cc: "Ben Whaley Le Clercq, J.D., LL.M." <Ben@leclercqlaw.com>, Scott Riddell <scott@leclercqlaw.com>

Hello,

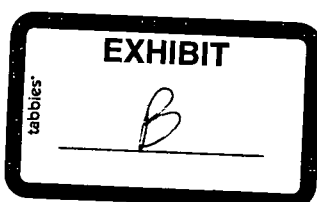
We served discovery on your office on May 24, 2019, and have not received the responses as of today. Please serve the responses no later than Tuesday, July 16, 2019. Please consider this our Rule 11 communication.

Debbie Mathews
Legal Assistant
Le Clercq Law Firm
708 South Shelmore Blvd., Suite 202
Mount Pleasant, SC 29464
Tel: 843-722-3523
Fax: 843-352-2977
debbie@leclercqlaw.com
www.leclercqlaw.com

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Debbie Mathews <debbie@leclercqlaw.com>

Re: Chappell v Ladles Defendants Discovery Responses

1 message

Debbie Mathews <Debbie@leclercqlaw.com>

Wed, Aug 14, 2019 at 3:41 PM

To: Paul Ferrara <paul@ferraralawfirm.net>, Janel Ferrara <janel@ferraralawfirm.net>, Jessica Weiss <j.weiss@ferraralawfirm.net>

Cc: "Ben Whaley Le Clercq, J.D., LL.M." <Ben@leclercqlaw.com>, David Ashley <David@leclercqlaw.com>

Hello,

We have not received the discovery responses. Can you let me know when we will receive them.
Thanks.

Debbie Mathews
Legal Assistant
Le Clercq Law Firm
708 South Shelmore Blvd., Suite 202
Mount Pleasant, SC 29464
Tel: 843-722-3523
Fax: 843-352-2977
debbie@leclercqlaw.com
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On Fri, Jul 12, 2019 at 9:23 AM Debbie Mathews <Debbie@leclercqlaw.com> wrote:

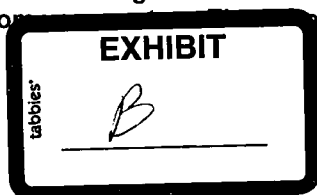
Hello,

We served discovery on your office on May 24, 2019, and have not received the responses as of today. Please serve the responses no later than Tuesday, July 16, 2019. Please consider this our Rule 11 communication.

Debbie Mathews
Legal Assistant
Le Clercq Law Firm
708 South Shelmore Blvd., Suite 202
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Tel: 843-722-3523
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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CRAIG CHAPPELL, on behalf of himself and
others similarly situated,

Plaintiff(s),

v.

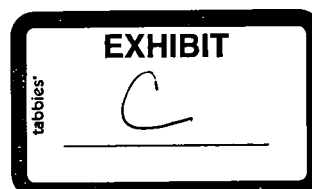
Ladles Soups – James Island LLC; Ladles
Soups, LLC; Ladles Soups At Cane Bay LLC;
Ladles Soups At Citadel Mall LLP; Ladles
Soups Calhoun LLC; Ladles Soups Cane Bay
LLC; Ladles Soups Coosaw LLC; Ladles Soups
Downtown Charleston, LLC; Ladles Soups
Fresh Fields, LLC; Ladles Soups @ Freshfields
Village, LLC; Ladles Soups Mainstreet, LLC;
Ladles Soups Moncks Corner LLC; Ladles
Soups Mount Pleasant, LLC; Ladles Franchise
Development, LLC; Ladles Franchising Inc.;
Ladles Fort Mill, LLC; Ladles Knightsville
LLC; Ladles West Ashley; Teri Owens; Sue
Allen, Tracy Allen, Steve Traeger, Erik Dyke,
Julie Dyke, Stan Sutton, Carol Sutton, Jason
Dalter, Kellie Henderson; Jane Doe 1-25
(Unknown Operating Company and
Management Company Owners); John Doe
25-40 (Management Personnel)

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-00785

**LADLES SOUPS OF MOUNT
PLEASANT, LLC, ERIK DYKE AND
JULIE DYKE RESPONSES TO
PLAINTIFF'S FIRST SET OF
INTERROGATORIES**



TO: CRAIG CHAPPELL AND HIS ATTORNEY BENJAMIN LE CLERCQ, ESQ.:

Defendants, Ladles Soups Mount Pleasant LLC, Erik Dyke and Julie Dyke, (hereinafter referred to as "Defendants") by and through their undersigned counsel, respond to Plaintiff, Craig Chappell's First Set of Interrogatories as follows:

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:

**Erik Dyke
c/o Shelbourne Law
131 E. Richardson Ave
Summerville, SC 29483**

Mr. Dyke is the owner and franchisee of Ladles Soups Mount Pleasant in the above captioned action and is expected to testify regarding his knowledge of the facts and circumstances in the pleadings. Upon information and belief, Mr. Dyke has not made any written or recorded statements regarding this matter beyond those found in its pleadings, discovery responses or documents in this matter.

**Julie Dyke
c/o Shelbourne Law
131 E. Richardson Ave
Summerville, SC 29483**

Mrs. Dyke is a co-owner and franchisee of Ladles Soups Mount Pleasant in the above captioned action and is expected to testify regarding her knowledge of the facts and circumstances in the pleadings. Upon information and belief, Mrs. Dyke has not made any written or recorded statements regarding this matter beyond those found in its pleadings, discovery responses or documents in this matter

2. Does Respondent have liability insurance, or is there any other form of indemnity or bond, through which Respondent is or might be insured in any manner for the damages, claims,

or actions that are the subject of the pleadings? If so, please provide the following information for each policy:

- a. The kind of insurance, indemnity or bond;
- b. The name of the company or companies, including any excess or umbrella carriers, which you claim provide coverage;
- c. The policy number or policies numbers of any applicable policy;
- d. The limit or limits of liability of each policy.
- e. The named insured of each policy.
- f. Whether the insurance carrier has accepted or denied coverage.
- g. Whether you are being defended by the insurance carrier under a reservation or rights.

Response: Defendant does not have any applicable insurance.

3. 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: In response to Interrogatory number 3, Defendants adopt and reiterate their response to Interrogatory number 1.

4. Identify each and every person who aided in answering these Interrogatories or the request for production of documents issued here with.

Response: Defendants Erik Dyke and Julie Dyke.

5. State all facts upon which you rely in support of each and every defense to Plaintiffs' Complaint in this matter.

Response: Plaintiff alleged that that Defendants failed to pay him wages and failed to turn over tips paid on credit card charges. Plaintiff has not had a contractual relationship with Defendants nor has Plaintiff ever been employed by the Defendant's. Plaintiff admitted in his deposition that Defendants did not take anything from him. Further, Defendants have never withheld credit card tips from employees.

6. State the factual basis as you understand it to each factual allegation in Plaintiff's Complaint in this matter.

Response: Defendants do not know of any factual basis for Plaintiff's causes of action.

7. Set forth a list of photographs, plats, sketches, or other prepared documents in your possession that relate to a claim or defense in this case.

Response: Defendants have attached all documents in their possession at this time. Defendants reserve the right to supplement their answers to Plaintiff's Interrogatories as more information is obtained through the discovery process.

8. In connection with each expert witness whom Respondent proposes to use as a witness at the trial of this case, please list the following:

- a. the expert's name, address, in field of expertise;
- b. detailed summary of the expert's opinions regarding this case and the basis for them;
- c. summary of the expert's knowledge, skill, experience, training, or education as it applies to the specific field of expertise alleged in this case;
- d. description of the claims and lawsuits in which the expert has given opinions, including the names and addresses of the parties and their attorneys, and the location of any depositions and recorded statements the expert has given in cases other than this one;

- e. the percentage of expert's practice devoted to consulting work in legal claims, the percentage attributable to the claimant/plaintiff as opposed to the defendant, and the amount of income derived from such consulting in the last 2 years;
- f. the specifics of any publication in speaking engagements given by the expert on matters relating to the expert's profession; and
- g. the names of publications considered by the expert to be learned treatises as described in the Federal or South Carolina rule of evidence 803(18).

Response: Defendants have not obtained an expert witness at this time but reserve the right to supplement their answers to Plaintiff's Interrogatories as more information is obtained through the discovery process. Defendants will reply on any expert retained by the other Defendants or Plaintiff in this case and all written responses to the discovery listing them as experts.

9. If Respondent or any other party with whom Respondent is familiar is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and/or pleading reflecting the correct information.

Response: Defendants are not aware of any party improperly identified, other than Defendants should not be named in this suit.

10. If Respondent is a legal entity, describe the type of entity, list all members and/or shareholders, directors, officers, and describe its constitutive documents. Describe which specific individuals at Respondent worked on or participated in the issues and facts described in this action? Give their names, contact details, and email addresses.

Response: Defendants are the sole owners and members of Ladles Soups Mount Pleasant. Ladles is an independent LLC owned by the Defendants. Defendants purchased a franchise from co-Defendant Ladles Franchising Inc. which has no control or oversight into Defendants' business. Defendants have not worked on or participated in the issues and facts described in this matter.

11. If Respondent is not a legal entity, give the names and contact details for all individuals with whom Respondent worked or with whom Respondent was affiliated arising from or related to this matter.

Response: Not applicable.

12. Describe and give the current location of all electronic equipment, including computers, handheld devices, mobile telephones, pagers, and/or PDAs that each person identified in the previous two Interrogatories has used. For each device, specify which people used it and for which subpart from the previous Interrogatory each person used it.

Response: Defendants object to this Interrogatory as it seeks information not relevant to the subject matter of this lawsuit or not calculated to lead to admissible evidence.

13. What does Respondent allege are the most important communications and meetings in this matter?

Response: Defendants object to this Interrogatory as it seeks information subject to Attorney-Client privilege and calls for legal conclusions. Without waiving these objections, Defendants are unaware of any communications or meetings.

14. Does Respondent contend there is an oral contract? If so, please state what Respondent believes to be the terms and provisions of all such oral contract(s) in detail and state the name, address and contact information of all persons you believe have knowledge or information relating to the terms or provisions of the oral contract(s).

Response: Defendants had no written or oral contract with the Plaintiff as Plaintiff was never an employee of Defendants.

15. Identify any and all social media sites of which Respondent is/was a member or in which Respondent participated/subscribed from January 1st, 2015 to the day of trial. Please state whether you have a Facebook, LinkedIn, Twitter, or other social media page or site, and if so, please provide the login information and password necessary to access such site or page.

Response: Defendants object to the production of this information as it is irrelevant, nor calculated to lead to admissible evidence. Without waiving these objections, www.facebook.com/Ladles-Soups-Mount Pleasant and on Twitter – Follow@Ladles Soups.

16. List and describe each and every document, drawing, map, diagram, model or other documentary material or tangible object that you intend to rely on to support your allegations/ defenses in this action, regardless of whether you intend to offer the same into evidence or merely use as a demonstrative aid at the trial of this action.

Response: Defendants have attached all documents in their possession at this time. Defendants reserve the right to supplement their answers to Plaintiff's Interrogatories as more information is obtained through the discovery process.

17. State whether you have been a party to a civil lawsuit. If so, for each lawsuit, please provide the following information:

- a. How were you named in the lawsuit (e.g. plaintiff, defendant, intervenor, etc.)?
- b. What was the nature of each claim and defense?
- c. The date, location, and title of the court in which the action was commenced.
- d. The names of all the parties other than yourself involved in the action.

Response: Defendant, LLC has not been a party to a lawsuit.

18. Please identify and describe every charge, administrative proceeding, arbitration and/or other legal proceeding brought against Respondent, and please identify the person making said allegations.

Response: None.

19. State your gross income for the years January 1, 2014 through the current date. Do you regularly produce profit and loss statements, balance sheets and income statements?

Response: Defendants object on the grounds that this Interrogatory is irrelevant, nor calls for discovery of admissible evidence. Without waiving objections, Defendants have attached all documents in their possession at this time. Defendants reserve the right to supplement their answers to Plaintiff's Interrogatories as more information is obtained

through the discovery process. Defendants do not regularly produce profit and loss statements, balance sheets and income statements.

20. State the name and contact details of your tax preparer, accountant, and bookkeeper.

Response: Defendants have attached all documents in their possession at this time. Defendants reserve the right to supplement their answers to Plaintiff's Interrogatories as more information is obtained through the discovery process.

21. For each defendant that is a limited liability company, please state:

- a. The name listed in the current articles of organization;
- b. All of the names used by the company during the past 10 years and the dates each was used;
- c. The name and address of each member;
- d. The name and address of each manager;
- e. The date and place of formation;
- f. The address of the principal place of business; and
- g. The states in which it is registered to do business.

Response: Ladles Soups Mount Pleasant, LLC
Members - Erik Dyke and Julie Dyke, c/o Shelbourne Law, 131 E. Richardson Ave., Summerville, SC 29483
Incorporated in May 3, 2010 in South Carolina

22. Set forth for each and every Defendant, individually, any and all real and personal property owned, whether individually, collectively, or otherwise owned including with other third parties, including but not limited to the following:

- a. all financial accounts, including bank, checking, savings, money market, investment, and/or securities accounts currently held by or for your benefit, and state current balances, location of the accounts, and name on accounts;
- b. any and all certificates of deposit, stock certificates in any publicly held or closely held corporation, as well as any bonds owned by each and every

Defendant, membership interest in any and all limited liability companies, partnership interest in any and all partnerships, and any and all interest in any other form of business entity, including joint ventures, whether domestic or offshore, detailing without limitation and with particularity percentages of ownership, amount of revenue generated for each entity, etc.

- c. any and all titles to vehicles, mobile homes, or watercraft owned by each and every Defendant, detailing a description of each item including year, model, serial number, vehicle identification number, present value and the amount of any lien thereon;
- d. any and all deeds, mortgages, notes, contracts of sale, and settlement or closing statements relating to any real estate transactions involving each and every Defendant;
- e. any and all real property, including without limitation (county, state, jurisdiction), whether domestic or offshore for each and every Defendant;
- f. any and all life insurance policies owned by each and every Defendant, along with any information pertaining to any loans outstanding on any such policies;
- g. any and all items of jewelry or art owned by each and every Defendant, including a description of each item and its most recent appraised valuation;
- h. any and all leases of realty or personalty in favor of each and every Defendant;
- i. any and all books, records, documents, or writings concerning the financial status of Defendants not herein before specified, including any and all interest in any form of trust; and

- j. any and all tax receipts, tax returns or supplemental forms, and any and all other documents, forms or letters filed with United States Internal Revenue Service, and any other state tax authority within the last 5 years.

Response: Defendants object to this Interrogatory on the grounds that it is compound, unreasonable, overly broad, unduly burdensome and expensive, irrelevant and not reasonably calculated to lead to discoverable evidence.

23. State the name and location of each and every Ladles' franchisee and name the owners of that franchise.

Response: Defendants do not know the name and location of every franchisee.

24. What is the bank and account number for the account used to pay employees?

Response: Defendants object to this Interrogatory as it calls for production of irrelevant information or is not conducive to lead to the discovery of admissible evidence.

25. Do you use a third-party payroll processing service? Describe all documents received from them since January 1, 2015.

Response: Defendants object to this Interrogatory on the grounds that it is irrelevant and unduly burdensome.

