

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

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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 2 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.

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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 MEMORANDUM IN
OPPOSITION TO DEFENDANTS
LADLES FRANCHISING INC.,
LADLESSOUPS, LLC, SUE ALLEN, AND
TRACY ALLEN’S MOTION FOR
SUMMARY JUDGMENT**

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Plaintiff submits this Memorandum in Opposition to Defendants Ladles Franchising Inc., Ladlessoups, LLC, Sue Allen, and Tracy Allen's ("Ladles Franchising," "Ladlessoups," and "Defendants") Motion for Summary Judgment. Defendants' Motion for Summary Judgment should be denied.

FACTUAL BACKGROUND

The Ladles Soups restaurant concept was created by Defendants Suzie Allen and her spouse Tracy Allen with the first location opening in West Ashley (Ladlessoups, LLC) in 2007,

the second location opening on Kiawah Island 2008 (currently Ladles Fresh Fields Village), and the third location opening in Summerville in 2009 (currently Ladles Knightsville). In 2010, Suzie Allen and Tracy Allen started Ladles Franchising, Inc. for the purpose of selling Ladles Soups franchises. Suzie Allen's sisters, Defendant Teri Owens and Carol Ellenburg, worked at the Ladles West Ashley location where they learned the business before opening their own Ladles Soups restaurants on James Island (Ladles James Island) and downtown Charleston (Ladles Soups Downtown Charleston), respectively. Additionally, Defendants Julie Dyke and Corey Paul also worked at the Ladles West Ashley location where they learned the business before opening their own locations in Mt. Pleasant and Fort Mill, respectively. In 2017, Mr. Paul purchased the West Ashley location from Suzie Allen and Tracy Allen.

This lawsuit is brought by a former employee of Ladles Soups James Island, Craig Chappell, as well as putative additional Plaintiff Lani Charpia,¹ who currently works at Ladles West Ashley, 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 ("SCPWA"), breach of contract, and conversion. Plaintiff alleges that Defendants are wrongfully and intentionally withholding credit card tips that were rightly intended for Plaintiff and others similarly situated and that the illegal conversion by Defendants of credit card tips is a common scheme or policy of Defendants.

Mr. Paul testified in his deposition as representative for Ladles West Ashley and Ladles Fort Mill that, upon purchasing the West Ashley Ladles Franchise, he continued the same policy of withholding credit card tips/wages that Franchisor Defendants Suzie Allen and Tracy Allen

¹ Plaintiff's Motion to Amend the Complaint to add Ms. Charpia as an additional party and class representative is currently pending with this Court. It also includes additional theories of liability, the basis of which has been discovered not through discovery, in which Defendants have failed to participate, but through counsel's investigations.

implemented when they owned the West Ashley location under the Ladlessoups, LLC operating company:

Q: What was the policy when you worked at West Ashley when – before you purchased it?

A: It was, I'm assuming, very similar to what I have now.

Q: Because you didn't change any policies when you purchased it, correct?

A: I did not come up with any new policies.

Q: Okay. So when you worked there, the store kept the credit card tips?

A: Yes.

Deposition excerpts of Corey Paul for Ladles West Ashley and Ladles Fort Mill at p. 66, Lns. 1-

11. **(Exhibit 1).**

According to the Ladles Franchise Agreement, Ladles Franchising, Inc. retained a level of control over the individual restaurant locations including, but not limited to:

1. "sole discretion" of employment and evaluation of individual restaurant managers (p. 8, Section 2);
2. trademarks (p. 11, Section 4);
3. the condition, appearance, and operation of individual restaurant locations including, but not limited to, "compliance with laws and good business practices" (pp. 19-25, Section 8);
4. marketing (pp. 25-28, Section 9);
5. reports, financial statements, and financial condition of individual restaurant locations (pp. 28-29, Section 10);
6. inspections and audits of individual restaurant locations including, but not limited to, the right to inspect restaurant and premises: observe and video tape the operations of the restaurant; interview personnel of the restaurant; interview customers of the restaurant; inspect and copy books, records, and documents relating to the operation of the restaurant (pp. 29-31, Section 11);

7. termination of the franchise if the individual restaurant: fails to accurately report gross sales or fails to make payments due; fails to “comply with any other provision of this Agreement or any mandatory specification, standard or operating procedure we prescribe;” “fail to use your reasonable efforts employ (sic) on a full time basis qualified Restaurant Managers with qualifications and experience acceptable to us; etc. (pp. 35-38, Section 14).

See, Ladles Franchise Agreement (**Exhibit 2**).

Such close control of Ladles Franchisees by Ladles Franchisor (which is common in the franchise industry), extends to employee wages, which control is fundamentally important to the Ladles franchise design and concept. The importance of Franchisor “control” over employee wages, including of course cash and credit card tips, is manifest in the “design” of the Ladles franchise concept, according to Ladles founder Sue Allen:

*The design of the store, the reason we did it the way we did it, is because **the only two things that you can really control in money, is food costs and employee wages,** so the way that the store is designed is to have less employees.*

Ladles founder Sue Allen, <https://www.ladlessoups.com/franchising>, at 5:18.

PROCEDURAL BACKGROUND

1. 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.
2. Plaintiffs encountered substantial challenges getting all the defendants served. 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.
3. On or about June 20, 2018, Defendants Ladles Soups Mt. Pleasant, Erik Dyke, and Julie Dyke filed Answers to the Complaint.

4. 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.

5. Subsequent to Answers being filed by Defendants, a number of motions were filed. On July 24 and 28, 2018, a Motion to Disallow Class Certification, Motion to Dismiss Improper Parties, and Motion to Dismiss based on Rule 12(b)(6) were filed by sixteen of the Defendants. 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.

6. Next, a hearing on Defendants' motions was held and all three motions were denied by Orders of this Court dated January 29, 2019.

7. On February 14, 2019, a Motion to Reconsider the January 29, 2019 Order denying the Motion to Dismiss was filed on behalf of sixteen Defendants and denied by an Order of this Court dated March 6, 2019.

8. Currently, Motions for Summary Judgment by all Defendants and Plaintiff's Motion to Compel against all Defendants, Motion for Continuance, Motion to Intervene and/or Amend the Complaint, and Motion for Class Certification are pending with this Court.

9. Plaintiff has submitted a proposed scheduling order with a trial date not before April 13, 2020, and a status conference in this matter was held on November 7, 2019.

STANDARD OF REVIEW

Summary judgment is only appropriate when there is "no genuine issue as to any material fact and [...] the moving party is entitled to judgment as a matter of law." Rule 56, SCRPC. In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Sauner v. Public Serv. Auth.*, 354 S.C. 397, 581 S.E.2d 161 (2003); *Hendricks v. Clemson*

Univ., 353 S.C. 449, 578 S.E.2d 711 (2003); *McNair v. Rainsford*, 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998); *see also Laurens Emergency Med. Specialists*, 355 S.C. at 108, 584 S.E.2d at 377 (stating that in reviewing summary judgment motion, facts and circumstances must be viewed in light most favorable to non-moving party). If triable issues exist, those issues must go to the jury. *Baril v. Aiken Reg'l Med. Ctrs.*, 352 S.C. 271, 573 S.E.2d 830 (Ct. App. 2002); *Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999).

Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 578 S.E.2d 329 (2003); *Regions Bank*, 354 S.C. at 659, 582 S.E.2d at 438; Rule 56(c), SCRCF. All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. *Bayle v. South Carolina Dep't of Transp.*, 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001); *see also Ferguson v. Charleston Lincoln Mercury, Inc.*, 349 S.C. 558, 563, 564 S.E.2d 94, 96 (2002) ("On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below."). Finally, "because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues." *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 220, 616 S.E.2d 722, 729 (Ct.App. 2005).

LEGAL ARGUMENT

- I. Plaintiff is not required to move for class certification under S.C.R.C.P. Rule 23 and several of the Defendants have refused to cooperate with discovery on class issues.

S.C.R.C.P. Rule 23 does not require Plaintiff to move for class certification. Rule 23(d)(1) states that “[a]s soon as practicable, after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained.”² Plaintiff properly captioned and pled class-action causes of action in his original Complaint and has complied with all requirements of Rule 23. Plaintiff has always maintained that this was a class action lawsuit and specifically requested that a class be certified in his November 27, 2018 Memorandum in Opposition to Defendant’s Motion to Disallow Class Certification. **(Exhibit 3 at p. 9).**

Additionally, Defendants have not been cooperative in participating in discovery on class issues. The moving Franchisor Defendants did not respond or even request an extension to respond to Plaintiff’s May 24, 2019 discovery requests until August 21, 2019, and therefore, are hardly in a position to claim delay in moving for class certification on the part of Plaintiff.

Several of the Franchisee Defendants still have not provided any discovery responses at all and the responses of the Franchisee Defendants that have been provided are woefully incomplete and deficient as noted in Plaintiff’s pending Motion to Compel. Additionally, only three of the Franchise Defendants have been made available to be deposed despite repeated requests for dates of availability that continue to go unanswered and Plaintiff noticing the depositions of all Franchise Defendants to no avail.

Moreover, on August 23, 2019, Plaintiff served all Defendants with Requests to Admit pertaining to class issues and the existence of a common policy regarding credit card tips. To date, only the Franchisor Defendants and Ladles Mt. Pleasant have responded. See, Motion to Deem Requests to Admit Admitted. **(Exhibit 4).** Franchise Defendants failed to respond to Plaintiffs’

² See, also, “The Theoretical Foundations of the Rules of Civil Procedure; Applied in Real Cases with Real People,” Justice John Few, South Carolina Supreme Court, from SC Bar, CLE “Select Topics in South Carolina Civil Procedure,” Friday, November 8, 2019 (confirming the same).

Requests to Admit (“RTAs”) within 30 days, despite having abundant notice of the existence of the same, and these RTAs are now deemed admitted. These RTAs include that the relevant Franchise Defendants that have not been deposed have “had a policy of not paying customer credit card tips to employees” both prior and subsequent to January 1, 2015.

Regardless, out of an abundance of caution and without the benefit of discovery on class issues due to many of the Defendants’ flat out refusal to engage in discovery, Plaintiff filed a Motion for Class Certification on September 11, 2019, and it is currently pending with this Court. Plaintiff alleges that Defendants are engaged in a common scheme and have a common policy of withholding credit card tips from their employees, as the quote above from Ladles founder Sue Allen suggests (“*the only two things that you can really control in money, is food costs and employee wages*”). In their Motion for Summary Judgment, the Franchisor Defendants allege that there is no common scheme or policy. Although the Franchisor Defendants have belatedly, engaged in discovery, they are attempting to benefit from the several Franchise Defendants’ refusal to comply with discovery requests that will show most, if not all, Franchisee Defendants have the same policy regarding withholding credit card tips from employees. That would not be a surprising result, since the policy originated with the Franchisor Defendants, and is an integral part of the Ladles franchise concept. If Franchisee Defendants would *fully* cooperate with discovery, as required, Plaintiffs’ class certification arguments will doubtlessly be strengthened.

Although Rule 23 does not require Plaintiff to move for class certification and despite several of the Defendants’ continued refusal to engage in discovery at all, Plaintiff requested that a class be certified in his November 27, 2018 Memorandum in Opposition to Defendants’ Motion to Disallow Class Certification and has also filed a separate Motion for Class Certification which is currently pending with this Court. There are sufficient grounds for the Court to certify the class

now. Alternatively, the Court could reserve ruling on the same until further discovery has been completed.