26. State the name, telephone number, including mobile phone number, email address, and street address for every employee of Respondent since January 1, 2015, and list whether they still work with Respondent, and if not, why they left.

Response: Defendants object to this Interrogatory on the grounds that it seeks information not relevant to the subject matter of this lawsuit nor conducive to lead to admissible evidence. This request is also an invasion of individuals right to privacy as they are not parties to this matter. Plaintiff has not obtained class certification.

27. How did Respondent come to be a Ladles Franchisee? Name and describe the Franchisor of Ladles ("Franchisor"), and describe Respondent's relationship with any such Franchisor, and the nature of the documents establishing such franchise relationship. Describe all communications, written or oral with such franchisor since January 1, 2015.

Response: Defendants purchased a franchise and are governed by the Franchise Agreement between the Franchisor and Franchisee.

28. Since January 1, 2015, state each and every employee, member, and/or officer of Respondent that has had any responsibility for: i) payroll; ii) signing or disbursing paychecks and/or wages; iii) handling tips/tip policy; iv) accounting and credit card receipts; v) bookkeeping/accounting; vi) hiring and firing employees.

Response: Defendants Erik Dyke and Julie Dyke.

29. Does Respondent have an employee handbook?

Response: Defendants object to this Interrogatory as it is vague and unduly burdensome as there is no specified time period requested. Without waiving these objections, Defendants have attached all documents in their possession at this time. Defendants reserve the right to supplement their answers to Plaintiff's Interrogatories as more information is obtained through the discovery process.

30. Since January 1, 2015, describe all payroll and salary documents provided to employees and or independent contractors, including W-2s and 1099s.

Response: Defendants object to this Interrogatory as it is unclear as to what the Plaintiff is seeking.

31. Who decided on behalf of Respondent that Respondent would retain credit card tips rather than pay them to employees? Did any other Defendant, or employee/agent/officer of another Defendant, share in the responsibility for that decision, agree with or suggest, counsel, or otherwise state that Respondents should retain credit card tips rather than pay them to employees?

Response: Defendants object to this Interrogatory on the grounds that it assumes that Defendants retain credit card tips and does not provide credit card tips to its employees. Without waiving these objections, Defendants do not have a policy of retaining credit card tips from employees.

32. When and how did Respondent decide that the credit card tip policy described in the prior paragraph would be Respondent's policy?

Response: This has always been Defendants' policy to give credit card tips to the employees.

33. Describe each and every written and oral communication with any person, including employees, officers, agents, or individuals affiliated with other franchisees or franchisor, or otherwise arising from or related to Respondent's policy of retaining credit card tips. In particular, describe any and all emails relating to such policy.

Response: Defendants object to this Interrogatory on the grounds that it assumes that Defendants retain credit card tips and does not provide credit card tips to its employees. Without waiving these objections, Defendants do not have a policy of retaining credit card tips from employees.

34. Describe any and all meetings with any other franchisees, their agents, members, officers or employees, and/or with Franchisor its agents, members, officers or employees, discussing or describing Respondent or other Franchisee or Franchisor policy relating to tips.

Response: Defendants have not had any meetings.

35. What has been Respondent's policy as to cash tips since January 1, 2015? Has that policy ever changed?

Response: Defendants pay cash tips to employees.

36. Who fired Craig Chappell? Why was he fired?

Response: Defendants did not fire Craig Chappell as Craig Chappell was never employed by the Defendants.

37. Describe Respondent's accounting software.

Response: Defendants object to this Interrogatory on the grounds that it is overly broad and unduly burdensome and not calculated to lead to the discovery of admissible evidence.

38. Describe Respondent's management structure for employee operations. Describe the types of employees and their functions in Respondent's operations.

Response: Defendants Erik Dyke and Julie Dyke handle all of this.

39. Describe any and all written communications were notices with Respondent's customers and clients notifying them as to any tip policy of Respondent, and in particular, Respondent's policy of retaining credit card tips rather than paying them to employees.

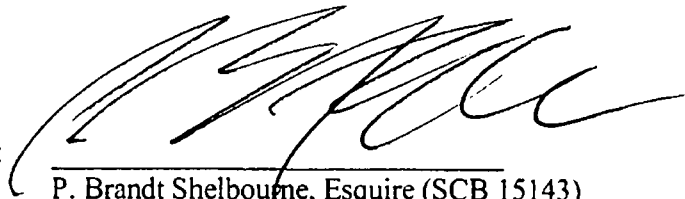
Response: Defendants object to this Interrogatory on the grounds that it assumes facts not in evidence. Without waiving these objections, Defendants do not have a policy of retaining credit card tips as Defendants does not retain credit card tips from employees.

40. Have any employees complained or raised concerns about Respondent's tipping policies? Describe each and every such complaint or discussion, and whether the same is documented in any written communications.

Response: No employees have complained.

RESPECTFULLY SUBMITTED,

By:



P. Brandt Shelbourne, Esquire (SCB 15143)
SHELBOURNE LAW FIRM
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210

**ATTORNEYS FOR DEFENDANTS LADLES
SOUPS OF MOUNT PLEASANT, LLC, ERIK
DYKE AND JULIE DYKE**

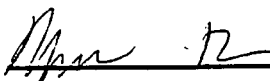
June 25th, 2019
Summerville, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Shelbourne Law, do hereby certify that a true and correct copy of Defendants Ladles Soups of Mount Pleasant, LLC, Erik Dyke and Julie Dyke Responses to Plaintiff's First Set of Interrogatories which this certificate is affixed was served upon the following parties via hard copy and/or electronic mail to the following:

Ben LeClercq, Esq. LeClercq Law Firm 708 South Shelmore Blvd., Ste.202 Mount Pleasant, SC, 29406 <i>Attorney for Plaintiff</i>	Kerry Koon, Esq. 147 Wappoo Creek Dr. Wappoo Centre, Suite 203 Charleston, SC 29491 kerrykoon@hotmail.com <i>Attorney for Defendants, Ladles Franchising, Inc.; Ladessoups, LLC, and Tracy Allen</i>
Paul B. Ferrara, III, Esq. Ferrara Law 8887 Old University Blvd. North Charleston, SC 29406 paul@ferraralawfirm.net <i>Attorney for Defendants: Kellie Henderson; Ladles Fort Mill LLC; Ladles Franchise Development LLC; Ladles Knightsville LLC; Ladles Soups @ Freshfields Village LLC; Ladles Soups at Freshfields Village LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston LLC; Ladles Soups Monks Corner LLC; Ladles West Ashley; Carol Sutton, and Steve Traeger; Ladles Soup James Island, LLC and Teri Owens</i>	

Date: June 25, 2019



Yvonne Franklin, Paralegal at Shelbourne Law

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CRAIG CHAPPELL, on behalf of himself and
others similarly situated,

Plaintiff(s),

v.

Ladles Soups – James Island LLC; Ladles
Soups, LLC; Ladles Soups At Cane Bay LLC;
Ladles Soups At Citadel Mall LLP; Ladles
Soups Calhoun LLC; Ladles Soups Cane Bay
LLC; Ladles Soups Coosaw LLC; Ladles Soups
Downtown Charleston, LLC; Ladles Soups
Fresh Fields, LLC; Ladles Soups @ Freshfields
Village, LLC; Ladles Soups Mainstreet, LLC;
Ladles Soups Moncks Corner LLC; Ladles
Soups Mount Pleasant, LLC; Ladles Franchise
Development, LLC; Ladles Franchising Inc.;
Ladles Fort Mill, LLC; Ladles Knightsville
LLC; Ladles West Ashley; Teri Owens; Sue
Allen, Tracy Allen, Steve Traeger, Erik Dyke,
Julie Dyke, Stan Sutton, Carol Sutton, Jason
Dalter, Kellie Henderson; Jane Doe 1-25
(Unknown Operating Company and
Management Company Owners); John Doe
25-40 (Management Personnel)

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-785

**LADLES SOUPS OF MOUNT
PLEASANT, LLC, ERIK DYKE AND
JULIE DYKE RESPONSES TO
PLAINTIFF'S FIRST REQUESTS
FOR PRODUCTION**



TO: CRAIG CHAPPELL AND HIS ATTORNEY BENJAMIN LE CLERCQ, ESQ.:

Defendants, Ladles Soups Mount Pleasant LLC, Erik Dyke and Julie Dyke, (hereinafter referred to as "Defendants") by and through their undersigned counsel, respond to Plaintiff, Craig Chappell's First Requests for Production as follows:

REQUESTS FOR PRODUCTION

1. All documents identified, described, referenced, or referred to in your responses to our First Interrogatories or to our First Requests for Production.

Response: Defendants will produce copies of all documents responsive to this request to produce in their possession at this time.

2. Any and all written communications, correspondence, memoranda, documents, and things relating to, supporting, refuting, or involving any of the facts and claims alleged in Plaintiff's Complaint and/or any answer by a Defendant.

Response: Defendants will produce copies of all documents responsive to this request to produce in their possession at this time.

3. Any and all written communications and/or documents relating to or involving the Plaintiff and/or any Defendant.

Response: Defendants will produce copies of all documents responsive to this request to produce in their possession at this time.

4. All statements given by respondent or any witness identified by Respondent or other witness to the facts relevant to this case that are in the possession of Respondent or his counsel, whether written or recorded, that relate in any way to the allegations of the complaint in this matter, or an answer by any Defendant.

Response: None at this time. Furthermore, Defendants have attached all documents in their possession at this time and reserves the right to supplement through the discovery process.

5. Any and all written communications, documents, and things relating to,

supporting, refuting, or involving any of the averments and defenses set forth in any pleading you have submitted in this matter.

Response: Defendants will produce copies of all documents responsive to this request to produce in their possession at this time.

6. Copies of all documents produced by third parties pursuant to subpoenas issued in this case or any request made pursuant to the Freedom of Information Act or other request by Respondent or Respondent's counsel.

Response: None at this time. Defendants reserve the right to supplement through the discovery process.

7. Any and all documents identified in response to Interrogatory number 8, relating to expert witnesses.

Response: Defendants have not obtained an expert witness at this time. However, Defendants reserve the right to supplement their answer to Plaintiff's Request to Produce as more information is obtained through the discovery process.

8. All e-mails, faxes, letters, text messages and other written communication between each and every Defendant and each and every Plaintiff.

Response: Defendants do not have any e-mails, faxes, letters, text messages and other written communication with the Plaintiff as Plaintiff was not an employee of the Defendants. Defendants are unaware of specific e-mails, faxes, letters, text messages and other written communication with Defendants, however, Defendants will produce copies of all documents responsive to this request to produce in their possession at this time.

9. If Respondent is a legal entity, produce all internal communications relating to this matter, including without limitation all e-mails, faxes, letters, text messages and other written communications between and among Respondent's employees, officers, directors, agents and counsel.

Response: Defendants object on the grounds that this calls for production of information protected by the Attorney-Client Privilege and by Attorney Work Product doctrine.

10. Provide for inspection all computers, electronic devices, and telephones containing

relevant production, ESI, or electronic data, including those described in response to Interrogatory number 12.

Response: Objection. This Request for Production is overly broad, unduly burdensome, or not reasonably calculated to lead to discovery of admissible evidence.

11. Produce a complete, itemized accounting and financial summary of all amounts paid and/or owed to you by any other party to this action for the period January 1, 2015 to present.

Response: Objection. Defendants do not owe, nor have paid any other party other than franchise fees which are not relevant or calculated to lead to discovery of admissible evidence.

12. All federal and state tax returns, income statements, balance sheets, and profit/loss statements for Respondent during the last five years, up through and including the date of trial.

Response: Objection. This Request for Production is overly broad, unduly burdensome. Without waiving these objections, Defendants will produce the federal and state tax returns for the last five years for Ladles Soups of Mount Pleasant, LLC.

13. All Respondent's bank statements from the last five years, up through and including the date of trial.

Response: Objection. This Interrogatory calls for production of irrelevant information and information not calculated to lead to discovery of admissible evidence.

14. For any individual Respondent, produce any resume or curriculum vitae you have created or used from the last five years, up to and including the date of trial.

Response: None.

15. Any and all documents evidencing or relating to postings, blogs, whether statements on any Internet were social media site in which you discuss any matter or issue arising from or relating to this action.

Response: None.

16. Produce each and every post, note, mention, story, document, or other item made by Respondent during the last seven years, up through and including the date of trial, on any and

all membership-based Internet websites which relates to or in any way references any party or witness to this action, or any issue or claim in this matter, and/or the allegations set forth in the complaint or any answer filed in this matter. For purposes of this RFP, "membership-based Internet websites" shall include social media websites (including but not limited to Myspace, Flickr, YouTube, Facebook, classmates, Bebo, Deviant Art, LinkedIn, Meetup, Gather, My Yearbook, Friendster, Google Plus, or Web Shots), blogging websites (including but not limited to Blogger, Live Journal, twitter, Windows Live Spaces, WordPress, Blogspot, Vox, or Xanga), dating websites (including but not limited to Adult Friend Finder, Ok Cupid, eHarmony, match, or Fubar), and any other personal websites for which Respondent has created, used, or maintained a personal account, username, or profile at any time for the last seven years up to the present.

Response: None.

17. Organization charts for all of Respondent's businesses relating to this matter, including the name, work address, and telephone number of all employees providing computer support functions within any of the organizations.

Response: Defendants do not have an organization chart for its business.

18. All Respondent's employee handbooks and other materials disseminating policies and procedures to individual employees.

Response: Defendants will produce copies of all documents responsive to this request to produce in their possession at this time, but do not have a handbook.

19. All Respondent's hard copy or electronic calendars for the last five years, up through and including the date of trial.

Response: Defendants object on the grounds that it is irrelevant nor calculated to lead to admissible evidence.

20. Lists of all employees since January 1st, 2015, up through and including the date of trial.

Response: Defendants object on the grounds that it is irrelevant nor calculated to lead to admissible evidence.

21. A description of your payroll process, whether you are doing it in-house or whether you are using third-party vendor.

Response: In house.

22. A copy of Respondent's each and every profit and loss statement, income statement, and balance sheet since January 1, 2015.

Response: Defendants will produce copies of all documents responsive to this request to produce in their possession at this time.

23. Any and all accounting, payroll, banking, or other records relating to salary payments, tips, wages, employment tax records, since January 1, 2015.

Response: Defendants object on the grounds that it is irrelevant nor calculated to lead to admissible evidence.

24. All W-2s, 1099s, and other employee and/or independent contractor records since Respondent's creation.

Response: Objection. This Request for Production is an invasion of an employee and/or independent contractor's privacy who are not a party to this action. In addition, this request is unduly burdensome, expensive and not reasonably calculated to lead to discovery of admissible evidence.

25. A copy of each and every piece of written communication, email, text, fax, letter, or otherwise, arising from or relating to Respondent's policy of retaining credit card tips rather than pay them to employees. As described above, every RFP herein shall be deemed a continuing RFP and Respondent must supplement his answers promptly, if and when he obtains relevant

production in addition to, or in any way inconsistent with, his initial production in accordance with the applicable Rules of Civil Procedure.

Response: Defendants do not have a policy of retaining tips so there are no such documents.

26. A copy of each and every complaint or discussion or document described in response to Interrogatory #30-40.

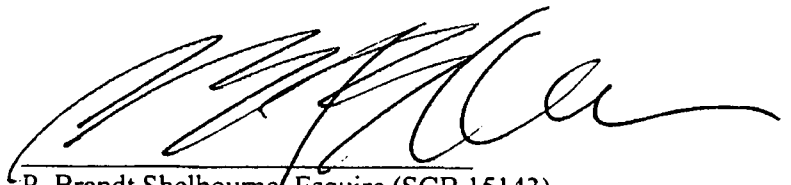
Response: Defendants object as this request calls for production of irrelevant information or is not calculated to lead to discovery of admissible evidence.

27. A copy of each and every complaint and/or administrative proceeding in which Respondent has been involved.

Response: None.

RESPECTFULLY SUBMITTED,

By:



P. Brandt Shelbourne, Esquire (SCB 15143)
SHELBOURNE LAW FIRM
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210
**ATTORNEYS FOR DEFENDANTS LADLES
SOUPS OF MOUNT PLEASANT, LLC, ERIK
DYKE AND JULIE DYKE**

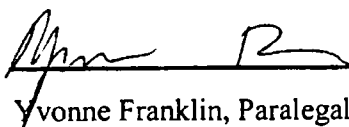
June 25th, 2019
Summerville, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Shelbourne Law, do hereby certify that a true and correct copy of Defendants Ladles Soups of Mount Pleasant, LLC, Erik Dyke and Julie Dyke Responses to Plaintiff's First Requests for Production which this certificate is affixed was served upon the following parties via hard copy and/or electronic mail to the following:

Ben LeClercq, Esq. LeClercq Law Firm 708 South Shelmore Blvd., Ste.202 Mount Pleasant, SC, 29406 <i>Attorney for Plaintiff</i>	Kerry Koon, Esq. 147 Wappoo Creek Dr. Wappoo Centre, Suite 203 Charleston, SC 29491 kerrykoon@hotmail.com <i>Attorney for Defendants, Ladles Franchising, Inc.; Ladessoups, LLC, and Tracy Allen</i>
Paul B. Ferrara, III, Esq. Ferrara Law 8887 Old University Blvd. North Charleston, SC 29406 paul@ferraralawfirm.net <i>Attorney for Defendants: Kellie Henderson; Ladles Fort Mill LLC; Ladles Franchise Development LLC; Ladles Knightsville LLC; Ladles Soups @ Freshfields Village LLC; Ladles Soups at Freshfields Village LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston LLC; Ladles Soups Monks Corner LLC; Ladles West Ashley; Carol Sutton, and Steve Traeger; Ladles Soup James Island, LLC and Teri Owens</i>	

Date: June 25, 2019


Yvonne Franklin, Paralegal at Shelbourne Law

STATE OF SOUTH CAROLINA,

COUNTY OF CHARLESTON

CRAIG CHAPPELL, on behalf of himself and
Others similarly situated,

Plaintiff(s),

v.

Ladles Soup-James Island LLC; Ladlessoups,

LLC; Ladles Soup At Cane Bay, LLC; Ladles

Soups at Citadel Mall LLP; Ladles Soups

Calhoun LLC; Ladles Soups Cane Bay LLC;

Ladles Soups Coosaw LLC; Ladles Soups

Downtown Charleston, LLC; Ladlessoups

Fresh Fields LLC; Ladles Soups @ Freshfields

Village, LLC; Ladlessoups Mainstreet, LLC;

Ladles Soups Moncks Corner LLC; Ladles

Franchise Development, LLC; Ladles Franchising,

Inc.; Ladles Fort Mill, LLC; Ladles Knightsville

LLC; Ladles West Ashley; Teri Owens; Sue Allen,

Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke

Stan Sutton, Carol Sutton, Jack Dalter, Kellie

Henderson; Jane Doe 1-25 (Unknown Operating

Company and Management Company Owners);

John Doe 25-40 (Management Personnel).

Defendants.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

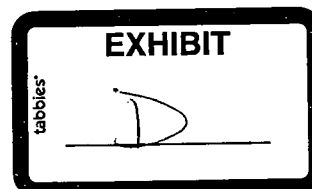
CASE NO. 2018-CP-10-00785

**DEFENDANTS' LADLES FRANCHISING,
INC., LADLESSOUPS, LLC, SUE ALLEN,
AND TRACY ALLEN'S ANSWERS TO
PLAINTIFF'S FIRST
INTERROGATORIES**

COMES NOW, Defendants Ladles Franchising, Inc., Ladlessoups, LLC, Sue Allen, and Tracy

Allen and answers Plaintiff's First Set of Interrogatories as follows:

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: Teri Owens, address known to Plaintiff, written statement provided August 1, 2019 (produced in response to Plaintiff's Request for Production); Suzie Allen, 1168 Furman Road, Cincinnati, Ohio 45216, no written or recorded statement taken; Tracy Allen, 1168 Furman Road, Cincinnati, Ohio 45216, no written or recorded statement taken.

2. Does Respondent have liability insurance, or is there any other form of indemnity or bond, through which Respondent is or might be insured in any manner for the damages, claims, or actions that are the subject of the pleadings? If so, please provide the following information for each policy: (a) The kind of insurance, indemnity or bond; (b) The name of the company or companies, including any excess or umbrella carriers, which you claim provide coverage; (c) The policy number or policies numbers of any applicable policy; (d) The limit or limits of liability of each policy; (e) The named insured of each policy; (f) Whether the insurance carrier has accepted or denied coverage; and (g) Whether you are being defended by the insurance carrier under a reservation or rights.

RESPONSE: None.

3. 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: Suzie Allen and Tracy Allen will testify that they personally were not involved in the facts, circumstances, actions, policies, and/or claims alleged by Plaintiff. Suzie Allen will testify on behalf of Ladlessoups, LLC that Ladlessoups, LLC was not involved in the facts, circumstances, actions, policies, and/or claims alleged by Plaintiff. Suzie Allen will testify on behalf of Ladles Franchising, Inc. that Ladles Franchising, Inc. was not involved in the facts, circumstances, actions, policies, and/or claims alleged by Plaintiff.

4. Identify each and every person who aided in answering these Interrogatories or the request for production of documents issued here with.

RESPONSE: Suzie Allen

5. State all facts upon which you rely in support of each and every defense to Plaintiffs' Complaint in this matter.

RESPONSE: For their defense, Respondents rely upon the fact that they had no relationship, contractual, employment, or otherwise, with Plaintiff and were not otherwise involved in the facts, circumstances, actions, policies, and/or claims alleged by Plaintiff in this action. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

Respondents Ladles Franchising, Inc., Suzie Allen, and Tracy Allen have never employed tipped employees.

6. State the factual basis as you understand it to each factual allegation in Plaintiffs' Complaint in this matter.

RESPONSE: Respondents never employed the Plaintiff nor did they have any control over his employment by Ladles James Island.

With regard to Ladlessoups, LLC, see Responses to Interrogatories Nos. 20-40, below.

Respondents object because this interrogatory calls for pure conjecture and speculation. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

7. Set forth a list of photographs, plats, sketches, or other prepared documents in your possession that relate to a claim or defense in this case.

RESPONSE: See Responses to Request for Production.

8. In connection with each expert witness whom Respondent proposes to use as a witness at the trial of this case, please list the following: (a) the expert's name, address, in field of expertise; (b) detailed summary of the expert's opinions regarding this case and the basis for them; (c) summary of the expert's knowledge, skill, experience, training, or education as it applies to the specific field of

expertise alleged in this case; (d) description of the claims and lawsuits in which the expert has given opinions, including the names and addresses of the parties and their attorneys, and the location of any depositions and recorded statements the expert has given in cases other than this one; (e) the percentage of expert's practice devoted to consulting work in legal claims, the percentage attributable to the claimant/plaintiff as opposed to the defendant, and the amount of income derived from such consulting in the last 2 years; (f) the specifics of any publication in speaking engagements given by the expert on matters relating to the expert's profession; and (g) the names of publications considered by the expert to be learned treatises as described in the Federal or South Carolina rule of evidence 803(18).

RESPONSE: None.

9. If Respondent or any other party with whom the Respondent is familiar is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and/or pleading reflecting the correct information.

RESPONSE: None.

10. If Respondent is a legal entity, describe the type of entity, list all members and/or shareholders, directors, officers, and describe its constitutive documents. Describe which specific individuals at Respondent worked on or participated in the issues and facts described in this action? Give their names, contact details, and email addresses.

RESPONSE: Ladlessoups, LLC is a South Carolina limited liability company that was organized on August 27, 2007 upon the filing of its Articles of Organization with the South Carolina Secretary of State. Suzie Allen is the sole member. The LLC was the operating entity for the Ladles Soups store in West Ashley, South Carolina. The assets of the Ladles Soups store in West Ashley were sold to Corey Paul in September of 2017. The LLC is still in existence but ceased operating in August of 2017 upon the sale of its assets.

Ladles Franchising, Inc. is a South Carolina corporation that was incorporated on August 13, 2010 upon the filing of its Articles of Incorporation with the South Carolina Secretary of State. There are currently five shareholders of Ladles Franchising, Inc. as follows:

Suzie Allen, Tracy Allen, Carol Ellenburg, Steve Traeger, and David Flander. Suzie Allen, Tracy Allen, and David Flander constitute the Board of Directors. Suzie Allen is the Chief Executive Officer. Tracy Allen is the President. David Flander is the Chairman of the Board.

Neither Ladlessoups, LLC nor Ladles Franchising, Inc. worked on or participated in the issues and facts described in this action.

11. If Respondent is not a legal entity, give the names and contact details for all individuals with whom Respondent worked or with whom Respondent was affiliated arising from or related to this matter.

RESPONSE: Suzie Allen is the Chief Executive Officer for Ladles Franchising, Inc. Tracy Allen is the President for Ladles Franchising, Inc. Ladles Franchising, Inc. has a contractual franchisor/franchisee relationship with Teri Owens, the owner of Ladles Soups James Island, LLC.

12. Describe and give the current location of all electronic equipment, including computers, handheld devices, mobile telephones, pagers, and/or PDAs that each person identified in the previous two Interrogatories has used. For each device, specify which people used it and for which subpart from the previous Interrogatory each person used it.

RESPONSE: Suzie Allen owns a business cell phone and business laptop computer which are in her possession in Ohio. Tracy Allen owns a business cell phone and business desktop computer which are in his possession in Ohio.

13. What does Respondent allege are the most important communications and meetings in this matter?

RESPONSE: Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

14. Does Respondent contend there is an oral contract? If so, please state what Respondent believes to be the terms and provisions of all such oral contract(s) in detail and state the name, address and contact information of all persons you believe have knowledge or information relating to the terms or provisions of the oral contract(s).

RESPONSE: Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process. However, there has never been any contract, oral or otherwise, between Plaintiff and Respondents.

15. Identify any and all social media sites of which Respondent is/was a member or in which Respondent participated/subscribed from January 1st, 2015 to the day of trial. Please state whether you have a Facebook, LinkedIn, Twitter, or other social media page or site, and if so, please provide the login information and password necessary to access such site or page.

RESPONSE: Ladlessoups, LLC had a Facebook page during the time of its operation until September of 2017 for purposes of updating its menu. Since such page is no longer maintained by Ladlessoups, LLC, there is no login or password information available.

Ladles Franchising, Inc. has never been a member or participated/subscribed to any social media site.

Tracy Allen and Suzie Allen both maintain personal Facebook pages and which are not used for business purposes.

Respondents object to the entirety of this request because it is not reasonably calculated to lead to admissible evidence. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

16. List and describe each and every document, drawing, map, diagram, model or other documentary material or tangible object that you intend to rely on to support your allegations/defenses in this action, regardless of whether you intend to offer the same into evidence or merely use as a demonstrative aid at the trial of this action.

RESPONSE: Ladles Franchising, Inc.'s Franchise Agreement, a sample of which is produced in response to Plaintiff's Request for Production. Additionally, the Franchise Disclosure Document issued to Ladles Soups-James Island, LLC is produced in response to Plaintiff's Request for Production. Respondents are attempting to locate a copy of the original Franchise Agreement with Ladles Soups James Island and will produce the same upon its location.

17. State whether you have been a party to a civil lawsuit. If so, for each lawsuit, please provide the following information: (a) How were you named in the lawsuit (e.g. plaintiff, defendant,

intervenor, etc.)? (b) What was the nature of each claim and defense? (c) The date, location, and title of the court in which the action was commenced. (d) The names of all the parties other than yourself involved in the action.

RESPONSE: Other than this matter, Suzie Allen was defendant in a personal bank repossession lawsuit in 2008 brought by First Federal Bank which resulted in the repossession of her boat. Suzie Allen was also a defendant in an action brought by an artist, John Daso, with regard to damaged artwork which was displayed in a Ladles Soups location a number of years ago.

Other than this matter, Tracy Allen has never been a party to a civil lawsuit.

Other than this matter, neither Ladlessoups, LLC nor Ladles Franchising, Inc. has ever been party to a civil lawsuit.

18. Please identify and describe every charge, administrative proceeding, arbitration and/or other legal proceeding brought against Respondent, and please identify the person making said allegations.

RESPONSE: None. See Response to Interrogatory #17, above.

19. State your gross income for the years January 1, 2014 through the current date. Do produce profit and loss statements, balance sheets and income statements?

RESPONSE: Respondents object to this Interrogatory as overly broad and not designed to lead to admissible or discoverable evidence. Should Respondents be ordered to produce this information, it should only be pursuant to a protective order.

20. State the name and contact details of your tax preparer, accountant, and bookkeeper.

RESPONSE: Pat Luciano is the accountant for Ladles Franchising, Inc. and Suzie Allen and Tracy Allen, personally. Pat Luciano was the accountant for Ladlessoups, LLC from 2015 through September of 2017. Pat Luciano's contact information is: 7445 Cross County Rd # 9, North Charleston, SC 29418; phone (843) 552-1000.

21. For each defendant that is a limited liability company, please state: (a) The name listed in the current articles of organization; (b) All of the names used by the company during the past 10 years and the dates each was used; (c) The name and address of each member; (d) The name and

address of each manager; (e) The date and place of formation; (f) The address of the principal place of business; and (g) The states in which it is registered to do business.

RESPONSE: With regard to Ladlessoups, LLC, please refer to the information contained in the Response to Interrogatory #10, above. Additionally, no other names were used by Ladlessoups, LLC. Suzie Allen is the sole member of Ladlessoups, LLC and her address is 1168 Furman Road, Cincinnati, Ohio 45216. The address of Ladlessoups, LLC principle place of business was 3125 Bees Ferry Rd, Charleston, SC 29414. Ladlessoups, LLC was only registered to do business in the State of South Carolina.