II. Franchisor Defendants, including Ladles Franchising, Inc and Ladles Franchise Development, LLC acted as agents of Operating Company/Franchisee Defendants and are employers liable under the South Carolina Payment of Wages Act.

Franchisor Defendants, including Ladles Franchising, Inc. and Ladles Franchise Development, LLC, acted as agents of Operating Company/Franchisee Defendants and are employers of Plaintiff, Craig Chappell, and putative Plaintiff, Lani Charpia, and similarly situated class members. The South Carolina Payment of Wages Act (the “Act”) provides that every employer in the State shall pay wages due pursuant to S.C. Code Ann. §41-10-40(A). The Act defines an employer as 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. S.C. Code Ann § 41-10-10(1) (emphasis added). South Carolina courts have explained that the legislature intended to impose individual liability on *agents or officers* of a corporation who *knowingly permit* their corporation to violate the Act. *Dumas v. InfoSafe Corp.*, 320 S.C. 188 (Ct.App. 1995) (emphasis added). In other words, *Dumas* requires the Court to determine whether the Individual Defendants “knowingly permitted” the business to violate the Payment of Wages Act. See, also, *Allen v. Pinnacle Healthcare Sys.*, 394 S.C. 268, 715 S.E.2d 362 (S.C. App., 2011).

Franchisor Defendants, including Ladles Franchising, Inc. and Ladles Franchise Development, LLC serve as agents of Operating Company/Franchisee Defendants. Black’s Law Dictionary defines “corporate agent” as “all employees and officers who have the power to bind the corporation.” A corporation is “bound” by the signature of an officer or agent. In *Fernander v. Thigpen*, 278 S.C. 140, 293 S.E.2d 424 (1982), the South Carolina Supreme Court explained

that, generally, "[q]uestions of agency ordinarily should not be resolved by summary judgment where there are any facts giving rise to an inference of an agency relationship." See also, *Reid v. Kelly & Play Air, Inc.*, 274 S.C. 171, 174, 262 S.E. (2d) 24 (1980); *Jamison v. Howard*, 271 S.C. 385, 247 S.E. (2d) 450 (1978). Per the Ladles Franchise Agreement,

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.***

See, Franchise Agreement at pp. 25 – 27 (emphasis added). Based on the foregoing paragraphs of the Franchise Agreement, Franchisor Defendants, including Ladles Franchising, Inc. and Ladles Franchise Development, LLC are indisputably taking significant and important actions as agent and on behalf of the Operating Company/Franchisee Defendants, for the benefit both of principals and agents. Moreover, Franchisor Defendants, including Ladles Franchising, Inc. and Ladles Franchise Development, LLC clearly have the power to bind the Operating Company/Franchisee

Defendants, with regard to the Marketing Fund, and therefore, qualify as an agents of the Operating Company/Franchisee Defendants.

As set out below, Ladles Franchising has knowledge of the policy of withholding credit card tips; has the power to stop the policy; and knowingly permits the Defendant Franchisees to wrongfully withhold credit tips by participating in the decision to do so and benefiting from the policy.

A. Franchisor Defendants Knowledge of Tipping Policy

Franchisor Defendants, including Sue Allen, Ladles Franchising, Inc. and Ladles Franchise Development, LLC designed and implemented the policy as a way to “control” (i.e., “lower” or “limit”) employee wages, one of only “two” things that can be controlled—a fundamental and integral part of the Ladles franchise concept. This policy and tight control over employee wages is manifest in the quote above from Ladles founder Sue Allen (“*the only two things that you can really control in money, is food costs and employee wages*”).

Franchisor Defendants have knowledge of the implementation by Operating Company/Franchise Defendants of the common policy of withholding credit tips from employees. Most if not all of the Ladles Franchises have a common policy of withholding credit card tips in violation of the SCPWA.³ To date, depositions of four Defendant locations have been taken and

³ Pursuant to the South Carolina Payment of Wages Act, an employer shall not “withhold or divert” any portion of any employee’s wages unless required or permitted by federal or state law “or the employer has given written notice of the deductions . . .” S.C. Code Ann. § 41-10-40(C). S.C. Code Ann. § 41-10-10(2) defines “wages” as all amounts at which labor rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the amount and includes vacation, holiday, and sick leave payments which are due to an employee under any employer policy or employment contract. The Court in *Sean Bass v. 817 Corp.*, No.: 2:16-cv-1964-RMG (D. S.C., 2017), found that here, the literal meaning of “all amounts for which labor rendered is recompensed” suggests that the statute covers just that, all amounts. Moreover, the Court found that the broad language that follows the clause to include amounts “fixed or ascertained” by any “method of calculating the amount” is intended to reinforce the comprehensiveness of “all amounts” rather than limit the term. *Id.* Tips are an amount for which tipped employees are recompensed for labor rendered. The amount is ascertainable by simple addition. And tips are not specifically excluded by the statute. Accordingly, the plain language of the statute supports finding that tips are wages within the meaning of the SCPWA. *Id.*

testimony from at least three of the Defendant locations already confirm that a policy of not paying employees their credit card tips is a widespread policy negatively impacting employees across the franchise. *See* Deposition excerpts of Ladles James Island at p. 25, Lns. 20-25; p. 27, Lns. 1 -18 and Ladles West Ashley and Ladles Fort Mill⁴ at p 32, Lns. 1-16; p. 37, Lns. 3-5 (**Exhibits 5 and 6**). Moreover, Franchisor Defendant Suzie Allen also testified that while she owned the Ladles Soup locations at West Ashley, Kiawah Island, and Summerville, the policy at all of these locations was that employees were only paid their hourly wages and that the credit card tips allegedly went to subsidizing the employees' hourly wages (though Plaintiffs dispute that characterization, and will be able to prove that credit card tips stayed in the employers' pockets). Employees were not paid credit tips separately or even told how much they earned in credit card tips. *See* Deposition excerpts of Suzie Allen, Ladlessoups, LLC, and Ladles Franchising, Inc. at p. 21, Lns. 6-25; p. 22 at Lns. 1-2; p. 32 at Lns. 12-22; p. 33 at Lns. 22-25; p. 34 at Ln. 1 and Lns. 14-21; and p. 35 at Lns. 6-13. (**Exhibit 7**).

First, the President of Ladles Franchising, Suzie Allen, created and implemented the credit card tip policy at the three Ladles locations she owned, the first franchises. *Id.* Ms. Allen is also aware of and has knowledge of the policies regarding credit card tips at other Ladles locations. Per the Ladles Franchise Agreement, the Franchisor receives monthly reports has the authority to review accounting and bookkeeping records for each location. *See* Franchise Agreement at pp. 28-29, Section 10. Additionally, each location is required to report its sales numbers to the Franchisor every month. *Id.* at . Furthermore, Ms. Allen testified that if she wanted to find out the amount of tips a location brought in for the day or for the year she could access this information through her bookkeeper. *See*, Deposition of Suzie Allen at p. 69, Lns. 4-8. (**Exhibit 8**). Likewise,

⁴ Corey Paul owns Ladles West Ashley as well as Ladles Fort Mill.

a review of the bookkeeping and payroll for any given location would show the amount of credit card tips, if any, each employee would have earned and been paid.

B. Franchisor Defendants Ability to Stop the Illegal Credit Card Tip Retention

In addition to having knowledge of the credit card tip policy, and suggesting its usage as a way to “control” (i.e. “limit”) employee wages and thus increase profits of *all* Defendants, Franchisor Defendants have the “actual power” to stop the Ladles locations from carrying out this illegal policy by mandating that this policy end and that all credit card tips be paid to hourly employees. Per the Franchise Agreement, the license under which the Franchises operate, individual restaurants are required 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 incomes taxes, social security taxes and sales taxes.” See Franchise Agreement at p. 23, subsection E. This section of the Franchise Agreement is all inclusive with regards to government laws, ordinances, and regulations and would naturally include compliance with the South Carolina Payment of Wages Act. Also per the Franchise Agreement, the Franchisor Defendants have the power to terminate any franchise that fails to “comply with any provision of this Agreement or any mandatory specification, standard, or operating procedure we prescribe” See Franchise Agreement at p. 36, paragraph (2).

C. Franchisor Defendants “knowingly permit” and benefit from illegal credit card retention.

Finally, Franchisor Defendants “knowingly permit” the Operating Company/Franchise Defendants to wrongfully withhold credit tips by creating and designing the policy, actively participating in the decision to do so and by benefiting from the policy. Franchisor Defendants receive royalty payments each month from each Ladles location. The royalty fee is a percentage

of gross sales for each month.⁵ The monthly gross sales includes sales of services performed at the restaurants whether for cash or credit which, by definition, would include credit card tips. Per the Ladles Franchise 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.

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.

See, Ladles Franchise Agreement at pp. 17-18 (emphasis added).

Franchisor Defendants are agents of the Operating Company/Franchise Defendant, and knowingly permit Operating Company/Franchise Defendants to violate the SCPWA, have the actual power to prevent this illegal policy, and benefit significantly from the same. Therefore Franchisor Defendants are liable as employers under the Wages Act, and this Court should deny summary judgment.

III. Plaintiff is a real party in interest in this lawsuit as a class representative because he was an employee that suffered from the Ladles restaurant policy of withholding credit card tips in violation of the SCPWA.

⁵ The percentage of gross sales paid varies for each Ladles location.

Pursuant to Rule 17(a) of the *South Carolina Rules of Civil Procedure* (“SCRCP”), “[e]very action shall be prosecuted in the name of the real party in interest.” To have standing, one must generally have a personal stake in the subject matter of the lawsuit, i.e., one must be a real party in interest. *Glaze v. Grooms*, 324 S.C. 249, 478 S.E.2d 841 (1996); *Townsend v. Townsend*, 323 S.C. 309, 474 S.E.2d 424 (1996). A real party in interest is one with a real, material, or substantial interest. *Anchor Point Inc. v. Shoals Sewer Co.*, 308 S.C. 422, 418 S.E.2d 546 (1992).

Plaintiff, Craig Chappell, was employed by Defendant Ladles James Island and his credit card tips were withheld by Defendant in violation of the Wages Act. From the deposition of Mr. Chappell:

A: They withheld charge tips.

Q: Tell me what you mean by that.

A: I don’t know how I can explain that better. They didn’t give anybody charge tips. They kept them and put them in their pocket.

Q: How do you know that?

A: How do I know that? Because we didn’t receive them. And they have a charge tips screen on their computer. And we’re to turn it to them every time they make a transaction. 90 percent of the people, I would say, pay with a debt (sic) or credit card. That’s all.

Deposition of Craig Chappell at p. 19, Lns. 14-24. **(Exhibit 9).**

Mr. Chappell was also informed by his co-worker that this was a common policy among most, if not all of the Ladles Restaurant locations. From the deposition of Craig Chappell:

Q: It was the same conversation with Logan when you had talked about specifically the Mount Pleasant location that you remember Logan also talking about all the other Ladles locations?

A: I don't know if it was the same conversation or a different one.

Q: But you recall a conversation with Logan where he said something along the lines of all the other Ladles locations, what, don't give charge tips to their employees?

MR. KOON: Object to the form.

MR. FERRARA: Object to the form.

A: Yes.

Q: Do you recall just one of those conversations happening with Logan, or were there a few?

A: It's been a few, a couple of times probably.

Deposition of Craig Chappell at p 129, Lns. 18-25 and p. 130, Lns. 1-9. **(Exhibit 10).**

Putative Plaintiff, Lani Charpia, has been employed at Defendant Ladles West Ashley since approximately --- and her credit card tips have been and continue to be withheld by Defendant in violation of SCPWA. *See*, Affidavit of Lani Charpia. **(Exhibit 11).**

Ladles James Island, Ladles West Ashley, and Ladles Fort Mill all have a policy of withholding credit tips from hourly employees. From the deposition of Ladles James Island:

Q: And when you talk about rates with them, do you talk about tips with them?

A: . . . The ACH tips, they go into the business because that's the only way I can afford the pay the higher rate.

Q: When you say the ACH, that's credit cards?

A: Yes, credit cards, credit, debit.

Deposition of Ladles James Island at p. 25, Lns 10-25. Additionally, from the deposition of Ladles West Ashley and Ladles Fort Mill discussing the tipping policy for Ladles West Ashley and Ladles Fort Mill:

Q: Okay. What do you tell them?

A: That everybody is a non-tipped employee, but we have cash tips on the counter, and as a bonus to them they're allowed to take those cash tips.

Q: Okay. But they don't take the credit card tips?

A: Correct.

Deposition of Ladles West Ashley and Ladles Fort Mill at p. 32, Lns. 1-16. Further, from the depositions of Ladles West Ashley and Ladles Fort Mill:

Q: And whose tips are they, though, the credit card tips?

A: Those would be the store's tips.

Deposition of Ladles West Ashley and Ladles Fort Mill at p. 37, Lns. 3-5.

As owner of Ladles West Ashley from 2007 to 2017, Defendants Suzie Allen, Tracy Allen, and Ladlesoups, LLC also had the same policy of withholding credit card tips from all hourly employees. *See*, Deposition of Corey Paul at p. 66. Lns. 1-11; Deposition of Suzie Allen at p. 21, Lns. 6-25. Additionally, Defendant Franchisor Defendants, including Ladles Franchising, Inc. are aware of the policy, have the ability to end the policy, and benefit from this policy in that they receive a portion of the credit card tips being improperly withheld. *See*, Ladles Franchise Agreement at pp. 17-18. To put it more bluntly, Franchisor Defendants, including Sue Allen, have in their pockets the credit card tips/wages belonging to Craig Chappell (and similarly situated plaintiffs').

Mr. Chappell and Ms. Charpia seek to be class representatives for all similarly situated employees of Ladles restaurants who have had their credit card tips withheld from three years prior to the filing of this lawsuit to the present. Mr. Chappell and Ms. Charpia have a substantial stake in the subject matter of this lawsuit and are real parties in interest because they have actually suffered the injuries complained of in this lawsuit and have the rights sought to be enforced. *See*

Glaze v. Grooms, 324 S.C. 249, 478, *Townsend v. Townsend*, 323 S.C. 309, 474, and *Anchor Point Inc. v. Shoals Sewer Co.*, 308 S.C. 422, 418.

IV. Plaintiff Craig Chappell and putative Plaintiff Lani Charpia have standing against all of the Franchise Defendants.

i. All of the Franchise Defendants were engaged in a civil conspiracy and common scheme that damaged Plaintiff Craig Chappell and putative Plaintiff Lani Charpia.

Plaintiff filed a pending Motion to Reconsider the Court's granting of summary judgment to Ladles Mt. Pleasant. Plaintiffs believe this decision was prematurely entered, likely on the basis that Plaintiff Chappell admittedly is not paid by Ladles Mt. Pleasant. However, during the hearing the Court (Price, J. presiding) indicated that decision "could change" based on the Court's future ruling on the Motion for Class Certification. Counsel's investigation (again, without the benefit of discovery) has uncovered evidence which indicates the existence of a civil conspiracy, and commensurate "special damages" of Plaintiffs. Ms. Charpia states that multiple Ladles customers have discovered the illegal, clandestine and common scheme or policy of Defendants to convert Plaintiffs' credit card tips/wages, which Plaintiffs allege in the amended complaint makes it more likely that such customers will not leave a tip in the future when they visit that same *or other* Ladles Franchises. *See*, Affidavit of Lani Charpia at paragraphs 5 – 8. **(Exhibit 11)**.

Specifically, the Ladles West Ashley customer identified by putative plaintiff Charpia who finds out about the policy while dining at Ladles West Ashley (which policy is covert and clandestine, and the result of a civil conspiracy, common plan or scheme, between Ladles West Ashley and the Franchisor), and then subsequently dines at the Ladles James Island (or Summerville, Coosaw, Fort Mill, Mount Pleasant etc. etc.) and fails to leave a credit card tip for those employees since he/she already knows "employees do not get the credit card tips at Ladles," shows how Ladles James Island (or Summerville, Coosaw, Fort Mill, Mount Pleasant etc. etc.)

employees can be damaged by the actions of *other* Ladles Operating Company/Franchise and Franchisor Defendants who do not sign their pay checks, and constitutes “special damages.” “Civil conspiracy involves acts that are by their very nature covert and clandestine and usually not susceptible of proof by direct evidence.” *McMillan v. Oconee Mem’l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006). 367 S.C. at 564, 626 S.E.2d at 886. *Under the proposed amended complaint, each putative class member plaintiff thereby alleges “special damages” by each Operating Company/Franchisee defendant.*

- ii. Plaintiff’s injuries are a result of a conspiracy or concerted action between the Defendants and all Defendants are juridically related in a manner that suggests a single resolution of the dispute would be expeditious.

Although courts generally require that the class representative have a cause of action against each defendant, there are two exceptions to this requirement which Plaintiff believes should be applied in this instance: “(1) Situations in which all injuries are the result of a conspiracy or concerted schemes between the defendants ... and (2) Instances in which all defendants are juridically related in a manner that suggests a single resolution of the dispute would be expeditious. *Thompson v Board of Education of Romeo Community Schools*, 709 F2d 1200,1204-05 (6th Cir 1983). *See also Haas v Pittsburgh National Bank*, 526 F2d 1083, 1088n 3 (3d Cir 1975), citing *La Mar v H & B Novelty and Loan Co*, 489 F2d 461,466 (9th Cir 1973); *Erie Fire Insurance Co v Madden*, 204 W Va 606,515 SE2d 351,354 (1998).

Here, as noted above and in the affidavit of Ms. Charpia, there exists a common scheme or policy by all Defendants to convert Plaintiffs’ credit card tips/wages that makes it more likely that Ladles customers will not leave a tip in the future when they visit that same *or other* Ladles Franchises causing damages in the forms of lost wages/tips to all Defendant Franchise and Franchisor employees. It makes no sense for this Court to be burdened with over 75 Plaintiffs

bringing separate lawsuits against over a dozen Defendants when a single resolution can be obtained in this matter.

To date, South Carolina has not yet adopted these exceptions to the standing requirement. *See, Gardner v. South Carolina Department of Revenue*, 577 S.E. 2d 190 at footnote 14, 353 S.C. 1 (S.C. 2003). However, based on the number of parties involved in bringing about the resolution of a single issue, if there were ever a case for the juridical links doctrine to be applied in South Carolina, this would be it.

- iii. Plaintiff Chappell and putative Plaintiff Charpia both have standing to bring claims and serve as class representatives under the SCPWA because they are employees as defined by SCPWA and had their wages withheld in violation of the Act.

In their supplemental memo, Defendants mistakenly rely on *Maners v. Lexington County Savings & Loan Association*, 267 S.E.2nd 422, 423, 275 S.C. 33, 35 (S.C. 1980) to support their argument that Plaintiff lacks standing. The Court in *Maners* found that the Plaintiff lacked standing under the South Carolina usury statute because she failed to meet the specific definition of borrower as specifically defined in that statute. Here, Mr. Chappell and Ms. Charpia both have standing to bring claims and serve as class representatives under the SCPWA because they are employees as defined by SCPWA and had their wages withheld in violation of the Act. Mr. Chappell and Ms. Charpia are seeking class certification for all similarly situated employees of Ladles restaurants who have had their credit card tips withheld from three years prior to the filing of this lawsuit to the present. Defendants Suzie Allen, Tracy Allen, and Ladlessoups, LLC as owners of Ladles West Ashley during at least a portion of this time period, withheld credit card tips in violation of the SCPWA. *See*, Deposition of Corey Paul at p. 66. Lns. 1-11; Deposition of Suzie Allen at p. 21, Lns. 6-25.

In their supplemental memo, Defendants also mistakenly rely on a discussion regarding standing in federal court in a Supreme Court case and a federal district court case from New Jersey to support their argument that Plaintiff lacks standing in this case to serve as a class representative. *See, Lewis v. Casey*, 518 U.S. 343, 357, 116 S. Ct. 2174, 135 L. Ed. 2nd 606 (1996); *In re. Franklin Mutual Funds Fee Litigation*. However, state law on standing differs substantially from federal law and varies considerably from state to state and Defendant fails to provide any support that Plaintiff lacks standing to serve as a class representative under South Carolina law.

Regardless, Defendants argue that *Lewis v. Casey*, 518 U.S. 343, 357, 116 S. Ct. 2174, 135 L. Ed. 2nd 606 (1996) supports their argument that Plaintiff must have standing to claim against all Defendants in order for this action to be certified as a class action. *Lewis v. Casey* says nothing of the sort. *Lewis v. Casey* involves a class action lawsuit brought by several prison inmates alleging various violations against an entire state prison system. The Supreme Court in *Lewis v. Casey* found that the named plaintiffs did not have standing because they did not personally suffer the injury alleged in the class action lawsuit. That clearly is not the case with Mr. Chappell and Ms. Charpia who have both suffered the injury from which they seek redress as class representatives in this lawsuit.

CONCLUSION

Plaintiff is not required to move for class certification under S.C.R.C.P. Rule 23 and several of the Defendants have refused to cooperate with discovery on class issues. Further, there is a genuine issue of material fact as to whether Ladles Franchising, Inc. acted as an agent of the Defendant Franchises and is an employer under the South Carolina Payment of Wages Act. Furthermore, Plaintiff is a real party in interest and has standing to bring this lawsuit as a class representative because he was an employee that suffered from the Ladles restaurant policy of

withholding credit card tips in violation of the SCPWA. Finally, both Plaintiffs have standing against all of the Franchise Defendants. Based on the foregoing, Plaintiff requests that Defendants' Motion for Summary Judgment be denied.

Respectfully submitted,

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December 31, 2019
 Mt. Pleasant, South Carolina

CERTIFICATE OF SERVICE

I, Debbie Mathews, certify that on December 31, 2019, a true and correct copy of the foregoing **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO LADLES FRANCHISING INC., LADLESSOUPS, LLC, SUE ALLEN, AND TRACY ALLEN'S MOTION FOR SUMMARY JUDGMENT** was served upon counsel for Defendants, via electronic mail as follows:

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s/ Debbie Mathews
Debbie Mathews

1 Q. What was the policy when you worked at
2 West Ashley when -- before you purchased it?

3 A. It was, I'm assuming, very similar to
4 what I have now.

5 Q. Because you didn't change any policies
6 when you purchased it, correct?

7 A. I did not come up with any new
8 policies.

9 Q. Okay. So when you worked there, the
10 store kept the credit card tips?

11 A. Yes.

12 MR. FERRARA: I object to the form of
13 the question on the last one.

14 BY MR ASHLEY:

15 Q. What kind of point of sale system do
16 you use?

17 A. Square.

18 Q. That's the name of it?

19 A. It's made by Apple.

20 Q. Is that -- can you describe it for me?
21 Is that the little iPads?

22 A. Yes.

23 Q. How does that work? Who picked -- who
24 chose that?

25 A. The Square point of sales system was

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-

1

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 Laddlessoups' 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 or 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 Ladlessoups' 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, Ladlesscups' 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 of 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

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,

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

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.