22. Set forth for each and every Defendant, individually, any and all real and personal property owned, whether individually, collectively, or otherwise owned including with other third parties, including but not limited to the following: (a) all financial accounts, including bank, checking, savings, money market, investment, and/or securities accounts currently held by or for your benefit, and state current balances, location of the accounts, and name on accounts; (b) any and all certificates of deposit, stock certificates in any publicly held or closely held corporation, as well as any bonds owned by each and every Defendant, membership interest in any and all limited liability companies, partnership interest in any and all partnerships, and any and all interest in any other form of business entity, including joint ventures, whether domestic or offshore, detailing without limitation and with particularity percentages of ownership, amount of revenue generated for each entity, etc.; (c) any and all titles to vehicles, mobile homes, or watercraft owned by each and every Defendant, detailing a description of each item including year, model, serial number, vehicle identification number, present value and the amount of any lien thereon; (d) any and all deeds, mortgages, notes, contracts of sale, and settlement or closing statements relating to any real estate transactions involving each and every Defendant; (e) any and all real property, including without limitation (county, state, jurisdiction), whether domestic or offshore for each and every Defendant; (f) any and all life insurance policies owned by each and every Defendant, along with any information pertaining to any loans outstanding on any such policies; (g) any and all items of jewelry or art owned by each and every Defendant,

including a description of each item and its most recent appraised valuation; (h) any and all leases of realty or personalty in favor of each and every Defendant; (i) any and all books, records, documents, or writings concerning the financial status of Defendants not herein before specified, including any and all interest in any form of trust; and (j) any and all tax receipts, tax returns or supplemental forms, and any and all other documents, forms or letters filed with United States Internal Revenue Service, and any other state tax authority within the last 5 years.

RESPONSE: Respondents object to this Interrogatory as overly broad and not designed to lead to admissible or discoverable evidence. Should Respondents be ordered to produce this information, it should only be pursuant to a protective order.

23. State the name and location of each and every Ladles' franchisee, and name the owners of that franchise.

RESPONSE: Ladles Soups West Ashley, 3125 Bees Ferry Rd., Charleston, SC 29414 (Corey Paul, owner); Ladles Soups Freshfields, 190 Gardener's Circle, O-100, Johns Island, SC 29455 (Steve Traeger, owner); Ladles Soups Knightsville, 1585 Central Avenue, Summerville, SC 29483 (Deena Taylor, owner); Ladles Soups Coosaw, 8600 Dorchester Rd., Ste. 101, N. Charleston, SC 29420 (Kelli Henderson, owner); Ladles Soups Charleston, 68 Cannon St., Charleston, SC 29403 (Carol Ellenburg, owner); Ladles Soups Moncks Corner, 636 Rembert C. Dennis Blvd., Moncks Corner, SC 29461 (Andy Clark, owner); Ladles Soups Fort Mill, 526 Mercantile Place, Fort Mill, SC 29715 (Corey Paul, owner); Ladles Soups Kill Devil Hills, 1901 S. Croaton Hwy., Kill Devil Hills, NC 27948 (Laurie Harvin, owner); Ladles Soups James Island, 1175A Folly Rd., Charleston, SC 29412 (Teri Owens, owner); Ladles Soups Mount Pleasant, 1164 Basketweave Dr., Mt. Pleasant, SC 29466 (Julie Dyke, owner).

24. What is the bank and account number for the account used to pay employees?

RESPONSE: Ladlessoups, LLC, which was in operation until September of 2017, used Suntrust bank accounts (Acct. No. 1000164147703 and 1000037141248) to pay employees.

The remaining Respondents do not and have not had any employees and thus do not possess any accounts for the purpose of paying employees. Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

25. Do you use a third-party payroll processing service? Describe all documents received from them since January 1, 2015.

RESPONSE: Ladlessoups, LLC used ADP payroll processing service from 2015 through the end of its operation in September of 2017. ADP sent bi-weekly employee paychecks, quarterly payroll tax returns, and annual tax and payroll summaries to Ladlessoups, LLC.

The remaining Respondents do not and have not had any employees to pay and thus do not use any third-party payroll processing services for that purpose. Respondents object to this interrogatory because it seeks information from third parties and information not within its possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

26. State the name, telephone number, including mobile phone number, email address, and street address for every employee of Respondent since January 1, 2015, and list whether they still work with Respondent, and if not, why they left.

RESPONSE: The following employees worked for Ladlessoups, LLC during its time of operation: Avery Jones (no contact information available); Joseph Brennan (no contact information available); Christian Markley (no contact information available); Lindy Clark (no contact information available); Leighann Chicco (no contact information available); Christopher Goodman (no contact information available); Corey Paul (see Response to Interrogatory No. 23, above); Ireland Pejsa (no contact information available); Sean Powell (no contact information available); Tyrone Satterfield (no contact information available); Taylor Sirles (no contact information available); Morgan Weesner (no contact information available); Shelley Wiley (no contact information available); Matti Elliott (no contact information available); Jenn Evangelist (no contact information available); Madison Botoha (843.442.6257); Myah Botoha (843.330.2666); Cassidy Melbo (no contact information available); Taylor Raglands (843.478.5824); and Phillip Hawkins (no contact information available).

The remaining Respondents do not and have not had any employees. Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

27. How did Respondent come to be a Ladles Franchisee? Name and describe the Franchisor of Ladles ("Franchisor"), and describe Respondent's relationship with any such Franchisor, and the nature of the documents establishing such franchise relationship. Describe all communications, written or oral with such franchisor since January 1, 2015.

RESPONSE: None of the Respondents are or have been Ladles Franchisees.

28. Since January 1, 2015, state each and every employee, member, and/or officer of Respondent that has had any responsibility for: i) payroll; ii) signing or disbursing paychecks and/or wages; iii) handling tips/tip policy; iv) accounting and credit card receipts; v) bookkeeping/accounting; vi) hiring and firing employees.

RESPONSE: Suzie Allen was the sole member and only manager for Ladlessoups, LLC with the responsibility for payroll, signing or disbursing paychecks and/or wages; handling tips/tip policy; accounting and credit card receipts; bookkeeping/accounting; and hiring and firing employees, all for that location only.

Ladles Franchising, Inc. is a South Carolina corporation that was incorporated on August 13, 2010 upon the filing of its Articles of Incorporation with the South Carolina Secretary of State. There are currently five shareholders of Ladles Franchising, Inc. as follows: Suzie Allen, Tracy Allen, Carol Ellenburg, Steve Traeger, and David Flander. Suzie Allen, Tracy Allen, and David Flander constitute the Board of Directors. Suzie Allen is the Chief Executive Officer. Tracy Allen is the President. David Flander is the Chairman of the Board. Ladles Franchising, Inc. has never paid its officers as employees.

None of the remaining Respondents have employees, members, and/or officers.

29. Does Respondent have an employee handbook?

RESPONSE: Ladles Franchising, Inc. provides all franchisees with an Employee Handbook, a sample copy of which is produced in response to the Requests for Production.

Ladlessoups, LLC possessed a copy of the Employee Handbook during its operation that would be provided to employees.

The remaining Respondents do not and have not had any service employees, tipped or otherwise, and thus do not have any employee handbooks. Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

30. Since January 1, 2015, describe all payroll and salary documents provided to employees and or independent contractors, including W-2s and 1099s.

RESPONSE: See Responses to Interrogatories #24 and 25, above. See also Responses to Requests for Production #23 and #24.

Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge.

Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

31. Who decided on behalf of Respondent that Respondent would retain credit card tips rather than pay them to employees? Did any other Defendant, or employee/agent/officer of another Defendant, share in the responsibility for that decision, agree with or suggest, counsel, or otherwise state that Respondents should retain credit card tips rather than pay them to employees?

RESPONSE: As part of its tip-pooling arrangement, Ladlessoups, LLC transferred all credit card tips to its payroll account for payment to employees during its time of operation. Ladlessoups, LLC did not permanently retain any employees' credit card tips.

Ladles Franchising, Inc. did not employee any service employees, tipped or otherwise. The remaining Respondents do not have any employees. Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

32. When and how did Respondent decide that the credit card tip policy described in the prior paragraph would be Respondent's policy?

RESPONSE: See Response to Interrogatory #31, above. As Ladlessoups, LLC never permanently retained employees' credit card tips, Ladlessoups, LLC never decided, possessed, or had knowledge of such a policy of retaining employee's credit card tips. Ladlessoups, LLC transferred all credit card tips to its payroll account for payment to employees during its time of operation. This method was only implemented after consultation by Suzie Allen with the South Carolina Department of Employment and Workforce.

Ladles Franchising, Inc. did not employee any service employees, tipped or otherwise. The remaining Respondents do not have any employees. Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

33. Describe each and every written and oral communication with any person, including employees, officers, agents, or individuals affiliated with other franchisees or franchisor, or otherwise arising from or related to Respondent's policy of retaining credit card tips. In particular, describe any and all emails relating to such policy.

RESPONSE: None since there is no such policy to retain credit card tips.

34. Describe any and all meetings with any other franchisees, their agents, members, officers or employees, and/or with Franchisor, its agents, members, officers or employees, discussing or describing Respondent or other Franchisee or Franchisor policy relating to tips.

RESPONSE: Suzie Allen and Teri Owens have informally discussed Plaintiff's firing around the time of such firing and then had another conversation concerning Plaintiff after Plaintiff brought this lawsuit.

Suzie Allen, Teri Owens, and Carol Ellenberg, as sisters and business associates, have had informal discussions regarding restaurant practices in the past. In all past discussions that Suzie Allen has ever had with Teri Owens, Carol Ellenberg, or any other franchisee with regard to payroll and tipping practices, Suzie Allen has been consistently clear in stating that all tip monies belong to the employees and may never be permanently retained by the owner and/or franchisee. However, the Franchisor (Ladles Franchising, Inc.) has never mandated any payroll practices or policies for any of its franchisees, each of whom have always maintained independent control and authority to establish their own payroll practices and policies.

35. What has been Respondent's policy as to cash tips since January 1, 2015? Has that policy ever changed?

RESPONSE: As part of its tip-pooling arrangement, Ladlessoups, LLC transferred all credit card tips to its payroll account for payment to employees during its time of operation. Ladlessoups, LLC did not permanently retain any employees' credit card tips. As Ladlessoups, LLC never permanently retained employees' credit card tips, Ladlessoups, LLC never decided, possessed, or had knowledge of such a policy of retaining employee's credit card tips.

Ladles Franchising, Inc. did not employ any service employees, tipped or otherwise. The remaining Respondents do not have any employees. Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

36. Who fired Craig Chappell? Why was he fired?

RESPONSE: Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

37. Describe Respondent's accounting software.

RESPONSE: None.

38. Describe Respondent's management structure for employee operations. Describe the types of employees and their functions in Respondent's operations.

RESPONSE: Suzie Allen was the manager of Ladlessoups, LLC's during its time of operation.

With regard to Ladles Franchising, Inc, see Responses to Interrogatories #10 and #11, above.

The remaining Respondents do not have any employees or management structure for employee operations. Respondents object to this interrogatory because it seeks information from third parties and information not within its possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

39. Describe any and all written communications were notices with Respondent's customers and clients notifying them as to any tip policy of Respondent, and in particular, Respondent's policy of retaining credit card tips rather than paying them to employees.

RESPONSE: As Ladlessoups, LLC never permanently retained employees' credit card tips, Ladlessoups, LLC never decided, possessed, or had knowledge of such a policy of retaining employee's credit card tips. All credit card tips were paid into the payroll account for payment to employees,

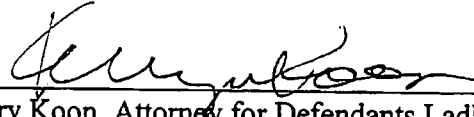
Ladles Franchising, Inc. has never employed service employees, tipped or otherwise, The remaining Respondents do not have any employees. Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

40. Have any employees complained or raised concerns about Respondent's tipping policies? Describe each and every such complaint or discussion, and whether the same is documented in any written communications.

RESPONSE: With regard to Ladlessoups, LLC, no.

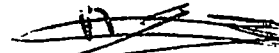
Ladles Franchising, Inc. has never employed service employees, tipped or otherwise. The remaining Respondents do not and have not had any employees. Respondents object to this interrogatory because it seeks information from third parties and information not within its

possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.



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August 21, 2019
Charleston, South Carolina

STATE OF SOUTH CAROLINA,

COUNTY OF CHARLESTON

CRAIG CHAPPELL, on behalf of himself and
Others similarly situated,

Plaintiff(s),

v.

Ladles Soup-James Island LLC; Ladlessoups,
LLC; Ladles Soup At Cane Bay, LLC; Ladles
Soups at Citadel Mall LLP; Ladles Soups

Calhoun LLC; Ladles Soups Cane Bay LLC;

Ladles Soups Coosaw LLC; Ladles Soups

Downtown Charleston, LLC; Ladlessoups

Fresh Fields LLC; Ladles Soups @ Freshfields

Village, LLC; Ladlessoups Mainstreet, LLC;

Ladles Soups Moncks Corner LLC; Ladles

Franchise Development, LLC; Ladles Franchising,

Inc.; Ladles Fort Mill, LLC; Ladles Knightsville

LLC; Ladles West Ashley; Teri Owens; Sue Allen,

Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke

Stan Sutton, Carol Sutton, Jack Dalter, Kellie

Henderson; Jane Doe 1-25 (Unknown Operating

Company and Management Company Owners);

John Doe 25-40 (Management Personnel).

Defendants.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 2018-CP-10-00785

**DEFENDANTS' LADLES FRANCHISING,
INC., LADLESSOUPS, LLC, SUE ALLEN,
AND TRACY ALLEN'S RESPONSE TO
PLAINTIFF'S REQUESTS FOR
PRODUCTION**

COMES NOW, Defendants Ladles Franchising, Inc., Ladlessoups, LLC, Sue Allen, and Tracy

Allen and responds to Plaintiff's First Request for Production as follows:

DOCUMENTS REQUESTED



1. All documents identified, described, referenced, or referred to in your responses to our First Interrogatories or to our First Requests for Production.

RESPONSE: The following documents are produced by Respondent Ladles Franchising, Inc. and attached hereto: (1) Sample Employee Handbook; (2) Franchise Disclosure Document provided to Ladles Soups-James Island, LLC; (3) Sample Franchise Agreement. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process; and (4) Ladlessoups, LLC Suntrust bank account statements (Acct. No. 1000037141248).

2. Any and all written communications, correspondence, memoranda, documents, and things relating to, supporting, refuting, or involving any of the facts and claims alleged in Plaintiff's Complaint and/or any answer by a Defendant.

RESPONSE: The following documents are produced by Respondent Ladles Franchising, Inc. and attached hereto: (1) Email from Teri Owens to Suzie Allen with Subject line "Craig Chappell employment," dated Friday, February 16, 2018 at 5:35 AM; (2) Email from Teri Owens to Suzie Allen with Subject line "Fwd: Wages," dated Monday, February 19, 2018 at 5:00 AM; (3) South Carolina Department of Employment and Workforce "Request for Information from Employer" and Teri Owen's responses to such request (both sent from Teri Owens to Suzie Allen after this lawsuit was filed by Plaintiff; and (4) all financial documents for Ladlessoups, LLC and Ladles Franchising, Inc. produced in response to this request.

Respondents object to this request to the extent that it requests attorney-client privileged communications and documents.

3. Any and all written communications and/or documents relating to or involving the Plaintiff and/or any Defendant.

RESPONSE: See Response to Request for Production No. 2, above. Respondents object to this Request for Production as overly broad and not designed to lead to admissible or discoverable evidence.

4. All statements given by respondent or any witness identified by Respondent or other witness to the facts relevant to this case that are in the possession of Respondent or his counsel, whether written or recorded, that relate in any way to the allegations of the complaint in this matter, or an answer by any Defendant.