2018 NOV 27 PM 12:18
FILED
CLERK OF COURT
CHARLESTON, S.C.

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. The memorandum they have filed, moreover, contains virtually no citation to legal authority, and cannot be seriously maintained to be the basis for a motion to strike a class, or 12(b)(6) dismissal. *See Schwartz v. Collins* (S.C. App., 2017). Without more, and in particular relevant case law, the motion is subject to denial on that basis alone, since there is no citation to authority. *Hawley v. Hawley*, 363 S.C. 318, 324 n.10, 610 S.E.2d 309, 312 n.10 (Ct. App. 2005) (finding an issue to be abandoned when there was no citation to authority and all arguments were short, conclusory statements). 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 \$100.²

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. At a minimum, resolution of these issues must await discovery. Nevertheless, should the Court examine this matter under Rule 23, and to the extent such matters can be “shown” or proved on the pleadings, Plaintiff’s Complaint easily meets Rule 23 requirements:

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

Rule 23, SCRCP 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

² Defs. * Mot. Disallow Class Cert. at 2.

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

Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is impracticable.” In *Middleton v. SunStar acceptance Corp.*, No. CIV.A 98-CP-07-1131 (S.C. Court of Common Pleas, Jan 13, 2000), the court stated:

There is no magic number necessary to establish numerosity. Instead a court must consider that the number of members of the putative class together with other factors, including the size of the class members’ claims. Classes with as few as 20 members have often been certified. *E.g.*, *Cyprus Newport News Gen’l & Non-Sectarian Hosp. Ass’n*, 375 F.2d 648, 653 (4th Cir. 1967) (18 members); *Manning v. Princeton Consumer Discount Co.*, 390 F. Supp. 320 (ED Pa 1975), (14 members).

No definite standard exists as to what size class satisfies the requirements of Rule 23(a)(1).” *Haywood v. Barnes*, 109 FRD 568, 576 (E.D. NC 1986).

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 Carolina and other states.⁴ The exact number of the members of the class is not currently known or knowable, at this early stage of this case. Work in the food and beverage industry, particularly in fairly low wage positions, as here, is transient by nature. Plaintiff does not expect that Defendants will have current contact details for each member of the prospective class.

As such, under *Middleton* and *Cypress Newport*, “joinder of all members is impractical.”⁵ 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

⁴ Compl. at para. 37.

⁵ Rule 23(a)(1), SCRCP.

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 contractual 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. Plaintiffs have satisfied the numerosity requirement.

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.”⁶ “Critically, [n]ot every issue in the case must be common to all class members.”⁷ Common issues are present if “[m]uch evidence as to the defendant’s conduct and liability will be applicable to the claims of all members of the class. Alone these common questions of law and facts satisfy the commonality requirement.” *Bates v. Tenco Servs., Inc.*, 132 F.R.D. 160 (D.S.C. 1990) (Blatt, J.). Indeed, the commonality requirement is satisfied if there was “only a single issue common to all members of the class.” H. Newburg, *1 Newburg on Class Actions*, Sec. 3.10 (3d Ed. 1992). In this regard, the South Carolina Court of Appeals has stated:

It is important to note that the subsection does not demand all questions of law and fact to be common, only that there be common issues among the class. In fact, a single common issue will suffice if it is important enough.

⁶ *Gardner v. South Carolina Dept. of Revenue*, 353 S.C. 1, 21, 577 S.E.2d 190 (2003).

⁷ *Id.*

McGann v. Mungo, 287 S.C. 561, 568 340 S.E.2d 154, 158 (Ct. App. 1985).

The commonality requirement of Rule 23(a) is construed liberally and “given permissive applications so that common questions have been found to exist in a wide range of contexts.” *Haywood v. Barnes*, 109 FRD 568, 577 (E.D. NC 1986).

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. Nevertheless, in McGann v. Mungo⁸ 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.⁹ Ruling on defendants’ argument that Rule 23(a)(2), SCRCP 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].”¹⁰ 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

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

⁹ McGann v. Mungo, 287 S.C. 561, 565 340 S.E.2d 154, 156 (Ct. App. 1985).

¹⁰ McGann v. Mungo, 287 S.C. 561, 568 340 S.E.2d 154, 158 (Ct. App. 1985).

members of the alleged class in the questions of law and fact involved.”¹¹ 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,¹² 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.¹³ Further, the Supreme Court found the trial court had abused its discretion by failing to allow plaintiffs to redefine their class before denying certification.¹⁴

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.¹⁵ 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.¹⁶ 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.¹⁷ Plaintiff alleges several common issues of law: whether Defendants’ retention of credit card tips was in violation of the SCPWA, the members’

¹¹ McGann v. Mungo, 287 S.C. 561, 568 340 S.E.2d 154, 158 (Ct. App. 1985).

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

¹³ Littlefield v. SC FORESTRY COM’N, 337 S.C. 348, 355, 523 S.E.2d 781 (1999)

¹⁴ 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).

¹⁵ Compl. (three counts for violation of Payment of Wages Act, breach of contract, and conversion).

¹⁶ Id. at para. 13.

¹⁷ Compl. at paras. 38(a)-(d).

employment contracts, or of state conversion law; and whether members are entitled to prejudgment interest and attorneys fees and costs.¹⁸

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 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

“Commonality” and “typicality” most often are dealt with as one in terms of class certification. *General Telephone Company of the Southwest v. Falcon*, 457 U.S. 147, 158 (1982)(“the commonality and typicality requirements of Rule 23(a) tend to merge.”). In the case the plaintiff class only the claims of the class must be typical — not defenses to these claims. The “typicality” requirement does not require that the claims be “coextensive, but rather similar to, or shared by most of the members of the class.” J. Flanagan, South Carolina Civil Procedure, at 180 (2d ed. 1996). “Typicality does not require that the claims or defenses of the class representatives

¹⁸ Id. at 38(c), (e).

be identical or perfectly coextensive with the claims and defenses of the members; substantial similarity of legal theory will be sufficient even in the face of differences of fact.” *Haywood, supra*, 109 FRD at 578. “Courts have held the typicality requirement is met with class representatives occupy essentially the same position as the other members of the class.” *Kitchens v. US Shelter*, 1988 WL 108598 (DSC 1988). “The proper inquiry is whether the members have similar injuries, whether the action is based on conduct not unique to the class representatives, and whether other class members were injured by the same course of conduct.” *Durabilt Corp. v. Chase Manhattan Corp.*, 89 FRD 87 (SDNY 1981).

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.

V. PLAINTIFF SHOWED ADEQUACY

Defendant does not allege anything with regard to this element of Rule 23, and so Plaintiff states only that Chappell rightly alleges he will protect the interests of the class, and undersigned counsel is competent and experienced in matters of this type.

VI. PLAINTIFF SHOWED EACH MEMBER SEEKS MORE THAN \$100

Plaintiff alleged this.³⁶

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

November 27, 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

³⁶ Compl. at para. 44.

CERTIFICATE OF SERVICE

I, Ben Le Clercq, certify that on November 27, 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

s/Ben Le Clercq

Ben Le Clercq

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@ferraralawfirm.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)

1 A. No, but I knew all other Ladles paid
2 higher rates than the average, too. I mean, I
3 just knew that.

4 Q. Okay. So that's just something that
5 each one does?

6 A. Uh-huh. Uh-huh.

7 Q. But how is it that they all came about
8 to do that -- do that type of pay rate?

9 A. I don't know.

10 Q. And when you talk about rates with
11 them, do you talk about tips with them?

12 A. Yes. There is a -- all the cash tips
13 -- and this was -- the employees decided this, and
14 I said the cash tips are yours. So you guys split
15 them however you see fit. If you want to share
16 them with the kitchen, you share them with the
17 kitchen. If you don't want to share them with the
18 kitchen, it's up to you. They decided we're going
19 to share them with everyone who works that day.

20 The ACH tips, they go into the
21 business because that's the only way I can afford
22 the pay the higher rate.

23 Q. When you say the ACH, that's credit
24 cards?

25 A. Yes, credit cards, credit, debit.

1 Q. Okay. And he -- hourly employees,
2 they don't get the credit card tips?

3 A. Well, they get it in their -- in their
4 payroll. I mean, that's how I make payroll,
5 because a lot of times the business percentages
6 don't work out to be able to pay people at the
7 higher levels.

8 Q. Okay. So do you -- you take the
9 credit card tips and then you --

10 A. Transfer it into payroll accounts to
11 make payroll.

12 Q. Right, but you're not transferring it
13 to them individually as tips; you're just adding
14 that to your gross sales, and then you pay them
15 out of?

16 A. Uh-huh.

17 Q. Your regular payroll?

18 A. Yes.

19 Q. Okay. And when you pay them, you
20 know, you don't have any -- there's no -- what
21 sort of information is on their paychecks?
22 Obviously, their name?

23 A. Their hourly rate, yes, and their year
24 to dates and their taxes and everything that comes
25 out of that.

1 Q. Okay. And what do you tell them?

2 A. That everybody is a non-tipped
3 employee, but we have cash tips on the counter,
4 and as a bonus to them they're allowed to take
5 those cash tips.

6 Q. Okay. But they don't take the credit
7 card tips?

8 A. Correct. And that is discussed that
9 they don't get the credit card tips, but they get
10 the cash tips as an added bonus to their hourly
11 wage, because we don't have designated servers
12 here, because if we did that, then those people up
13 front would no longer be -- they wouldn't --
14 they're not supposed to work in the back anymore,
15 and that defeats our whole concept and our whole
16 teamwork.

17 Q. Right. Well, do you have a tip
18 pooling policy?

19 A. No.

20 Q. Where you just put all the tips into
21 and it can just get divvied up between the people
22 on the shift?

23 A. No, there's no policy for that.

24 Q. With the cash tips then, how do you
25 decide who gets that?

1 added to the gross sales?

2 A. Uh-huh.

3 Q. And whose tips are they, though, the
4 credit card tips?

5 A. Those would be the store's tips.

6 Q. And do you tell the employees this?

7 A. Yes. That's in the document that they
8 sign, pretty much, that they're -- that they don't
9 get the credit card tips. That's discussed with
10 every single employee manual that gets signed.

11 Q. Okay. But are they -- so is that put
12 on their paycheck anywhere, the amount of tips
13 that came in that they're not participating in?

14 A. No, because it's not theirs. Once you
15 opt out of becoming a non-tipped employee, then
16 you're no longer -- I don't track what you would
17 have made had you been it, because your hourly
18 rate is then different.

19 Q. Okay. And just when you say you opt
20 out of being a tipped employee, what do you mean
21 by that?

22 A. Well, we explain to them that we're
23 not -- that we're hiring a non-tipped employee.
24 So by agreeing to that, therefore opting out of
25 being a tipped employee.

1 Q. And when you first started was -- how
2 much -- and you had salaried employees, correct?

3 A. Yes.

4 Q. And how much did they make?

5 A. One made 500; one made 6- a week.

6 Q. Okay. And so how did you handle -- I
7 assume that tips, whether they were cash or credit
8 card, were coming in?

9 A. Yes.

10 Q. Okay. And how did you handle that?

11 A. The cash tips, they would split them.
12 I really didn't have anything to do with that. The
13 credit card tips were allotted to their hourly
14 wage. It afforded us the ability to pay them a
15 higher hourly -- hourly wage.

16 Q. Okay. So did they -- so that just went
17 into a pool of -- just explain that to me again.
18 So...

19 A. It gave us -- it was a subsidized --
20 the hourly rate that the employees made was
21 subsidized by the tips.

22 Q. Okay. So when they got their paycheck,
23 they didn't have an itemized amount for tips?

24 A. No, they did not.

25 Q. They didn't get a separate paycheck for

1 tips?

2 A. No, they did not.

3 Q. And I don't know, you may have given
4 this information to your attorney. Do you know --
5 well, let me back up.

6 You opened up the Ladles in West Ashley
7 in 2007?

8 A. '07.

9 Q. And you had it for how long?

10 A. Until 2017.

11 Q. Okay.

12 A. The end of the year.

13 Q. Do you know from, let's say 2015 to
14 2017, the amount of credit card tips that Ladles
15 West Ashley was bringing in each year?

16 A. I do not.

17 Q. Okay. Is that an amount that you could
18 find?

19 A. I'm sure.

20 Q. Okay. And you don't think with the
21 records that you've given your attorney that that
22 number is in there?

23 A. I don't know.

24 Q. Okay. Do you know what records you've
25 given your attorney?

1 Jersey.

2 Q. And so at some point did you open other
3 Ladles restaurants?

4 A. Yes.

5 Q. And would they have been under the
6 Ladlessoups, LLC?

7 A. No.

8 Q. And this might be where I get into a
9 question where I'm asking Ms. Allen just as an
10 individual as you, not as a representative of
11 Ladles, LLC -- Ladlessoups, LLC.

12 So at some point you opened up other
13 locations --

14 A. Yes.

15 Q. -- besides the Ladles West -- okay.
16 What was the first?

17 A. Freshfields.

18 Q. And that's the one on Johns Island --
19 is it Kiawah or Johns Island?

20 A. Kiawah. Same.

21 Q. And what year would that have been?

22 A. 2008.

23 Q. Okay. And business was going good and
24 you just saw that there was an opportunity to open
25 up --

1 A. No.

2 Q. Okay. Tell me. Sorry.

3 A. We were approached and given a really
4 nice opportunity by Kiawah.

5 Q. Okay. And who approached you?

6 A. Tim somebody. I don't know his name.

7 Q. And well, just tell me, he had been to
8 your restaurant before --

9 A. Yes.

10 Q. -- and liked it?

11 A. Yes.

12 Q. And then he asked y'all to open --

13 A. Yes.

14 Q. -- up a location?

15 Okay. And did you basically go through
16 the same process that you opened up the Ladles West
17 Ashley to open up that location?

18 A. A little more in depth.

19 Q. Okay. And how so?

20 A. It was a -- we had to have engineered
21 plans for the build-out because it was a shell.

22 Q. Okay. Same concept --

23 A. Yes.

24 Q. Okay. And same policies, as far as
25 with the tipping?

1 A. Yes.

2 Q. Okay. And after that, did you -- well,
3 let me ask you this: Did you open that under a
4 separate LLC?

5 A. Yes.

6 Q. And what was the name of that?

7 A. I honestly cannot remember what the
8 name of it was. It was -- I really don't know, and
9 I don't want to misstate.

10 Q. Sure. Is that something that you can
11 find --

12 A. Yes.

13 Q. -- and provide to your attorney?
14 And after that, did you open up any
15 other locations?

16 A. Yes.

17 Q. Where?

18 A. Summerville.

19 Q. And when did you open up that location?

20 A. I'm not 100 percent positive. It was
21 probably -- about a year later, 2009.

22 Q. Okay. And did you do that under a
23 separate --

24 A. Yes.

25 Q. -- a different LLC? Do you remember

1 the name of that LLC?

2 A. I'm not 100 percent positive about that
3 one either.

4 Q. Sure. And will --

5 A. But I can get that for you as well.

6 Q. Thank you. And did you open up -- and
7 did that have same policy with the credit --

8 A. Yes.

9 (Court reporter clarification.)

10 BY MR. ASHLEY:

11 Q. So that had the same policies for
12 credit card tips?

13 A. Yes.

14 Q. Did you have any other locations after
15 that?

16 A. No.

17 Q. And at some point, did you sell the
18 location in Kiawah to somebody?

19 A. Yes.

20 Q. Okay. And when did you sell that?

21 A. I'm not positive of the date on that
22 either. To the best of my recollection, around
23 2012.

24 Q. Okay. And who did you sell it to?

25 A. Dan Sutton.

1 And this is information that you have
2 access to for each individual store?

3 A. What do you mean?

4 Q. If you wanted to find out the amount of
5 tips that Ladles at Fort Mill brought in for the
6 day or for the year, that's information that you
7 could obtain, correct?

8 A. I could. I don't.

9 Q. Okay. And Ladles, I assume -- do y'all
10 have a trademark?

11 A. Yes.

12 Q. And who owns that?

13 A. What do you mean?

14 Q. Who can use the trademark, the Ladles
15 trademark?

16 A. Any franchisee.

17 Q. Who actually owns the trademark?

18 A. Ladles Franchising.

19 Q. And do you have an employee handbook?

20 A. Yes.

21 Q. And who creates the employee handbook?

22 A. My husband and I created it, Tracy
23 Allen and myself.

24 Q. And all of the locations use the same
25 handbook?

1 2015 to April of 2015, are you?

2 MR. RIDDELL: Objection.

3 BY MR. FERRARA:

4 Q You can still answer.

5 A I don't understand the question. I'm sorry.

6 Lost wages?

7 Q Are you claiming --

8 A She still claimed all the charge tips. She
9 kept all of them, if that's what you're referring to.

10 Q Let me ask you this, Craig, just for the
11 period of February 2015 to April 2015, what are you
12 claiming, if anything at all, that Ladles - James Island
13 did wrong to you during that time?

14 A They withheld charge tips.

15 Q Tell me what you mean by that.

16 A I don't know how I can explain that better.
17 They didn't give anybody charge tips. They kept them
18 and put them in their pocket.

19 Q How do you know that?

20 A How do I know that? Because we didn't receive
21 them. And they have a charge tips screen on their
22 computer. And we're to turn it to them every time they
23 make a transaction. 90 percent of the people, I would
24 say, pay with a debt or credit card. That's all.

25 Q And tell me in your own words what you're

1 Q Sometime in your first stint?

2 A Yeah, probably, probably.

3 Q And so was it also in talking with Logan that
4 you came to form some view of what other Ladles
5 locations were doing with charge tips? Do you recall
6 Logan telling you something about how other Ladles
7 locations handled charge tips?

8 MR. KOON: Object to the form of the question.

9 A No. What I understood is the one and only
10 time we talked about Mount Pleasant was the time that we
11 were actually talking about the tips and how all Ladles
12 keeps charge tips except Mount Pleasant.

13 Q So isn't that same conversation when you-all
14 specifically talked about the Mount Pleasant location --

15 A I don't know if --

16 Q Hang on, let me finish.

17 A Okay. Go ahead.

18 Q It was the same conversation with Logan when
19 you had talked about specifically the Mount Pleasant
20 location that you remember Logan also talking about all
21 the other Ladles locations?

22 A I don't know if it was the same conversation
23 or a different one.

24 Q But you recall a conversation with Logan where
25 he said something along the lines of all the other

1 Ladles locations, what, don't give charge tips to their
2 employees?

3 MR. KOON: Object to the form.

4 MR. FERRARA: Object to the form.

5 Q Answer orally for the record, please.

6 A Yes.

7 Q Do you recall just one of those conversations
8 happening with Logan, or were there a few?

9 A It's been a few, a couple of times probably.

10 MR. KOON: Object to the form of the question.

11 BY MR. RIDDELL:

12 Q Do you remember about when these couple of
13 conversations occurred, were they both like really near
14 the beginning of your employment or were they kind of
15 spread out?

16 MR. FERRARA: Object to the form.

17 MR. KOON: Object to the form.

18 A I'm probably guessing in the beginning because
19 after the first six months or whatever, it was never
20 brought up again. So I'm guessing at the beginning of
21 my employment.

22 Q Why didn't any employees ever challenge this?

23 MR. KOON: Object to the form of the question.

24 A Because they're young, and they need a job.

25 And some were in high school. Some were just starting

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

1 A Teri was the owner. She's been there the
2 whole time, yep.

3 Q Do you recall how long immediately after you
4 began working there that you were solely a grill cook
5 before, you testified, you learned some other jobs?

6 A I was never solely a grill cook from day one.
7 I started out washing dishes. Then they put me on the
8 grill. That was my first day. The second day they
9 threw me on grill. The third day they threw me out
10 front waiting on people, cleaning tables, picking up
11 their plates. Then maybe a month later, they introduced
12 me to the register. And then time to clean the
13 bathrooms, they put me on that job. It's just like
14 everybody did everything. They slowly get you in every
15 position.

16 Q Did you ever help customers sitting in the
17 dining area in any way after they got their food?

18 A Absolutely. I have sat down with them at
19 times if they want to talk, the older people. And Teri
20 said that was quite fine, and that's good PR. So, you
21 know, you just do everything to make the people happy.

22 Q Did you ever take additional orders from such
23 seated customers --

24 A Absolutely.

25 Q -- after they first got their food?

1 Q Did you ever work any shifts with Sean?

2 A I worked a lot of shifts with Sean.

3 Q Did he get cash tips?

4 A Yes, everybody did that worked.

5 Q His cash tips would not be any different
6 from --

7 A No.

8 Q -- how they were divvied up amongst other
9 employees?

10 A If it's 15 bucks and there's five people,
11 everyone gets three bucks.

12 Q Did you ever see Sean do any work besides
13 soup?

14 A Yes.

15 Q What other work did Sean do?

16 A Exactly what everybody else does. I've seen
17 him run the register, clean tables. I never really saw
18 him mop a floor before, but, yeah, he would do just
19 about everything just like everybody else.

20 Q In your opinion is it at all likely that
21 Christine was shorted charge tips in the same way you
22 felt you were?

23 MR. FERRARA: Object to the form.

24 MR. KOON: Object to the form.

25 MR. SHELBOURNE: Object to the form.

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
Plaintiff(s),	)	SUPPLEMENTAL ANSWERS TO
	)	PLAINTIFF'S FIRST
v.	)	INTERROGATORIES
	)	
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 supplements its answers to Plaintiff's First Set of Interrogatories as follows:

INTERROGATORIES

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

RESPONSE: None. Respondents possess no opinion with regards to this matter.

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 do not and have not maintained or produced profit and loss statements, balance sheets, or income statements.

Tracy and Suzie Allen's 2014 adjusted gross income is \$77,559 which includes a loss from Ladlessoups, LLC of (\$13,125) and income from Ladles Franchising, Inc. of \$2,369.

Tracy and Suzie Allen's 2015 adjusted gross income is \$128,067 which includes income from Ladlessoups, LLC of \$24,854 and income from Ladles Franchising, Inc. of \$50,362.