RESPONSE: Respondent directs Plaintiff to refer to (1) Sue Allen's and Tracy Allen's Affidavits which were filed in support of Defendants Ladles Franchising, Inc., Ladlessoups, LLC, Sue Allen, and Tracy Allen's Notice of Motion and Motion to Disallow Class Certification in this matter and (2) Craig's Chappell's Deposition transcript, both of which are in possession of and/or have been served upon Plaintiff.

5. Any and all written communications, documents, and things relating to, supporting, refuting, or involving any of the averments and defenses set forth in any pleading you have submitted in this matter.

RESPONSE: See Responses to Requests for Production Nos. 1, 2, and 4, above.

6. Copies of all documents produced by third parties pursuant to subpoenas issued in this case or any request made pursuant to the Freedom of Information Act or other request by Respondent or Respondent's counsel.

RESPONSE: None.

7. Any and all documents identified in response to Interrogatory number 8, relating to expert witnesses.

RESPONSE: None.

8. All e-mails, faxes, letters, text messages and other written communication between each and every Defendant and each and every Plaintiff.

RESPONSE: See Responses to Requests for Production No. 2, above.

Respondents object to this Request for Production as overly broad and not designed to lead to admissible or discoverable evidence.

9. If Respondent is a legal entity, produce all internal communications relating to this matter, including without limitation all e-mails, faxes, letters, text messages and other written communications between and among Respondent's employees, officers, directors, agents and counsel.

RESPONSE: With regard to Respondent Ladles Franchising, Inc., please see Responses to Requests for Production No. 2, above.

With regarding to Ladlessoups, LLC, none exist.

Respondents object to this Request for Production as overly broad and not designed to lead to admissible or discoverable evidence. Respondents also object to this request to the extent that it requests attorney-client privileged communications and documents.

10. Provide for inspection all computers, electronic devices, and telephones containing relevant production, ESI, or electronic data, including those described in response to Interrogatory number 12.

RESPONSE: Respondents object to this Request for Production as overly broad and not designed to lead to admissible or discoverable evidence.

With regard to Sue Allen's and Tracy Allen's business cell phones and computers, those items are currently being used by those individuals, who now reside in Ohio. Respondents Sue Allen and Tracy Allen cannot be deprived of business property which they currently use for the purposes of ongoing business operations.

Respondents also object to this request to the extent that it requests attorney-client privileged communications and documents.

11. Produce a complete, itemized accounting and financial summary of all amounts paid and/or owed to you by any other party to this action for the period January 1, 2015 to present.

RESPONSE: Respondents object to this Interrogatory as overly broad and not designed to lead to admissible or discoverable evidence. Should Respondents be ordered to produce this information, it shall only be pursuant to a protective order.

12. All federal and state tax returns, income statements, balance sheets, and profit/loss statements for Respondent during the last five years, up through and including the date of trial.

RESPONSE: Respondents object to this Interrogatory as overly broad and not designed to lead to admissible or discoverable evidence. Should Respondents be ordered to produce this information, it shall only be pursuant to a protective order.

13. All Respondent's bank statements from the last five years, up through and including the date of trial.

RESPONSE: Ladlessoups, LLC 2015 and 2016 bank statements for Suntrust Acct. No. 1000037141248 are produced and attached hereto.

Respondents object to this Interrogatory as overly broad and not designed to lead to admissible or discoverable evidence, particularly as it requests Respondent Sue Allen and Tracy's Allen's personal bank account records. Should Respondents be ordered to produce this information, it should only be pursuant to a protective order.

14. For any individual Respondent, produce any resume or curriculum vitae you have created or used from the last five years, up to and including the date of trial.

RESPONSE: None.

15. Any and all documents evidencing or relating to postings, blogs, whether statements on any Internet were social media site in which you discuss any matter or issue arising from or relating to this action.

RESPONSE: None.

16. Produce each and every post, note, mention, story, document, or other item made by Respondent during the last seven years, up through and including the date of trial, on any and all membership-based Internet websites which relates to or in any way references any party or witness to this action, or any issue or claim in this matter, and/or the allegations set forth in the complaint or any answer filed in this matter. For purposes of this RFP, "membership-based Internet websites" shall include social media websites (including but not limited to Myspace, Flickr, YouTube, Facebook, classmates, Bebo, Deviant Art, LinkedIn, Meetup, Gather, My Yearbook, Friendster, Google Plus, or Web Shots), blogging websites (including but not limited to Blogger, Live Journal, twitter, Windows Live Spaces, WordPress, Blogspot, Vox, or Xanga), dating websites (including but not limited to Adult Friend Finder, Ok Cupid, eHarmony, match, or Fubar), and any other personal websites for which Respondent has created, used, or maintained a personal account, username, or profile at any time for the last seven years up to the present.

RESPONSE: None. Respondents object to this Interrogatory as overly broad and not designed to lead to admissible or discoverable evidence.

17. Organization charts for all of Respondent's businesses relating to this matter, including the name, work address, and telephone number of all employees providing computer support functions within any of the organizations.

RESPONSE: None.

18. All Respondent's employee handbooks and other materials disseminating policies and procedures to individual employees.

RESPONSE: Sample Employee Handbook disseminated to Ladlessoups, LLC employees during its period of operation is enclosed herein.

Ladles Franchising, Inc. has no such documents as it does not operate restaurants or employ service employees, tipped or otherwise. The remaining Respondents do not and have not had any employees.

19. All Respondent's hard copy or electronic calendars for the last five years, up through and including the date of trial.

RESPONSE: Respondents object to this Interrogatory as overly broad and not designed to lead to admissible or discoverable evidence.

20. Lists of all employees since January 1st, 2015, up through and including the date of trial.

RESPONSE: The following employees worked for Ladlessoups, LLC during its time of operation: Avery Jones; Joseph Brennan; Christian Markley; Lindy Clark; Leighann Chicco; Christopher Goodman; Corey Paul; Ireland Pejsa; Sean Powell; Tyrone Satterfield; Taylor Sirles; Morgan Weesner; Shelley Wiley; Matti Elliott; Jenn Evangelist; Madison Botoha; Myah Botoha; Cassidy Melbo; Taylor Raglands; and Phillip Hawkins.

The remaining Respondents do not and have not had any employees. Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

21. A description of your payroll process, whether you are doing it in-house or whether you are using third-party vendor.

RESPONSE: Ladlessoups, LLC used ADP payroll processing service from 2015 through the end of its operation in September of 2017. ADP sent bi-weekly employee paychecks, quarterly payroll tax returns, and annual tax and payroll summaries to Ladlessoups, LLC.

The remaining Respondents do not and have not had any employees to pay and thus do not use any third-party payroll processing services for that purpose. Respondents object to this interrogatory because it seeks information from third parties and information not within its possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

22. A copy of Respondent's each and every profit and loss statement, income statement, and balance sheet since January 1, 2015.

RESPONSE: None.

23. Any and all accounting, payroll, banking, or other records relating to salary payments, tips, wages, employment tax records, since January 1, 2015.

RESPONSE: Please find the following documents attached hereto in response to this request: (1) Ladlessoups, LLC 2015 Quickbooks Payroll Summary; (2) Ladles Franchising, Inc.'s 2016 IRS Form 1096 and accompanying Form 1099-Misc.'s; (3) Ladlessoups, LLC 2016 W-2 and Earnings Summaries; (4) Ladles Franchising, Inc.'s 2017 IRS Form 1096 and accompanying Form 1099-Misc.'s; and (5) Ladlessoups, LLC 2017 W-2 and Earnings Summaries.

Respondents Ladlessoups, LLC and Ladles Franchising, Inc. are attempting to locate additional documentation and will produce upon locating the same.

Ladles Franchising, Inc. has never employed service employees, tipped or otherwise.

The remaining Respondents do not and have not had any employees and thus do not possess such records.

24. All W-2s, 1099s, and other employee and/or independent contractor records since Respondent's creation.

RESPONSE: See Response to Request for Production No. 23, above.

Respondents Ladlessoups, LLC and Ladles Franchising, Inc. are attempting to locate the same and will produce upon locating them.

The remaining Respondents do not and have not had any employees and/or independent contractors and thus do not possess such records.

25. A copy of each and every piece of written communication, email, text, fax, letter, or otherwise, arising from or relating to Respondent's policy of retaining credit card tips rather than pay them to employees. As described above, every RFP herein shall be deemed a continuing RFP and Respondent must supplement his answers promptly, if and when he obtains relevant production in addition to, or in any way inconsistent with, his initial production in accordance with the applicable Rules of Civil Procedure.

RESPONSE: None. Respondent Ladlessoups, LLC never possessed a policy of permanently retaining employees credit card tips as all such tips were transferred to the payroll account and paid over to employees.

The remaining Respondents do not and have not had service employees, tipped or otherwise.

Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

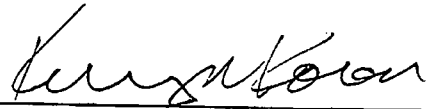
26. A copy of each and every complaint or discussion or document described in response to Interrogatory #30-40.

RESPONSE: See Response to Request for Production Nos. 23 and 24, above.

The remaining Respondents do not and have not had service employees, tipped or otherwise, and thus do not possess such documents.

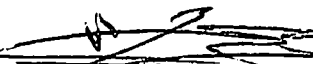
27. A copy of each and every complaint and/or administrative proceeding in which Respondent has been involved.

RESPONSE: Respondents object to this Interrogatory as overly broad and not designed to lead to admissible or discoverable evidence.



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August 21, 2019
Charleston, South Carolina

STATE OF SOUTH CAROLINA,

COUNTY OF CHARLESTON

CRAIG CHAPPELL, on behalf of himself and
Others similarly situated,

Plaintiff(s),

v.

Ladles Soup-James Island LLC; Ladlessoups,

LLC; Ladles Soup At Cane Bay, LLC; Ladles

Soups at Citadel Mall LLP; Ladles Soups

Calhoun LLC; Ladles Soups Cane Bay LLC;

Ladles Soups Coosaw LLC; Ladles Soups

Downtown Charleston, LLC; Ladlessoups

Fresh Fields LLC; Ladles Soups @ Freshfields

Village, LLC; Ladlessoups Mainstreet, LLC;

Ladles Soups Moncks Corner LLC; Ladles

Franchise Development, LLC; Ladles Franchising,

Inc.; Ladles Fort Mill, LLC; Ladles Knightsville

LLC; Ladles West Ashley; Teri Owens; Sue Allen,

Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke

Stan Sutton, Carol Sutton, Jack Dalter, Kellie

Henderson; Jane Doe 1-25 (Unknown Operating

Company and Management Company Owners);

John Doe 25-40 (Management Personnel).

Defendants.

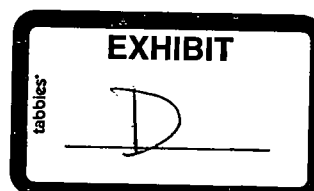
IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 2018-CP-10-00785

CERTIFICATE OF SERVICE

I, Megan Mitchum, an employee of Kerry W. Koon, Esq., hereby certify that on August 21, 2019, I served a copy of Defendants Ladles Franchising Inc., Ladlessoups, LLC, Sue Allen and Tracy Allen's Answers to Plaintiff's First Interrogatories & Responses to First Request for



Production of Documents which are contained on a CD provided herewith, in the above captioned case, by depositing the same in the U.S. Mail, addressed to the following:

Benjamin LeClercq, Esq.
708 S. Shelmore Blvd., Ste. 202
Mt. Pleasant, SC 29464

Peter B. Shelbourne, Esq.
131 E. Richardson Avenue
Summerville, SC 29483

Paul B. Ferrara, III, Esq.
2300 Otranto Road
North Charleston, SC 29406



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-785

CRAIG CHAPPELL, on behalf of himself and
others similarly situated,

Plaintiff(s),

v.

Ladles Soups – James Island LLC; Ladlessoups, LLC; Ladles Soups At Cane Bay LLC; Ladles Soups At Citadel Mall LLP; Ladles Soups Calhoun LLC; Ladles Soups Cane Bay LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston, LLC; Ladlessoups Fresh Fields, LLC; Ladles Soups @ Freshfields Village, LLC; Ladlessoups Mainstreet, LLC; Ladles Soups Moncks Corner LLC; Ladlessoups Mount Pleasant, LLC; Ladles Franchise Development, LLC; Ladles Franchising Inc.; Ladles Fort Mill, LLC; Ladles Knightsville LLC; Ladles West Ashley; Teri Owens; Sue Allen, Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke, Stan Sutton, Carol Sutton, Jason Dalter, Kellie Henderson; Jane Doe 1-25 (Unknown Operating Company and Management Company Owners); John Doe 25-40 (Management Personnel)

Defendants.

PLAINTIFF’S MOTION FOR STATUS CONFERENCE AND SCHEDULING ORDER

Plaintiff in the above-captioned action respectfully moves this Court pursuant to Rule 16 of the South Carolina Rules of Civil Procedure for a status conference in this matter as well as a Scheduling Order as set forth in the attached Proposed Scheduling Order.

This is a class-action alleging failure to pay wages under the South Carolina Payment of Wages Act, breach of contract, and conversion. Plaintiffs allege that Defendant restaurant owners wrongfully and intentionally withheld client's credit card tips that were rightly intended for Plaintiffs, Ladles serving staff and employees.

Though filed on February 14, 2018, this case has had a lengthy initial pleadings phase. Defendants Motion to Disallow Class was denied as moot on January 29, 2019. Also on that date, Defendant's Motion to Dismiss Improper Parties was denied without prejudice, and the motion to dismiss Teri Owens was denied without prejudice. Subsequently, on March 6, 2019, the court denied Defendant's motion to reconsider, and discovery commenced.

The parties have not completed discovery. A majority of Defendants have made no response at all to Plaintiff's First Interrogatories and Requests for Production which were served on May 24, 2019. These Defendants have not even requested an extension to respond. Their responses are over 120 days late and Plaintiff's Motion to Compel is pending with this Court. Plaintiff noticed the depositions of all of the Defendant locations. However, only representatives of 3 out of 12 of the Defendant locations were made available to be deposed. To date, no alternative dates have been provided by their counsel.

Moreover, counsel for Plaintiff has requested that Defendants' counsel agree to a Scheduling Order offering varying dates for consideration and counsel for Defendants have refused to agree or even offer alternative dates.

Accordingly, Plaintiff hereby moves the Court to schedule a status conference and issue the attached Proposed Scheduling Order.