Tracy and Suzie Allen's 2016 adjusted gross income is \$143,376 which includes income from Ladlessoups, LLC of \$77,614 and income from Ladles Franchising, Inc. of \$20,663.

Tracy and Suzie Allen's 2017 adjusted gross income is \$10,172 which includes a loss from Ladlessoups, LLC of (\$21,875) and income from Ladles Franchising, Inc. of \$23,658.

Tracy and Suzie Allen's 2018 adjusted gross income is \$34,611. Ladles Franchising, Inc.'s 2018 gross income is \$93,388.

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.

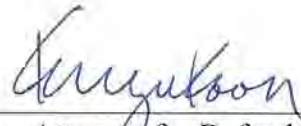
30. Since January 1, 2015, describe all payroll and salary documents provided to employees and or independent contractors, including W-2s and 1099s.

RESPONSE: See Respondent's original Responses to Plaintiff's Interrogatories #24 and 25 and also Responses to Plaintiff's Requests for Production #23 and #24. Respondents have produced all such information (including IRS Form W-2s) to Plaintiff that are in Respondent's possession, control, and custody.

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

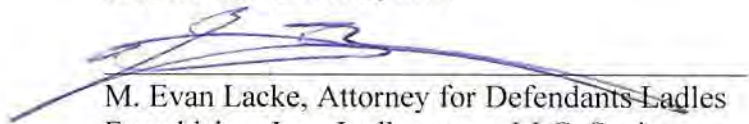
RESPONSE: During its term of operation, Ladlessoups, LLC allowed its employees to split daily cash tips amongst themselves in whatever proportions such employees deemed appropriate.

Ladles Franchising, Inc. did not employ any service employees, tipped or otherwise. The remaining Respondents do not have any employees.



Kerry Koon, Attorney for Defendants Ladles Franchising, Inc., Ladlessoups, LLC, Suzie Allen, and Tracy Allen
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LACKE LAW FIRM, LLC

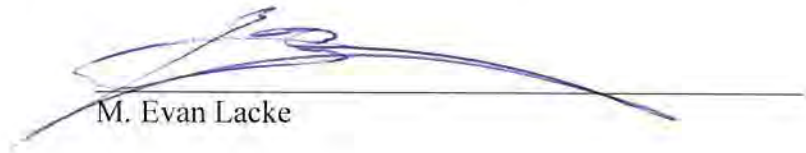


M. Evan Lacke, Attorney for Defendants Ladles Franchising, Inc., Ladlessoups, LLC, Suzie Allen, and Tracy Allen
147 Wappoo Creek Drive, Ste. 204
Charleston, South Carolina 29412
Phone: (843) 327-1523
Fax: (843) 795-3990

December 31, 2019
Charleston, South Carolina

CERTIFICATE OF SERVICE

I, M. Evan Lacke, certify that on December 31, 2019, a true and correct copy of the foregoing DEFENDANTS LADLES FRANCHISING INC., LADLESSOUPS, LLC, SUE ALLEN AND TRACY ALLEN'S SUPPLEMENTAL ANSWERS TO PLAINTIFF'S FIRST INTERROGATORIES was served upon counsel for Co-Defendants and Plaintiff, via electronic mail:


M. Evan Lacke

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
SUPPLEMENTAL RESPONSES TO
PLAINTIFF'S REQUESTS FOR
PRODUCTION**

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

Allen and supplements its responses to Plaintiff's First Request for Production as follows:

DOCUMENTS REQUESTED

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: No such itemized accountings or financial summaries of the type requested are in existence.

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 do not possess or produce income statements, balance sheets, or profit/loss statements.

With regard to Respondents' federal and state tax returns for the last five years, if Plaintiff agrees to Respondents production of same in accordance with the proposed Protective Order submitted to Plaintiff's counsel via a December 23, 2019 email, Respondents will provide the same.

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.

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

RESPONSE: Please find a copy of Respondent Suzie Allen’s day planner for January 2019 through December 2019. Blank pages have been omitted. The original planner is available for inspection at the law offices of Lacke Law Firm, LLC, upon request. No other hard copy or electronic calendars are in existence for any of the Respondents.

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 refer to the following documents produced in Respondents’ original responses to Plaintiff’s First Requests for Production: (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. These comprise all of such documents in the Respondents’ possession, control, and custody.

If Respondents Ladlessoups, LLC and Ladles Franchising, Inc. discover additional documentation, they will produce 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. These comprise all of such documents in the Respondents' possession, control, and custody.

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.

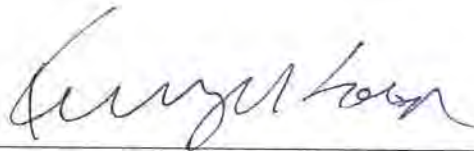
27. A copy of each and every complaint and/or administrative proceeding in which Respondent has been involved.

RESPONSE: Other than this matter, Suzie Allen was a defendant in a personal bank repossession lawsuit in 2008 brought by First Federal Bank which resulted in the repossession of her boat. Mrs. Allen does not possess a copy of the Complaint in that matter.

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. Mrs. Allen does not possess a copy of the Complaint in that matter.

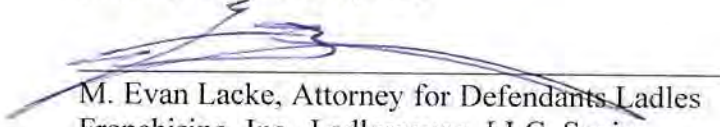
Other than this matter, Tracy Allen has never been a party to a civil lawsuit.

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



Kerry Koon, Attorney for Defendants Ladles Franchising, Inc., Ladlessoups, LLC, Suzie Allen, and Tracy Allen
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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

December 31, 2019
Charleston, South Carolina

CERTIFICATE OF SERVICE

I, M. Evan Lacke, certify that on December 31, 2019, a true and correct copy of the foregoing DEFENDANTS LADLES FRANCHISING INC., LADLESSOUPS, LLC, SUE ALLEN AND TRACY ALLEN'S SUPPLEMENTAL RESPONSE TO PLAINTIFF'S REQUESTS FOR PRODUCTION was served upon counsel for Co-Defendants and Plaintiff, via electronic mail.


M. Evan Lacke

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,	)	
	)	
	)	DEFENDANTS LADLES FRANCHISING
	)	INC., LADLESSOUPS, LLC, SUE ALLEN
	)	AND TRACY ALLEN'S RESPONSE TO
Plaintiff(s),	)	PLAINTIFF'S MEMORANDUM IN
	)	OPPOSITION TO MOTION FOR
	)	SUMMARY JUDGMENT
	)	
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.)
_____)

Plaintiff's memorandum and exhibits in opposition to these Defendants' Motion for Summary Judgment do not demonstrate a genuine issue of fact or law requiring a trial.

1. Plaintiff fails to demonstrate any evidence in the record contradicting the central ground for these Defendants' Motion for Summary Judgment; that the Plaintiff (nor the proposed intervenor) ever worked for, or had a contractual relationship with, either Ladles Franchising, Inc., Ladlessoups, LLC, Sue Allen or Tracy Allen. The Plaintiff simply cannot sue one for whom he has not worked under the Wage Statue.

2. Ladles Franchising, Inc. is not the agent of Plaintiff's immediate employer or any other of the franchisees. Plaintiff attempts to equate the authorization in the franchise agreement to maintain a marketing fund as establishing a general agency of Ladles Franchising, Inc. for the franchisees. This argument is tenuous and illusory on its face, more importantly it ignores paragraph 5A of the Franchise Agreement which is controlling and provides as follows:

"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..."

Plaintiff cites Dumas v. InfoSafe Corp., 320 S.C. 188 (Ct. App. 1995) which stated that individual agents or officers of a corporation are liable if they knowingly permit “their corporation” to violate the Wage Act. Plaintiff’s memorandum draws emphasis to the phrase “knowingly permit” but ignores the phrase “their corporation”. Individual liability does not extend for those not affiliated with the employer corporation.

The following deposition excerpts regarding this issue are attached to Plaintiff’s supplemental memorandum.

Teri Owens, Plaintiff’s employer, testified on page 69 of her deposition:

“Q: Alright. Thank you. Does either Suzie or Tracy Allen own any interest in Ladles James Island, LLC?

A: No.

Q: Is either Suzie or Tracy Allen a manager or agent of Ladles James Island, LLC?

A: No.

Q: Do you have any other legal relationship with Ladles Franchising, Inc. other than the terms of your Franchise Agreement?

A: No.”

and on page 70 she testified concerning paragraph 5A of the Franchise Agreement:

“Q: Does this portion of the Franchise Agreement specify that Ladles James Island, LLC is an independent contractor separate and apart from Ladles Franchising, Inc.?

A: It does look like that.

Q: Alright. And do you - - does Ladles James Island, Inc. - - excuse me James Island, LLC operate as an independent contractor separate and apart from Ladles Franchising, Inc.?

A: Yes.

Q: Does Ladles Franchising, Inc. through the Franchise Agreement have any authority to set Ladles James Island, LLC’s compensation policies?

A: No.

Q: There's nothing in the employee handbook about tipping, is there?

A: No.

Q: Does Ladles Franchising, Inc., Suzie Allen or Tracy Allen, have they established any policies that require you to follow concerning tipping and payment of either credit card or cash tips to employees?

A: No.

Q: To your knowledge, have you ever heard of any, let's use the phrase Ladles-wide policy as far as handling credit card and cash tips?

A: No."

On page 94 -95 of the deposition of Corey Paul, member of CT Foods, LLC and CP Foods, LLC, the franchisee at West Ashley and Fort Mill testified as follows:

"Q: Does Suzie Allen own any membership in CT Foods, Inc.

A: None.

Q: LLC. Excuse me. Does Tracy Allen own any membership interest in CT Foods, LLC?

A: No.

Q: Are either Suzie Allen or Tracy Allen managers or agents of CT Foods, LLC?

A: No."

and later

"Q: All right. So let me ask the same questions for CP Foods, LLC. Is Suzie Allen a member or owner of CP Foods, LLC?

A: No.

Q: Is Tracy Allen a member or owner of CP Foods, LLC?

A: No.

Q: Is either Tracy Allen or Suzie Allen a manager or agent of CP Foods, LLC?

A: No."

and on pages 96-97 he testified:

“Q: Does that paragraph 5A of the sample Franchise Agreement specify that both CT Foods, LLC and CP Foods, LLC are independent contractors?”

A: It does.

Q: And they are separate entities, separate and apart from Ladlessoups, LLC, correct? And they are not under the control of either Ladles - - excuse me. They’re not under - - separate and independent from Ladles Franchising, Inc., is that correct?

A: That is correct.

Q: Alright their management is not under control of Ladles Franchising, Inc.; is that correct?

A: Correct.

Q: And neither CP Foods, LLC nor CT Foods, LLC is under the control of either Suzie Allen or Tracy Allen, is that correct?

A: Correct.

Q: And since you purchased Ladlessoups - - Ladles Soups West Ashley restaurant from Ladlessoups, LLC, has Ladlessales, LLC (Sic. Ladlessoups LLC) exercised any supervisory or management authority over the West Ashley restaurant.

A: No.”

and on page 98:

“Q: All right. Now is it also correct that the Ladles Franchise Agreement does not direct you to - - in any way how to compensate your employee; is that correct?”

A: That is correct.

Q: It does not direct you to handle either cash or credit card tips in any particular fashion; is that correct?

A: That is correct.”

Julie Dyke testified on page 51 of her deposition:

“Q: Has Ladles Franchising, Inc., Sue Allen or Tracy Allen ever attempted to require you to handle credit card tips in any particular fashion?”

A: No.

Q: Has Ladles Franchising, Inc., Sue Allen or Tracy Allen ever suggested that the method that you use in handling credit card tips was either right or wrong?

A: No.

Q: Is there any Ladles wide policy about handling credit card tips?

A: Not that I am aware of.”

The Franchise Agreement and the testimony of the franchisees are conclusive that there is no agency relationship, nor right of control by Ladles Franchising, Inc.

Moreover, the Plaintiff alleges actual agency therefore actual control, not the right to control is the test. In *Jamison v. Morris*, 285 S.C. 215, 684 S.E. 2nd 168 (2009) the Supreme Court held:

“In an actual agency case, the question is not whether the purported principal could have exercised control over its agent, but whether it did so.” Compare *Glover v. Boy Scouts of America*, 923 P 2nd 1383 (Utah 1986) (right to control must rest on facts as they exist, not speculation if different policies had been followed). *Id.* at 385 S.E. 2nd 222.

This statement of the law negatives Plaintiff’s arguments that Defendants are liable because they supposedly “knowingly permitted some action of the franchisees or that they could have prohibited some action. Since franchisor did not exercise actual control, as shown by the record, they cannot be vicariously liable for actions of the franchisees.

Perhaps the best evidence that there is no uniform policy as to retention of credit card tips is Julie Dyke’s testimony consistent with Plaintiff’s own, that the Mt. Pleasant franchise paid credit card tips to the employees by monthly checks by Julie Dyke’s disposition testimony on pages 24 -25 (attached hereto):

“Q: - - to a different - - okay. What do y’all do with the credit card tips?

A: The end of each month, they’re are written a separate check. It’s distributed among all the employees based on how many hours they worked.

Q: And does that include the hourly employees?

- A: Everyone is hourly.
- Q: Everyone is - - you don't have any salary employees?
- A: No.
- Q: I got you. And so just once a month they get a separate check?
- A: Yes.
- Q: And that's for their tips?
- A: Their tips."

Ladles Mt. Pleasant had every right to handle their credit card tips as they chose, and make their own policy as did all other franchisees.

3. Despite Plaintiff's inference otherwise, the record demonstrates that credit card tips are not included in the calculation of franchise fees due Ladles Franchising, Inc. Terri Owens testified on page 33 of her deposition (attached hereto) concerning her "Square" report used to calculate the location's franchise fee:

- "Q: Ok, when you say that it is in that report, what report are you referring?
- A: My Square report. My Square summary report. There is a gross number. There is a net number.
- Q: Right and tips are not included in either of those?
- A: Tips are included in - - I think they are included in gross, but I am not sure. They are not included in net. Taxes are not included in net because they go directly back out.
- Q: So.
- A: So no I do not pay the franchise a percentage of the tips."

On page 36 of her deposition Julie Dyke testified (attached hereto):

- "Q: And how do you know that tips aren't included in the gross sales?
- A: Because they're not.

Q: You know it's not because you don't pay it?

A: Right. Because I have a report that shows me total sales, discounts, tax.

Q: Is that- -

A: It's itemized."

Sue Allen confirmed that royalty percentages do not include tips, when she testified on page 66-67 (attached hereto):

"Q: Right, I understand that each store might have a different percentage, but what are they paying a percentage of?

A: They pay on their sales of their product, less any discounts that they wouldn't have received money for, less taxes and less tips."

CONCLUSION

These Defendants' Motion for Summary Judgment should be granted.

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

S/ M. Evan Lacke

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Fax: (843) 795-3990
Attorney for Defendants Ladles Franchising, Inc.,
Ladlessoups, LLC, Sue Allen and Tracy Allen

January 3, 2020
Charleston, South Carolina

vs. CASE NO. 2018-CP-10-785
LADLES SOUPS-JAMES ISLAND, LLC;

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

572

1 Q. Okay.

2 A. Does not include taxes or tips.

3 Q. Okay. And how do you know that?

4 A. Because it's in my report. It's
5 exactly, and that's the number I pay my percentage
6 on.

7 Q. Okay. When you say it is in that
8 report, what report are you referring?

9 A. My Square report. My Square summary
10 report. There is a gross number. There is a net
11 number.

12 Q. Right. And tips are not included in
13 either of those?

14 A. Tips are included in -- I think
15 they're included in gross, but I'm not sure. They
16 are not included in net. Taxes are not included
17 in net because those go directly back out.

18 Q. So --

19 A. So no, I do not pay the franchise a
20 percentage of the tips.

21 Q. Okay. Is Ladles Franchising, Inc.,
22 are they aware of your policy of keeping the
23 credit card tips?

24 A. Yes, since all of this has occurred,
25 you know. We never really discussed it before.

A W R

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

Fast, Accurate & Friendly

Charleston, SC	Hilton Head, SC	Myrtle Beach, SC
(843) 722-8414	(843) 785-3263	(843) 839-3376

Columbia, SC	Greenville, SC	Charlotte, NC
(803) 731-5224	(864) 234-7030	(704) 573-3919

Asheville, NC
(828) 785-5699

1 payment?

2 A. Kitchen, right now everybody comes in
3 at 12.

4 Q. Okay. That's what they start out at?

5 A. Yes.

6 Q. Okay. And then do people in the
7 kitchen do up front work?

8 A. Yes.

9 Q. And vice versa?

10 A. Yes.

11 Q. And so if you've got experience or if
12 you've been working there for a while, is there a
13 next level after \$10 and \$12?

14 A. I mean, pretty much what we do at our
15 Ladles is every year if they're still there, they
16 get another dollar an hour. And this is the time
17 of year, so they're all getting ready to get bumped
18 up a dollar.

19 Q. So, if somebody, if they stay on long
20 enough, they keep moving up --

21 A. Uh-huh.

22 Q. -- to a different -- okay.

23 What do y'all do with the credit card
24 tips?

25 A. The end of each month, they're written

1 a separate check. It's distributed among all the
2 employees based on how many hours they work.

3 Q. And does that include the hourly
4 employees?

5 A. Everyone is hourly.

6 Q. Everyone is -- you don't have any
7 salaried employees?

8 A. No.

9 Q. I got you. And so just once a month
10 they get a separate check?

11 A. Yes.

12 Q. And that's for their tips?

13 A. Their tips.

14 Q. And how is it that you decided to do
15 that policy, as opposed to keeping the credit card
16 tips?

17 A. Well, since everyone is a team and we
18 all work together, we just -- that seemed the
19 fairest way. We pool the cash, so they pool
20 everything -- we pool it all.

21 Q. I got you. Are you an hourly paid
22 employee?

23 A. No.

24 Q. Do you take a salary?

25 A. We take a draw when we need to, but,

1 A. Gross would be we don't pay royalties
2 on our sales tax, which is included in the gross.

3 Q. Right.

4 A. So, to me, in my mind, that is net. We
5 don't pay royalties to her on tax.

6 Q. Right. And that's actually --

7 A. So we have our sales and then minus our
8 tax. You know, tips are not included in that. I
9 wouldn't pay her royalties on tips I took in. So
10 that is -- to me, is net. So...

11 Q. And how do you know that tips aren't
12 included in the gross sales?

13 A. Because they're not.

14 Q. You know it's not because you don't pay
15 it?

16 A. Right, because I have a report that
17 shows me total sales, discounts, tax.

18 Q. Is that --

19 A. It's itemized.

20 Q. Have you provided that to your
21 attorney?

22 A. It's all electronic.

23 Q. Is it possible to get a paper copy of
24 it?

25 A. No. I don't know how you'd get a -- I

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 (843) 722-8414	Hilton Head, SC (843) 785-3263	Myrtle Beach, SC (843) 839-3376

Columbia, SC (803) 731-5224	Greenville, SC (864) 234-7030	Charlotte, NC (704) 573-3919

Asheville, NC
(828) 785-5699

1 Q. So if somebody was employing a manager
2 that wasn't acceptable to you, you would have the
3 ability to either have that manager removed or
4 terminate the franchise, correct?

5 MR. KOON: Object to the form of the
6 question.

7 THE WITNESS: Yes. Has never been
8 done. Just want to state that.

9 BY MR. ASHLEY:

10 Q. And so how does the -- so can you tell
11 me about how the individual stores, they pay --
12 it's a royalty fee to you?

13 A. Yes.

14 Q. Okay. And how is that determined?

15 A. It's based -- it's based on the
16 individual store.

17 Q. Right. The percentage that they pay is
18 based on the individual store.

19 A. Correct.

20 Q. But how do you come up with percentage
21 of what is being -- that they pay?

22 A. Percent of what?

23 Q. Right. I understand that each store
24 might have a different percentage, but what are
25 they paying a percentage of?

1 A. They pay on their sales of their
2 product, less any discounts that they wouldn't have
3 received money for, less taxes, and less tips.

4 Q. Okay. And is that included in the
5 agreement, that tips -- and if you want to turn to
6 Page 17 of the agreement. I'm sorry, Page 18.

7 And it's the definition of gross sales,
8 and so the agreement states that the royalty
9 fees -- it's a percentage of the gross sales?

10 A. Correct.

11 Q. And the agreement defines gross sales
12 as all food, beverage, other menu items,
13 merchandise and goods, and other services sold or
14 performed by or for you or the restaurant in, upon,
15 or from the premises or through or by means of the
16 business conducted at the restaurant or the
17 premises, whether for cash or credit, correct?

18 A. Correct.

19 Q. And it excludes -- in the next
20 sentence, it excludes some things, and that would
21 be taxes; management or employee meals; sale of
22 cigars, cigarettes, and newspapers; as well as
23 income from pay phones. But it doesn't mention
24 tips. How do you know that tips aren't included in
25 the gross sales?