Respectfully submitted,

s/ David D. Ashley
Ben Le Clercq (S.C. Bar #65754)
David D. Ashley (S.C. Bar #76206)
Le Clercq Law Firm
Ben@LeClercLaw.com
David@LeClercLaw.com
708 South Shelmore Blvd. #202
Mount Pleasant, SC 29464
Phone (843) 722-3523
Counsel for Plaintiffs

October 22, 2019
Mt. Pleasant, South Carolina

CERTIFICATE OF SERVICE

I, Debbie Mathews, certify that on October 22, 2019, a true and correct copy of the foregoing **MOTION FOR STATUS CONFERENCE AND SCHEDULING ORDER** was served upon counsel for Defendants, via electronic mail as follows:

Kerry Koon - kerrykoon@hotmail.com
M. Evan Lacke - elacke@lackelawfirm.com
147 Wappoo Creek Drive, Suite 204
Charleston, SC 29412

Paul B. Ferrera, III - paul@ferraralawfirm.net
Janel Ferrara - janel@ferraralawfirm.net
Jessica Weiss - j.weiss@ferraralawfirm.net
2300 Otranto Road
North Charleston, SC 29406

P. Brandt Shelbourne – brandt@shelbournelaw.com
Yvonne Franklin - civlit@shelbournelaw.com
131 E. Richardson Avenue
Summerville, SC 29483

s/ Debbie Mathews
Debbie Mathews

STATE OF SOUTH CAROLINA,	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2018-CP-10-00785
	)	
CRAIG CHAPPELL, on behalf of himself and	)	
Others similarly situated,	)	
	)	
Plaintiff(s),	)	
v.	)	
	)	
		<i>SUPPLEMENTAL MEMORANDUM IN SUPPORT OF DEFENDANTS LADLES FRANCHISING, INC., LADLESSOUPS, LLC, SUE ALLEN & TRACY ALLEN'S MOTION FOR SUMMARY JUDGMENT</i>
Ladles Soup-James Island LLC; Ladlessoups,	)	
LLC; Ladles Soup At Cane Bay, LLC; Ladles	)	
Soups at Citadel Mall LLP; Ladles Soups	)	
Calhoun LLC; Ladles Soups Cane Bay LLC;	)	
Ladles Soups Coosaw LLC; Ladles Soups	)	
Downtown Charleston, LLC; Ladlessoups	)	
Fresh Fields LLC; Ladles Soups @ Freshfields	)	
Village, LLC; Ladlessoups Mainstreet, LLC;	)	
Ladles Soups Moncks Corner LLC; Ladles	)	
Franchise Development, LLC; Ladles Franchising,	)	
Inc.; Ladles Fort Mill, LLC; Ladles Knightsville	)	
LLC; Ladles West Ashley; Teri Owens; Sue Allen,	)	
Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke	)	
Stan Sutton, Carol Sutton, Jack Dalter, Kellie	)	
Henderson; Jane Doe 1-25 (Unknown Operating	)	
Company and Management Company Owners);	)	
John Doe 25-40 (Management Personnel).	)	
	)	
Defendants.	)	
_____	)	

The previously filed Affidavit of Sue Allen and the Plaintiff's own deposition testimony conclusively establish that Plaintiff had no employer/employee relationship or other contractual relationship with the moving Defendants Ladles Franchising, Inc. Ladlessoups, LLC (former owner of the Bees Ferry location), Sue Allen or Tracy Allen. Plaintiff therefore has no standing to bring his three (3) causes of action against these Defendants 1) violation of S.C.P.W.A; 2) breach of contract; and 3) conversion.

A contract of employment is no different from any other type of contract, Taylor v. Cummins Atlantic, Inc., 852 F. Supp. 1279 (D.C.S.C. 1994).

A contract exists where there is an agreement between two (2) or more persons upon sufficient consideration either to do or not to do a particular act. See Carolina Amusement Company, Inc. v. Connecticut National Life Insurance Company, 313 S.C. 215, 437 S.E. 2nd 122 (Ct. App. 1993).

Since the Plaintiff has never had a contractual relationship with these Defendants, employment or otherwise, he has no standing to sue them. In Bank of America, N.A. v. Draper, the Court of Appeals stated:

"Standing is...that concept of justiciability that is concerned with whether a particular person may raise legal arguments or claims." ... "It concerns an individual's sufficient interest in the outcome of the litigation to warrant consideration of [the persons'] position by a Court...Standing is a fundamental requirement for instituting an action." Id. at 746 S.C. 2nd 480.

and

"Generally a party must be a real party in interest to the litigation to have standing....The South Carolina rule with respect to the real party in interest requirement is patterned after the comparable federal rule, which has been regarded as embodying the concept that an action shall be prosecuted 'in the name of the party who, by the substantive law, has the right sought to be enforced.' it is the ownership of the right sought to be enforced which qualifies one as a real party in interest, rather than the absolute ownership of specific property." Id. at 746 S.E. 2nd 481.

Here, the Plaintiff owns no rights which can be asserted against these Defendants since he has no employer/employee or contractual relationship.

The South Carolina Courts have equated standing with privity. See Maners v. Lexington County Savings & Loan Association, 267 S.E. 2nd 422, 423, 275 S.C. 33, 35 (S.C. 1980):

“...Appellant has no standing to allege usury because she was not in privity with Respondent...” Id. at 275 S.C. 33-34.

There is no privity, contractual or otherwise between Plaintiff and these Defendants.

The named Plaintiff must have standing to claim against all Defendants in order for this action to be certified as a class action.

In Lewis v. Casey, 518 U.S. 343, 357, 116 S. Ct. 2174, 135 L. Ed. 2nd 606 (1996) the United States Supreme Court held:

“That a suit may be a class action...adds nothing to the question of standing, for even named Plaintiffs who represent a class must allege and show that they personally have been injured, not that the injury has been suffered by other, unidentified class members to which they belong and which they purport to represent.” Id. at 518 U.S. 357.

In, In re. Franklin Mutual Funds Fee Litigation, the United States District Court for the District of New Jersey summarized federal law regarding standing to bring a class action stating:

“Thus, in order to establish standing in the class action context, for each named Defendant, at least one named Plaintiff must be able to allege injury traceable to that Defendant. Henry v. Circus Circus Casinos, Inc., 323 F.R.D. 541, 544 (D. Nev. 2004); Ramos v. Patrician Equities Corp., 765 F. Supp. 1196, 1199 (SDNY 1991); In re. Eaton Vance Corp. Sec. Litig., 2019 F.R.D. 38, 41 (D. Mass. 2003) An inability to do so with regard to certain named Defendant demonstrates an absence of standing as to claims, asserted against those Defendants.” Id. at 518 U.S. 357.

Plaintiff has no standing to sue these Defendants either individually or as purported class representative.

Additionally, as to the claim that Defendants Ladles Franchising, Inc., Sue Allen or Tracy Allen established a “Ladles-Wide” policy regarding credit card tips, three (3) franchisees owning four (4) franchise locations have been deposed and all have testified that no such policy exists. See (Deposition excerpts of Corey Paul, an owner of the Bees Ferry and Fort Mill locations, page 93, line 19 - page 98, line 15); (Deposition excerpts of Terri Owens, owner of the James Island location, page 69, line 11 – page 71, line 7); (Deposition excerpts of Julie Dyke, owner of Ladles Mt. Pleasant, page 51, lines 3 -19).

Sue Allen testified as representative of Ladlessoups, LLC and Ladles Franchising, Inc., and confirmed the testimony of the three (3) franchisees that there is no such policy. (Deposition of Sue Allen, page 85, lines 8-25).

CONCLUSION

There is not a scintilla of evidence as to an employer/employee or other contractual relationship between Plaintiff and these Defendants nor a scintilla of evidence of any “Ladles-Wide” policy concerning credit cards tips, therefore the motion for summary judgment should be granted in favor of Ladles Franchising, Inc., Ladlessoups, LLC, Sue Allen and Tracy Allen.

Respectfully Submitted,

S/Kerry W. Koon

Kerry W. Koon, Esq.
147 Wappoo Creek Drive, Ste. 203
Charleston, South Carolina 29412
Phone: (843) 795-7000
Fax: (843) 762-5276
Attorney for Defendants Ladles Franchising, Inc.,
Ladlessoups, LLC, Sue Allen and Tracy Allen

LACKE LAW FIRM, LLC

S/M. Evan Lacke

M. Evan Lacke, Esq.

147 Wappoo Creek Drive, Ste. 204

Charleston, South Carolina 29412

Phone: (843) 327-1523

Fax: (843) 795-3990

Attorney for Defendants Ladles Franchising, Inc.,

Ladlessoups, LLC, Sue Allen and Tracy Allen

Charleston, South Carolina
October 25th, 2019.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Plaintiffs,

CASE NO. 2018-CP-10-785

LADLES SOUPS-JAMES ISLAND, LLC;

(Continued on Page 2)

30 (b) (6)

DEPOSITION OF: LADLES WEST ASHLEY
BY: COREY PAUL

DATE: September 13, 2019
TIME: 9:33 a.m.
LOCATION: 234 Seven Farms Drive
Charleston, SC

TAKEN BY:

REPORTED BY: Counsel for the Plaintiff
Roxanne Easterwood, RPR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Asheville, NC

(8-28) 785-5699

A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

1 A. I know them.

2 Q. Have you talked to them about how --
3 their tip policy?

4 A. Not in the least.

5 Q. Have they talked to you about your tip
6 policy?

7 A. No.

8 Q. Have you explained any documents with
9 them about tip policies or anything like that?

10 A. No.

11 Q. As far as you know, they operate
12 totally independently on a tip policy from
13 anything that you do?

14 A. Correct.

15 MR. SHELBOURNE: Okay. That's all I
16 have. Thank you.

17 EXAMINATION

18 BY MR. KOON:

19 Q. Corey, my name is Kerry Koon. I
20 represent Ladles Franchising, Inc., Suzie Allen,
21 Tracy Allen, and Ladlessoups, LLC. My first
22 question is, at least in the case of the West
23 Ashley restaurant under your ownership and the
24 Fort Mill restaurant under your ownership, Ladles
25 Franchising, Inc. does not collect royalties based

1 upon credit card tips; is that correct?

2 A. That is correct.

3 Q. All right. So that would not be
4 included in the definition of gross sales as it
5 applies to franchising fees for West Ashley under
6 your ownership or Fort Mill under your ownership;
7 is that correct?

8 A. That is correct.

9 Q. Now, if -- under your own ownership,
10 if an employee had elected to take the server wage
11 of \$2.13 an hour plus all tips, including credit
12 card tips, do you know whether they would make
13 less or more than the hourly wage than was offered
14 and accepted by them?

15 A. They would make less.

16 Q. Now, is CT Foods, LLC a limited
17 liability company owned by you and your wife?

18 A. Yes.

19 Q. And are you and your wife 50 percent
20 each owners?

21 A. Yes.

22 Q. Does Suzie Allen own any membership
23 interest in CT Foods, Inc.?

24 A. None.

25 Q. LLC, excuse me. Does Tracy Allen own

1 any membership interest in CT Foods, LLC?

2 A. No.

3 Q. Are either Suzie Allen or Tracy Allen
4 managers or agents of CT Foods, LLC?

5 A. No.

6 Q. Is CT Foods, LLC the owner of both the
7 West Ashley restaurant and the Fort Mill
8 restaurant?

9 A. No.

10 Q. All right. Who owns what?

11 A. CT Foods, LLC owns West Ashley. CP
12 Foods, LLC owns Fort Mill.

13 Q. I'm sorry, CP?

14 A. Yes. One letter difference.

15 Q. All right. So let me ask the same
16 questions for CP Foods, LLC. Is Suzie Allen a
17 member or owner of CP Foods, LLC?

18 A. No.

19 Q. Is Tracy Allen a member or owner of CP
20 Foods, LLC?

21 A. No.

22 Q. Is either Tracy Allen or Suzie Allen a
23 manager or agent of CP Foods, LLC?

24 A. No.

25 Q. All right. Does anybody other than

1 you and your wife have any ownership interest in
2 either CT Foods or CP Foods?

3 A. No.

4 Q. And is it your belief that the Fort
5 Mill store, CP Foods, LLC has signed a franchise
6 agreement?

7 A. Yes.

8 Q. All right. Do you still have the
9 franchise agreement in front of you?

10 A. I do.

11 Q. If you would look at page 13?

12 A. Okay.

13 Q. Paragraph 5A. Would you review that
14 for a moment?

15 A. Yes.

16 Q. Just read it over to yourself.

17 (The witness reads the document, as
18 requested.)

19 THE WITNESS: Got it.

20 BY MR. KOON:

21 Q. Does that paragraph 5A of the sample
22 franchise agreement specify that both CT Foods,
23 LLC and CP Foods, LLC are independent contractors?

24 A. It does.

25 Q. And they are separate entities

1 separate and apart from Ladlessoups, LLC?

2 A. Correct.

3 Q. And they're not under the control of
4 either Ladles -- excuse me. They're not under --
5 separate and independent from Ladles Franchising,
6 Inc.; is that correct?

7 A. That's correct.

8 Q. All right. Their management is not
9 under control of Ladles Franchising, Inc.; is that
10 correct?

11 A. Correct.

12 Q. And neither CP Foods, LLC nor CT
13 Foods, LLC is under the control of either Suzie
14 Allen or Tracy Allen; is that correct?

15 A. Correct.

16 Q. And since you purchased Ladlessoups --
17 excuse me Ladlessoups West Ashley restaurant from
18 Ladlessoups, LLC, has Ladlessales, LLC exercised
19 any supervisory or management authority over the
20 West Ashley restaurant?

21 A. No.

22 Q. You have operated your restaurant
23 totally independent from Ladlessoups, LLC since
24 September 1, 2017; is that correct?

25 A. That's correct.

1 Q. All right. Now, is it also correct
2 that the franchise agreement does not direct you
3 to -- in any way how to compensate your employees;
4 is that correct?

5 A. That is correct.

6 Q. It does not direct you to handle
7 either cash or credit card tips in any particular
8 fashion; is that correct?

9 A. That is correct.

10 Q. There is no Ladles-wide policy imposed
11 by Ladlessoups -- excuse me, Ladles Franchising,
12 Incorporated, Suzie Allen, or Tracy Allen
13 concerning the handling of credit card or cash
14 tips; is that correct?

15 A. Correct.

16 Q. You have never employed Craig
17 Chappell; is that correct?

18 A. Correct.

19 Q. Now if you would look at page 47, I
20 think it is, of the franchise agreement?

21 A. Okay.

22 Q. Paragraph L under -- on page 47.
23 Would you read to yourself and familiarize
24 yourself with the first sentence of that
25 paragraph? It's entitled Interpretation.

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON NINTH JUDICIAL CIRCUIT

CRAIG CHAPPELL, ON BEHALF OF HIMSELF AND OTHERS
SIMILARLY SITUATED,
Plaintiffs,

vs. CASE NO. 2018-CP-10-785
LADLES SOUPS-JAMES ISLAND, LLC;

(Continued on Page 2)

DEPOSITION OF: TERI OWENS
DATE: September 13, 2019
TIME: 12:00 p.m.
LOCATION: 234 Seven Farms Drive
Charleston, SC

TAKEN BY: Counsel for the Plaintiff
REPORTED BY: Roxanne Easterwood, RPR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Asheville, NC
(828) 785-5699



A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

1 Q. Does anyone other than you and Alfred
2 own any interest --

3 A. No.

4 Q. -- any interest in Ladles James
5 Island, LLC?

6 A. No.

7 Q. All right. Thank you. Does either
8 Suzie or Tracy Allen own any interest in Ladles
9 James Island, LLC?

10 A. No.

11 Q. Is either Suzie or Tracy Allen a
12 manager or agent of Ladles James Island, LLC?

13 A. No.

14 Q. Now, do you have any other legal
15 relationship with Ladles Franchising, Inc. other
16 than the terms of your franchise agreement?

17 A. No.

18 Q. Do you have a copy of the franchise
19 agreement with you?

20 A. Uh-huh.

21 Q. All right. Look, if you would, at
22 page 13.

23 A. Okay.

24 Q. Take a moment to review paragraph 5A
25 on page 13, and let me know when you're ready to

1 answer a question about it.

2 (The witness reads the document, as
3 requested.)

4 THE WITNESS: Okay.

5 BY MR. KOON:

6 Q. Does this portion of the franchise
7 agreement specify that Ladles James Island, LLC is
8 an independent contractor separate and apart from
9 Ladles Franchising, Inc.?

10 A. It does look like that.

11 Q. All right. And do you -- does Ladles
12 James Island, Inc. -- excuse me, James Island, LLC
13 operate as an independent contractor separate and
14 apart from Ladles Franchising, Inc.?

15 A. Yes.

16 Q. Does Ladles Franchising, Inc. through
17 the franchise agreement have any authority to set
18 Ladles James Island, LLC's compensation policies?

19 A. No.

20 Q. There's nothing in the employee
21 handbook about tipping, is there?

22 A. No.

23 Q. Does Ladles Franchising, Inc., Suzie
24 Allen or Tracy Allen, have they established any
25 policies that they require you to follow

1 concerning tipping and payment of either credit
2 card or cash tips to employees?

3 A. No.

4 Q. To your knowledge, have you ever heard
5 of any, let's use the phrase, Ladles-wide policy
6 as far as handling credit card and cash tips?

7 A. No.

8 Q. Are each, to your knowledge -- well,
9 strike that.

10 Let me ask you to review one more
11 portion of the franchise agreement, page 47, if
12 you would turn to that page. Paragraph L, when
13 you get there.

14 A. My fingers aren't working. Here we
15 go. Okay.

16 Q. If you would read the first paragraph
17 -- excuse me, the first sentence of paragraph L,
18 and let me know when you're prepared to answer a
19 question about it?

20 A. The preambles and exhibits are a part
21 of this agreement which together with the
22 commitment agreement and the development
23 agreement. If any constitutes the entire
24 agreement of the parties and there are no other
25 oral or written understandings or agreements

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

CRAIG CHAPPELL, ON BEHALF OF HIMSELF AND OTHERS
SIMILARLY SITUATED,

Plaintiff(s),

vs.

CASE NO. 2018-CP-10-785

LADLES SOUPS - JAMES ISLAND LLC, et al.,

Defendants.

30(b)(6) LADLES OF MT. PLEASANT
DEPOSITION OF: JULIE DYKE

DATE: September 18, 2019

TIME: 9:14 AM

LOCATION: Ferrara Law Firm
8887 Old University Blvd.
North Charleston, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: MARIE MCCOLLUM, Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 separate and apart from Ladles Franchising, Inc.?

2 A. Yes.

3 Q. And ever since you became a franchisee,
4 meaning Ladles Soups Mount Pleasant, LLC, have you
5 operated as independent contractors?

6 A. Yes.

7 Q. Has Ladles Franchising, Inc., Sue
8 Allen, or Tracy Allen ever attempted to require you
9 to handle credit card tips in any particular
10 fashion?

11 A. No.

12 Q. Has either Ladles Franchising, Inc.,
13 Sue Allen, or Tracy Allen ever suggested that the
14 method that you use in handling credit card tips
15 was either right or wrong?

16 A. No.

17 Q. Is there any Ladles-wide policy about
18 handling credit card tips?

19 A. Not that I'm aware of.

20 Q. Now, you were asked if Ladles
21 Franchising could terminate your agreement. It
22 might take me a second to find it, but is there a
23 termination section in the Ladles Franchising
24 Agreement?

25 A. There is somewhere.

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

CRAIG CHAPPELL, ON BEHALF OF HIMSELF AND OTHERS
SIMILARLY SITUATED,

Plaintiff(s),

vs.

CASE NO. 2018-CP-10-785

LADLES SOUPS - JAMES ISLAND LLC, et al.,

Defendants.

30(b)(6) LADLESSOUPS, LLC, and LADLES
FRANCHISING, INC.

DEPOSITION OF: SUE ELLEN ALLEN

DATE: September 18, 2019

TIME: 11:41 AM

LOCATION: Ferrara Law Firm
8887 Old University Blvd.
North Charleston, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: MARIE MCCOLLUM, Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

Fast, Accurate & Friendly

Charleston, SC	Hilton Head, SC	Myrtle Beach, SC
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Columbia, SC	Greenville, SC	Charlotte, NC
(803) 731-5224	(864) 234-7030	(704) 573-3919

Asheville, NC
(828) 785-5699

1 of employee that would receive tips in a restaurant
2 business?

3 A. No.

4 Q. Have you operated any of the defendant
5 restaurants subsequent to your sale of Ladlessoups,
6 LLC, assets to Corey Paul?

7 A. No.

8 Q. Is there any Ladles-wide policy
9 concerning the handling of credit card or cash
10 tips?

11 A. No.

12 Q. Do you know how the various
13 franchisees, other than what you might have learned
14 by observing the course of this litigation, handle
15 credit card tips?

16 A. No.

17 Q. Do you make it your business to inquire
18 as a representative of Ladles Franchising, Inc., as
19 to how the individual franchisees handle credit
20 card tips?

21 A. No.

22 Q. Are you aware of anything in the
23 Franchise Agreement that concerns the handling of
24 the compensation of tips by the franchisee?

25 A. No.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

CASE NO.: 2018-CP-10-785

CRAIG CHAPPELL, on behalf of himself and
others similarly situated,

Plaintiff(s),

v.

Ladles Soups – James Island LLC; Ladlessoups,
LLC; Ladles Soups At Cane Bay LLC; Ladles
Soups At Citadel Mall LLP; Ladles Soups
Calhoun LLC; Ladles Soups Cane Bay LLC;
Ladles Soups Coosaw LLC; Ladles Soups
Downtown Charleston, LLC; Ladlessoups
Fresh Fields, LLC; Ladles Soups @ Freshfields
Village, LLC; Ladlessoups Mainstreet, LLC;
Ladles Soups Moncks Corner LLC;
Ladlessoups Mount Pleasant, LLC; Ladles
Franchise Development, LLC; Ladles
Franchising Inc.; Ladles Fort Mill, LLC;
Ladles Knightsville LLC; Ladles West Ashley;
Teri Owens; Sue Allen, Tracy Allen, Steve
Traeger, Erik Dyke, Julie Dyke, Stan Sutton,
Carol Sutton, Jason Dalter, Kellie Henderson;
Jane Doe 1-25 (Unknown Operating Company
and Management Company Owners); John
Doe 25-40 (Management Personnel)

Defendants.

MOTION TO DEEM REQUESTS FOR ADMISSION ADMITTED

PLEASE TAKE NOTICE that Plaintiff, by and through his attorney, will move at a date
and time to be set by the Court, but not sooner than ten (10) days after service hereof, for an Order:

(1) to deem admitted the matters in Plaintiff's First Set of Requests to Admit to Defendant
Ladles Soups – James Island LLC;

(2) to deem admitted the matters in Plaintiff's First Set of Requests to Admit to Defendant Ladles Soups Coosaw, LLC;

(3) to deem admitted the matters in Plaintiff's First Set of Requests to Admit to Defendant Ladles Soups Downtown Charleston, LLC;

(4) to deem admitted the matters in Plaintiff's First Set of Requests to Admit to Defendant Ladlessoups Fresh Fields, LLC;

(5) to deem admitted the matters in Plaintiff's First Set of Requests to Admit to Defendant Ladles Soups @ Freshfields Village, LLC;

(6) to deem admitted the matters in Plaintiff's First Set of Requests to Admit to Defendant Ladles Soups Moncks Corner, LLC;

(7) to deem admitted the matters in Plaintiff's First Set of Requests to Admit to Defendant Ladles Fort Mill, LLC;

(8) to deem admitted the matters in Plaintiff's First Set of Requests to Admit to Defendant Ladles Knightsville, LLC;

(9) to deem admitted the matters in Plaintiff's First Set of Requests to Admit to Defendant Ladles West Ashley;

(10) to deem admitted the matters in Plaintiff's First Set of Requests to Admit to Defendant Teri Owens;

(11) to deem admitted the matters in Plaintiff's First Set of Requests to Admit to Defendant Kelli Henderson;

(12) to deem admitted the matters in Plaintiff's First Set of Requests to Admit to Defendant Carol Sutton;

(13) to deem admitted the matters in Plaintiff's First Set of Requests to Admit to Defendant Steve Traeger;

This Motion is brought pursuant to the South Carolina Rules of Civil Procedure, including Rules 7, 36, and 37 and is based upon the grounds stated below. Pursuant to Rule 36, SCRPC, "a matter is admitted" unless the party to whom the request is directed responds within 30 days of service. SCRPC, 36(a), (b). On August 23, 2019, Plaintiff served Requests to Admit on the above-referenced Defendants. **(Exhibit A, Plaintiff's First Request for Admission)**. Plaintiff's Requests to Admit were served by e-mail to "all defendants," including by the following addresses of counsel: paul@ferraralawfirm.net; janel@ferraralawfirm.net; and j.weiss@ferraralawfirm.net. **(Exhibit B, Plaintiff's e-mail to Defendant)**. Counsel did not receive any message indicating that the 3 messages reference in the prior sentence were not received or had "bounced back." These attorney e-mail addresses are exactly as listed in AIS, which all South Carolina attorneys are required to maintain, **(Exhibit C, screenshot of AIS profile)**, and which AIS email address must be updated annually.

In the same email message attached as **Exhibit B**, in which the above referenced requests for admission were sent to the three email addresses at Ferrara law firm, they were also sent to six other email addresses, including: Brandt Shelbourne (brandt@shelbournelaw.com), Yvonne Franklin (civlit@shelbournelaw.com), Kerry Koon (kerrykoon@hotmail.com), Evan Lacke (elacke@lackelawfirm.com), Ben Le Clercq (ben@leclercqlaw.com), and Debbie Mathews (Debbie@leclercqlaw.com). The messages to the "Le Clercq Law Firm" recipients were received on the same day. Additionally, the RTAs attached as **Exhibit A** and sent by undersigned were received by Mr. Lacke, since his office submitted responses to the RTAs by email message dated September 19, 2019. **(Exhibit D, Mr. Koon's response to RTAs)**. As is evident from **Exhibit**

D, the responses from Mr. Koon's office were copied on "Paul@ferarralawfirm.net". Moreover, the above referenced RTAs were also received by Mr. Shelbourne, since his office submitted a response to the RTAs on September 19, 2019, which response is attached as **Exhibit E**. The certificate of service at **Exhibit E, p. 5** states that the response was:

served upon the following counsel via hardcopy and/or electronic mail to the following Paul B. Ferrara, Ill, Esq. Ferrara Law Firm, PLLC, 8887 Old University Blvd., Suite 200, North Charleston, SC 29406, paul@ferarralawfirm.net, Attorney for Defendants: Kellie Henderson; Ladles Fort Mill LLC; Ladles Franchise Development LLC; Ladles Knightsville LLC; Ladles Soups @ Freshfields Village LLC; Ladles Soups at Freshfields Village LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston LLC; Ladles Soups Monks Corner LLC; Ladles West Ashley; Carol Sutton, and Steve Traeger; Ladles Soup James Island, LLC and Teri Owens.

Undersigned counsel did not receive Mr. Shelbourne's response by email, but rather by hard copy/regular mail, which may indicate the same type of mailing (i.e., hard copy) to Mr. Ferrara.

Given the advent and importance of "efiling"--all members of the SC Bar are required to maintain, monitor on a regular basis, and annually certify their email addresses as correct on the Supreme Court's AIS website. See South Carolina Supreme Court Order, dated October 17, 2011 ("attorneys admitted to practice law in this State . . . shall, by November 18, 2011, log-on, verify, and update their contact information on the AIS. . . . [T]he attorney . . . shall ensure that his or her contact information in the AIS includes a mailing address, an e-mail address, and a telephone or cell phone number, and that this information is current and accurate"); **Attached Exhibit F, Jason Bobertz, Deputy Clerk of Court, Supreme Court of South Carolina, CLE presentation on "E Filing", Nov. 8, 2019, p. 18**. Efiling is "mandatory" for attorneys, attorney email addresses are used to copy counsel on court filings, and under current procedure, at the time of "efiling" of a "pleading and other documents served under Rule 5, SCRCF", a "Notice of Electronic Filing" ("NEF") is "transmitted to AIS Email Address of All E-Filers in the Case." **Exhibit F, p. 22**.

Moreover, “E-Service [is] complete at the Time of Submission,” and “Timely E-Filing = Timely E-Service.” **Exhibit F, p. 22.** In other words, if Mr. Paul Ferarra and Ms. Janel Ferarra had received an “NEF” (e.g., a Motion for Summary Judgment) to their email addresses (paul@ferraralawfirm.net; janel@ferraralawfirm.net) on the date the RTAs attached as **Exhibit A/Exhibit B** were sent to them by email, the service of such NEF/MSJ would be considered complete at the time of submission (i.e., the date MSJ was efiled). See **Exhibit F, p. 22.**

At no time did the Defendants request an extension to respond to Plaintiff’s First Request for Admission. It has now been over 120 days since Plaintiff served his requests to admit on the above-referenced Defendants. The above-referenced Defendants have not yet responded. Plaintiff is therefore entitled to an Order deeming admitted the matters in the requests as to these Defendants. See Rule 36(a), SCRCP (“[t]he matter is admitted” unless the party timely responds); *Scott v. Greenville Hous. Auth.*, 353 S.C. 639, 645–46, 579 S.E.2d 151, 154 (Ct. App. 2003) (“Whether as previously embodied in prior South Carolina Circuit Court Rule 89 or as currently verbalized in Rule 36, SCRCP, South Carolina has long had the discovery rule that failure to respond to requests for admissions renders any matter listed in the request conclusively admitted for trial”); *Phillips v. Bayless*, No. 2006-UP-379, 2006 WL 7287200, at *3 (S.C. Ct. App. Nov. 21, 2006) (affirming the trial court’s bright-line test in deeming the requests admitted for failure to timely respond); *Linda Lundstrom, Inc. v. Jennings*, No. 2005-UP-209, 2005 WL 7083850, at *4 (S.C. Ct. App. Mar. 21, 2005) (“Because [the defendant] failed to answer the requests to admit within thirty days of service, the matters contained therein were deemed admitted pursuant to Rule 36, SCRCP”).

Defendants have failed miserably to participate in discovery as required by the SCRCP, but rather have continually frustrated Plaintiff’s efforts at discovery, including: i) many Defendants

complete failure to respond *at all* to any discovery (even today); ii) other Defendants failure to timely respond at all to discovery, followed later by a limited response to some discovery requests, but then responding only partially to those limited requests they deem worthy of response (e.g., Defendants refusal to produce the identify and contact details of employees in this, a Wages Act case); iii) Defendants' failure to produce parties for deposition; iv) failure to accept service of process for parties represented, and other similar obstreperous conduct. Having frustrated Plaintiff's legitimate discovery attempts, Defendants then refused to agree to a Scheduling Order, but rather attempted to force Plaintiffs to go to trial without the benefit of discovery. Given that counsel's independent investigation (without the benefit of discovery) nevertheless disclosed evidence of fraudulent behavior by one or more Defendants (Charpia Affidavit, par. 6), this obstreperous conduct appears to be purposeful. Defendants should be held to the consequences of such conduct.

December 23, 2019

Respectfully Submitted,

s/Ben Whaley Le Clercq

Ben Le Clercq (S.C. Bar #65754)

David D. Ashley (S.C. Bar #76206)

Le Clercq Law Firm

Ben@LeClercqLaw.com

David@LeClercqLaw.com

708 South Shelmore Blvd. #202

Mount Pleasant, SC 29464

Phone (843) 722-3523

Fax (843) 352-2977

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I, Ben Le Clercq, certify that on December 23, 2019, a true and correct copy of the foregoing **PLAINTIFF'S MOTION TO HAVE REQUESTS FOR ADMISSION DEEMED ADMITTED** was served upon counsel for Defendants, via NEF by efileing, and also by electronic mail as follows:

Kerry Koon - kerrykoon@hotmail.com
M. Evan Lacke - elacke@lackelawfirm.com
147 Wappoo Creek Drive, Suite 204
Charleston, SC 29412

Paul B. Ferrera, III - paul@ferraralawfirm.net
Janel K. Ferrara - janel@ferraralawfirm.net
Jessica Weiss - j.weiss@ferraralawfirm.net
2300 Otranto Road
North Charleston, SC 29406

P. Brandt Shelbourne – brandt@shelbournelaw.com
Yvonne Franklin - civlit@shelbournelaw.com
131 E. Richardson Avenue
Summerville, SC 29483

Respectfully Submitted,

s/Ben Whaley Le Clercq
Ben Le Clercq (S.C. Bar #65754)

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

CASE NO.: 2018-CP-10-785

CRAIG CHAPPELL, on behalf of himself and
others similarly situated,

Plaintiff(s),

v.

Ladles Soups – James Island LLC; Ladlessoups, LLC; Ladles Soups At Cane Bay LLC; Ladles Soups At Citadel Mall LLP; Ladles Soups Calhoun LLC; Ladles Soups Cane Bay LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston, LLC; Ladlessoups Fresh Fields, LLC; Ladles Soups @ Freshfields Village, LLC; Ladlessoups Mainstreet, LLC; Ladles Soups Moncks Corner LLC; Ladlessoups Mount Pleasant, LLC; Ladles Franchise Development, LLC; Ladles Franchising Inc.; Ladles Fort Mill, LLC; Ladles Knightsville LLC; Ladles West Ashley; Teri Owens; Sue Allen, Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke, Stan Sutton, Carol Sutton, Jason Dalter, Kellie Henderson; Jane Doe 1-25 (Unknown Operating Company and Management Company Owners); John Doe 25-40 (Management Personnel)

Defendants.

PLAINTIFF'S FIRST REQUESTS FOR ADMISSION

Plaintiffs, Craig Chappell and others similarly situated, ("Plaintiffs"), propound the following Requests for Admission to Defendant, Ladles Soups et al., to be answered fully and completely in accordance with Rule 36 of the South Carolina Rules of Civil Procedure.

One copy of these Requests are being served on counsel for each Defendant with the intention that they be answered separately by each Defendant.

If you do not understand a Request, please contact Plaintiff's undersigned counsel at any time after service and an attempt will be made to resolve any definitional or comprehension problems orally or in writing.

To the extent that you contend that a Request is objectionable in form or substance, please contact Plaintiff's undersigned counsel at any time after service and an attempt will be made to resolve any such problems, either orally or in writing.

1. Admit that Defendant has had a policy of not paying customer credit card tips to employees, at any time from January 1, 2015 to the present.

2. Admit that Defendant had a policy of not paying customer credit card tips to employees at any time prior to January 1, 2015.

3. Admit that Defendant, any Franchisee, Officer, Employee, or Agent, have had discussions at any time with one or more representatives of Ladles Soup franchisor regarding Defendant's policy of not paying customer credit card tips to employees.

4. Admit that one or more of Defendant's managers have instructed its employees that they may not share with customers the fact that credit card tips are not paid to the employees, but are instead kept by Defendant.

5. Admit that one or more of Defendant's owners, officers, employees or agents have instructed their managers to tell staff employees that they may not share with customers the fact that credit card tips are not paid to the employees, but are instead kept by Defendant.

6. Admit that Defendant allows its employees to keep cash tips from its customers.

7. Admit that Defendant does not provide its employees with information regarding how Defendant makes use of the money from credit card tips.

8. Admit that Defendant does not provide written notice to its employees of the amounts and terms of deductions of credit card tips.

9. Admit that Defendant does not provide its employees with itemized statements showing the retention or diversion of credit card tips for each pay period.

10. Admit that Defendant does not have a company policy in place that provides employees with a procedure to dispute the practice of Defendant retaining credit card tips so that the employees can have this money paid to them.

August 23, 2019

Respectfully Submitted,

/s/ Ben Le Clercq
Ben Le Clercq (S.C. Bar #65754)
David D. Ashley (S.C. Bar #76206)
Le Clercq Law Firm
Ben@LeClercLaw.com
David@LeClercLaw.com
708 South Shelmore Blvd. #202
Mount Pleasant, SC 29464
Phone (843) 722-3523
Fax (843) 352-2977
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I, David Ashley, certify that on August 23, 2019, a true and correct copy of the foregoing **PLAINTIFF'S FIRST REQUESTS FOR ADMISSION** was served upon counsel for Defendants, via electronic mail as follows:

Kerry Koon - kerrykoon@hotmail.com
M. Evan Lacke - elacke@lackelawfirm.com
147 Wappoo Creek Drive, Suite 204
Charleston, SC 29412

Paul B. Ferrera, III - paul@ferraralawfirm.net
Janel K. Ferrara - janel@ferraralawfirm.net
Jessica Weiss - j.weiss@ferraralawfirm.net
2300 Otranto Road
North Charleston, SC 29406

P. Brandt Shelbourne – brandt@shelbournelaw.com
Yvonne Franklin - civlit@shelbournelaw.com
131 E. Richardson Avenue
Summerville, SC 29483

/s/ David Ashley
David Ashley

DA

From: David Ashley david@leclercqlaw.com

Subject: Chappell v. Ladles Soups, et al.

Date: August 23, 2019 at 4:19 PM

To: Paul Ferrara III paul@ferraralawfirm.net, Janel Ferrara janel@ferraralawfirm.net, Jessica Weiss j.weiss@ferraralawfirm.net, Brandt Shelbourne brandt@shelbournelaw.com, Yvonne Franklin civlit@shelbournelaw.com, Kerry Koon kerrykoon@hotmail.com, M. Evan Lacke elacke@lackelawfirm.com, Ben Le Clercq ben@leclercqlaw.com, Debbie Mathews Debbie@leclercqlaw.com

All,

Please see the attached Plaintiff's Requests for Admission for service on all Defendants.

With kind regards, I am

Respectfully,

David D. Ashley

Associate

Le Clercq Law Firm

[708 South Shelmore Blvd., Suite 202](#)

[Mount Pleasant, SC 29464](#)

Tel: 843-722-3523

Fax: 843-352-2977

david@leclercqlaw.com

www.leclercqlaw.com

DISCLAIMER:

This e-mail message contains confidential, privileged information intended solely for the addressee. Please do not read, copy, or disseminate it unless you are the addressee. If you have received it in error, please call us at 843-722-3523 and ask to speak with the message sender. Also, we would appreciate your forwarding the message back to us and deleting it from your system. Thank you. This e-mail and all other electronic (including voice) communications from the sender's firm are for informational purposes only. No such communication is intended by the sender to constitute either an electronic record or an electronic signature, or to constitute any agreement by the sender to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed unless otherwise specifically indicated.



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**Paul B.
Ferrara III**

Ferrara Law
Firm, PLLC

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ADR		N. Charleston, SC
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Contract		Charleston
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&		
Paralegal		
Directory		
Mailing	Phone:	(843) 569-5511 Ext.
Lists		
and	Law School:	Western Michigan
Labels		University Thomas M.
Sections,		Cooley Law School,
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&	Bar Admission:	05/15/2002
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Janel Kleinhardt Ferrara

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(843) 569-5511 Ext.

Law School:

Detroit College of Law,
2002

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Bar Admission:

05/12/2003

Member Class:

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**Member
Status:**

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Charleston

KK

From: Kerry Koon kerrykoon@hotmail.com 
Subject: Chappell v. Ladles, et al./2018-CP-10-0785
Date: September 19, 2019 at 4:25 PM
To: David Ashley David@leclercqlaw.com, Ben Le Clercq ben@leclercqlaw.com, Paul Ferrara paul@ferraralawfirm.net,
Brandt Shelbourne brandt@shelbournelaw.com
Cc: M. Evan Lacke elacke@lackelawfirm.com

Mr. Ashley, please see attached Defendants Ladles Franchising, Inc., Ladlessoups, LLC, Sue Allen & Tracy Allen's Responses to Plaintiff's First Request for Admissions regarding the above. Hard copy to follow via U.S. Mail.

Mr. Ferrara & Mr. Shelbourne, only sending this to y'all via email unless one of you request a hard copy.

Thank you,
Megan Mitchum, Legal Assistant to Kerry W. Koon, Esq.
843.795.7000



Ashley, David &
LeCler....19.pdf

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

CASE NO.: 2018-CP-10-00785

CRAIG CHAPPELL, on behalf of himself and
others similarly situated,

Plaintiff(s),

**LADLES SOUPS OF MOUNT
PLEASANT, LLC, ERIK DYKE AND
JULIE DYKE RESPONSES TO
PLAINTIFF'S FIRST REQUESTS
FOR ADMISSION**

v.

Ladles Soups – James Island LLC; Ladles Soups, LLC; Ladles Soups At Cane Bay LLC; Ladles Soups At Citadel Mall LLP; Ladles Soups Calhoun LLC; Ladles Soups Cane Bay LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston, LLC; Ladles Soups Fresh Fields, LLC; Ladles Soups @ Freshfields Village, LLC; Ladles Soups Mainstreet, LLC; Ladles Soups Moncks Corner LLC; Ladles Soups Mount Pleasant, LLC; Ladles Franchise Development, LLC; Ladles Franchising Inc.; Ladles Fort Mill, LLC; Ladles Knightsville LLC; Ladles West Ashley; Teri Owens; Sue Allen, Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke, Stan Sutton, Carol Sutton, Jason Dalter, Kellie Henderson; Jane Doe 1-25 (Unknown Operating Company and Management Company Owners); John Doe 25-40 (Management Personnel)

Defendants.

TO: CRAIG CHAPPELL AND HIS ATTORNEY DAVID D. ASHLEY, ESQ.:

Defendants, Ladles Soups Mount Pleasant LLC, Erik Dyke and Julie Dyke, (hereinafter referred to as "Defendants") by and through their undersigned counsel, respond to Plaintiff, Craig Chappell's First Requests for Admission as follows:

REQUESTS FOR ADMISSION

1. Admit that Defendant has had a policy of not paying customer credit card tips to employees, at any time from January 1, 2015 to the present.

Response: Denied.

2. Admit that the Defendant had a policy of not paying customer credit card tips to employees at any time prior to January 1, 2015.

Response: Denied.

3. Admit that Defendant, any Franchise Officer, Employee, or Agent, have had discussions at any time with one or more representatives of Ladles Soup franchisor regarding Defendant's policy of not paying customer credit card tips to employees.

Response: Denied. Defendants do not understand this Request to Admit and therefore object as it is confusing.

4. Admit that one or more of Defendant's managers have instructed its employees that they may not share with customers the fact that credit card tips are not paid to the employees, but are instead kept by Defendant.

Response: Denied.

5. Admit that one or more of Defendant's owners, officers, employees or agents have instructed their managers to tell staff employees that they may not share with customers the fact

that credit card tips are not paid to the employees, but are instead kept by Defendant.

Response: **Denied.**

6. Admit that Defendant allows its employees to keep cash tips from its customers.

Response: **Admitted.**

7. Admit that Defendant does not provide its employees with information regarding how Defendant makes use of the money from credit card tips.

Response: **Denied.**

8. Admit that Defendant does not provide written notice to its employees of the amounts and terms of deductions of credit card tips.

Response: **Denied.**

9. Admit that Defendant does not provide its employees with itemized statements showing the retention or diversion of credit card tips for each pay period.

Response: **Denied.**

10. Admit that Defendant does not have a company policy in place that provides employees with a procedure to dispute the practice of Defendant retaining credit card tips so that the employees can have this money paid to them.

Response: **Denied.**

[SIGNATURE BLOCK ON NEXT PAGE]

RESPECTFULLY SUBMITTED,

By:



P. Brandt Shelbourne, Esquire (SCB 15143)
SHELBOURNE LAW FIRM
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210

**ATTORNEYS FOR DEFENDANTS LADLES
SOUPS OF MOUNT PLEASANT, LLC, ERIK
DYKE AND JULIE DYKE**

Sept 19

August, 2019

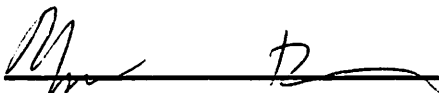
Summerville, South Carolina

CERTIFICATE OF SERVICE

I, Yvonne Franklin, certify that on September 19, 2019 a true and correct copy of **Defendants Ladles Soups of Mount Pleasant, LLC, Erik Dyke and Julie Dyke Responses to Plaintiff's First Request for Admission** was served upon the following counsel via hard copy and/or electronic mail to the following:

Ben Le Clercq., Esq. David D. Ashley, Esq. Le Clerq Law Firm 708 South Shelmore Blvd., Ste. 202 Mount Pleasant, SC, 29464 <i>Attorney for Plaintiff</i>	Kerry W. Koon, Esq. M. Evan Lacke 147 Wappoo Creek Dr. Wappoo Centre, Suite 203 Charleston, SC 29412 kerrykoon@hotmail.com <i>Attorney for Defendants, Ladles Franchising, Inc.; Ladessoups, LLC, Sue Allen and Tracy Allen</i>
Paul B. Ferrara, III, Esq. Ferrara Law Firm, PLLC 8887 Old University Blvd., Suite 200 North Charleston, SC 29406 paul@ferraralawfirm.net <i>Attorney for Defendants: Kellie Henderson; Ladles Fort Mill LLC; Ladles Franchise Development LLC; Ladles Knightsville LLC; Ladles Soups @ Freshfields Village LLC; Ladles Soups at Freshfields Village LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston LLC; Ladles Soups Monks Corner LLC; Ladles West Ashley; Carol Sutton, and Steve Traeger; Ladles Soup James Island, LLC and Teri Owens</i>	

Date: September 19, 2019



Yvonne Franklin, Paralegal at Shelbourne Law

SOUTH CAROLINA E-FILING AND THE RULES OF CIVIL PROCEDURE

Jason Bobertz
Deputy Clerk of Court
Supreme Court of South Carolina

Columbia, South Carolina

November 8, 2019



GOALS OF E-FILING

- Attorneys and Litigants:
- File, serve, and view documents via the Internet
- Extend the time for filing
- Electronic Service of pleadings and other documents served under Rule 5, SCRCP

BASIC PROCEDURES

- AIS is Repository of Email Service Addresses
- E-Filing Mandatory for Attorneys
- SRLs not Currently Permitted to E-File
- Instruction about E-Filing “Quirks”

ELECTRONIC SERVICE

- Automatic E-Service via Notice of Electronic Filing (NEF) at Submission
- E-Service Complete at the Time of Submission
- Timely E-Filing = Timely E-Service
- NEF Transmitted to AIS Email Address of All E-Filers in the Case