2015 (p.1)

	January	February	March	April	May	June
West Ashley	\$ 36,462.00	\$ 34,609.00	\$ 33,034.00	\$ 26,904.00	\$ 24,086.00	\$ 22,248.00
Freshfields	\$ 22,001.00	\$ 21,393.00	\$ 27,147.00	\$ 27,439.00	\$ 21,650.00	\$ 25,505.00
Mount Pleasant	\$ 45,473.00	\$ 46,457.00	\$ 35,707.00	\$ 31,009.00	\$ 24,247.00	\$ 20,937.00
Coosaw	\$ 35,869.00	\$ 32,979.00	\$ 29,647.00	\$ 24,754.00	\$ 21,335.00	\$ 18,879.00
James Island	\$ 36,716.00	\$ 35,893.00	\$ 30,098.00	\$ 25,161.00	\$ 21,649.00	\$ 20,252.00
Charleston	\$ 20,383.00	\$ 22,759.00	\$ 17,145.00	\$ 15,087.00	\$ 11,162.00	\$ 9,326.00
Cane Bay	\$ 24,522.00	\$ 24,397.00	\$ 22,450.00	\$ 19,204.00	\$ 19,165.00	\$ 14,959.00
Knightsville					\$ 8,916.00	\$ 24,800.00
Fort Mill						
Moncks Corner						
	\$ 274,567.00	\$ 260,414.00	\$ 232,906.00	\$ 197,774.00	\$ 177,474.00	\$ 183,454.00

July	August	September	October	November	December	YTD
\$ 22,370.00	\$ 26,538.00	\$ 29,235.00	\$ 34,764.00	\$ 35,150.28	\$ 38,119.40	\$ 363,519.68
\$ 33,495.00	\$ 27,733.00	\$ 22,422.00	\$ 24,300.00	\$ 27,476.13	\$ 27,855.06	\$ 308,416.19
\$ 22,668.00	\$ 24,241.00	\$ 30,556.00	\$ 39,230.00	\$ 41,399.50	\$ 46,780.04	\$ 408,704.54
\$ 18,785.00	\$ 23,603.00	\$ 23,624.00	\$ 28,659.00	\$ 28,982.25	\$ 27,952.23	\$ 315,068.48
\$ 20,744.00	\$ 22,305.00	\$ 25,250.00	\$ 30,686.00	\$ 31,292.13	\$ 32,561.25	\$ 332,607.38
\$ 7,281.00	\$ 8,058.00	\$ 15,628.00	\$ 20,083.00	\$ 23,882.13	\$ 19,117.50	\$ 189,911.63
\$ 11,527.00	\$ 17,100.00	\$ 20,235.00	\$ 19,654.00	\$ 20,795.15	\$ 20,329.47	\$ 234,337.62
\$ 23,783.00	\$ 25,990.00	\$ 24,835.00	\$ 25,897.00	\$ 25,342.69	\$ 36,336.36	\$ 195,900.05
				\$ -	\$ 37,872.23	\$ 37,872.23
						\$ -
\$ 191,805.00	\$ 207,538.00	\$ 223,487.00	\$ 262,890.00	\$ 268,993.41	\$ 328,596.56	\$ 2,809,898.97

2016 (p.1)

	January	February	March	April	May	June	July	August	September	October
WA	\$ 43,923.28	\$ 41,497.64	\$ 32,327.83	\$ 31,809.49	\$ 31,547.94	\$ 29,743.98	\$ 27,765.44	\$ 31,389.08	\$ 31,481.17	\$ 32,938.75
FF	\$ 22,390.17	\$ 21,917.00	\$ 30,136.08	\$ 26,743.63	\$ 24,708.19	\$ 28,642.34	\$ 35,979.15	\$ 31,302.00	\$ 22,578.14	\$ 19,330.93
MP	\$ 52,062.80	\$ 45,815.97	\$ 35,223.89	\$ 30,998.57	\$ 30,163.16	\$ 25,699.82	\$ 24,621.56	\$ 30,018.91	\$ 31,551.04	\$ 33,121.06
CC	\$ 35,661.91	\$ 30,517.79	\$ 27,651.58	\$ 27,144.58	\$ 22,919.56	\$ 22,125.80	\$ 19,958.11	\$ 22,793.74	\$ 24,861.96	\$ 21,841.75
JI	\$ 39,407.43	\$ 34,622.45	\$ 28,372.63	\$ 26,328.94	\$ 24,461.48	\$ 22,222.03	\$ 22,135.68	\$ 26,452.88	\$ 28,269.28	\$ 27,616.32
DT	\$ 23,060.94	\$ 20,558.15	\$ 18,335.62	\$ 16,455.81	\$ 10,912.94	\$ -	\$ -	\$ -	\$ 9,503.84	\$ 18,292.95
CB	\$ 21,295.73	\$ 22,558.72	\$ 20,997.48	\$ 21,452.13	\$ 18,350.75	\$ 16,040.14	\$ 13,709.09	\$ 20,167.34	\$ 17,697.76	\$ 17,129.14
KV	\$ 32,386.28	\$ 29,096.87	\$ 26,105.70	\$ 23,228.14	\$ 23,237.28	\$ 21,047.69	\$ 17,638.66	\$ 20,130.38	\$ 20,483.75	\$ 19,328.93
FM	\$ 38,258.68	\$ 37,625.08	\$ 35,078.11	\$ 32,166.15	\$ 30,371.18	\$ 23,801.13	\$ 27,159.50	\$ 29,110.95	\$ 30,053.71	\$ 34,638.68
MC							\$ 14,693.88	\$ 40,347.97	\$ 29,300.67	\$ 26,480.97
	\$ 352,530.93	\$ 322,070.72	\$ 292,785.06	\$ 293,967.32	\$ 277,704.57	\$ 244,985.05	\$ 260,482.16	\$ 317,781.86	\$ 309,522.48	\$ 326,967.75

November	December	YTD
\$ 38,946.10	\$ 47,321.71	\$ 420,692.41
\$ 28,556.89	\$ 31,407.83	\$ 323,692.35
\$ 43,961.99	\$ 53,101.29	\$ 436,340.06
\$ 27,851.65	\$ 31,512.94	\$ 314,841.37
\$ 36,346.17	\$ 40,689.60	\$ 356,924.89
\$ 26,160.51	\$ 26,996.22	\$ 170,276.98
\$ 21,044.28	\$ 22,916.71	\$ 233,359.27
\$ 27,090.79	\$ 29,304.38	\$ 289,078.85
	,	
\$ 36,655.83	\$ 41,496.55	\$ 396,415.55
\$ 31,704.61	\$ 30,517.52	\$ 173,045.62
\$ 398,662.48	\$ 449,203.79	\$ 3,846,664.17

2017 (P1)

	January	February	March	April	May	June
WA	\$ 40,168.18	\$31,596.91	\$ 41,832.01	\$ 31,757.29	\$ 32,225.07	\$ 28,976.21
FF	\$ 24,080.75	\$22,769.76	\$ 31,632.17	\$ 27,505.38	\$ 24,620.25	\$ 33,716.22
MP	\$ 41,904.38	\$35,350.88	\$ 40,667.27	\$ 26,190.16	\$ 28,335.56	\$ 27,069.39
CC	\$ 29,332.65	\$25,580.33	\$ 31,267.03	\$ 20,941.74	\$ 22,045.57	\$ 20,246.65
JI	\$ 34,128.61	\$28,639.71	\$ 33,047.95	\$ 25,924.45	\$ 26,506.62	\$ 26,565.99
DT	\$ 29,138.13	\$24,390.21	\$ 27,591.18	\$ 23,681.63	\$ 21,603.56	\$ 16,952.33
KV	\$ 26,588.10	\$24,761.85	\$ 30,794.98	\$ 23,342.70	\$ 23,476.76	\$ 21,756.99
FIM	\$ 35,698.15	\$31,485.05	\$ 36,130.77	\$ 26,009.12	\$ 24,457.27	\$ 19,151.59
MC	\$ 27,822.94	\$24,934.15	\$ 29,981.60	\$ 23,288.51	\$ 21,620.82	\$ 20,259.63
	\$ 367,163.42	\$ 322,576.09	\$ 385,236.31	\$ 298,926.42	\$ 294,272.51	\$ 280,616.05
CB	\$ 20,156.19	\$18,483.50	\$ 21,185.63	\$ 16,118.67	\$ 16,566.72	\$ 16,919.80

2017 (p.2)

July	August	September	October	November	December	YTD
\$ 27,407.45	\$ 33,154.62	\$ 28,960.33	\$ 39,050.66	\$ 40,027.93	\$ 43,303.77	\$ 418,460.43
\$ 40,010.74	\$ 34,764.75	\$ 17,862.90	\$ 27,543.61	\$ 28,511.39	\$ 32,591.41	\$ 345,609.33
\$ 23,857.27	\$ 30,186.70	\$ 26,334.25	\$ 40,044.42	\$ 47,211.79	\$ 54,386.79	\$ 421,538.86
\$ 18,436.33	\$ 23,775.07	\$ 20,658.55	\$ 28,568.11	\$ 30,386.78	\$ 32,819.17	\$ 304,057.98
\$ 22,958.64	\$ 29,046.23	\$ 26,747.37	\$ 35,258.39	\$ 39,392.70	\$ 42,749.03	\$ 370,965.69
\$ 15,331.59	\$ 21,791.40	\$ 24,301.34	\$ 35,524.31	\$ 38,916.48	\$ 36,023.26	\$ 315,245.42
\$ 21,927.81	\$ 28,447.84	\$ 25,320.39	\$ 33,073.85	\$ 31,357.99	\$ 36,008.62	\$ 326,857.88
\$ 18,457.70	\$ 23,763.50	\$ 23,140.56	\$ 28,973.59	\$ 32,101.07	\$ 33,251.58	\$ 332,619.95
\$ 19,245.55	\$ 25,379.48	\$ 18,933.50	\$ 24,819.66	\$ 23,907.98	\$ 25,593.20	\$ 285,787.02
\$ 272,694.92	\$ 322,573.76	\$ 277,639.23	\$ 367,713.26	\$ 384,721.20	\$ 412,506.14	\$ 3,986,639.31
\$ 11,459.96	\$ 9,063.39	\$ 11,497.15	\$ 3,135.13	\$ -	n/a	\$ 144,586.14
						\$ 4,131,225.45

	West Ash	Freshfield	Mt Pleas	Coosaw	James Is	Dwntown	Kn-Ville	Fort Mill	Monck Co	TOTALS
Jan-18	\$ 40,571.26	\$ 20,570.37	\$ 47,621.85	\$ 29,311.20	\$ 38,312.72	\$ 40,467.04	\$ 30,968.93	\$ 30,825.97	\$ 23,550.97	\$ 367,677.05
Jan-19	\$ 42,073.62	\$ 25,040.35	\$ 42,863.37	\$ 34,108.06	\$ 43,475.11	\$ 43,164.03	\$ 40,593.17	\$ 28,796.78	\$ 27,157.64	\$ 424,134.03
	\$ 1,502.36	\$ 4,469.98	\$ (4,758.48)	\$ 4,796.86	\$ 5,162.39	\$ 2,696.99	\$ 9,624.24	\$ (2,029.19)	\$ 3,606.67	\$ 56,456.98
Feb-18	\$ 32,886.94	\$ 23,016.72	\$ 35,272.41	\$ 25,976.15	\$ 32,401.72	\$ 33,851.75	\$ 29,101.18	\$ 25,056.87	\$ 21,521.95	\$ 319,796.15
Feb-19	\$ 40,740.21	\$ 26,350.76	\$ 36,888.91	\$ 30,357.05	\$ 36,903.93	\$ 37,501.47	\$ 38,848.98	\$ 25,550.12	\$ 25,970.89	\$ 377,668.51
	\$ 7,853.27	\$ 3,334.04	\$ 1,616.50	\$ 4,380.90	\$ 4,502.21	\$ 3,649.72	\$ 9,747.80	\$ 493.25	\$ 4,448.94	\$ 57,872.36
Mar-18	\$ 39,622.46	\$ 36,457.50	\$ 39,855.82	\$ 28,506.92	\$ 36,766.54	\$ 36,810.36	\$ 33,726.17	\$ 30,140.22	\$ 24,170.40	\$ 373,772.31
Mar-19	\$ 40,916.01	\$ 37,843.38	\$ 36,908.64	\$ 33,439.86	\$ 39,507.92	\$ 36,419.20	\$ 38,240.75	\$ 26,398.71	\$ 26,574.97	\$ 404,067.60
	\$ 1,293.55	\$ 1,385.88	\$ (2,947.18)	\$ 4,932.94	\$ 2,741.38	\$ (391.16)	\$ 4,514.58	\$ (3,741.51)	\$ 2,404.57	\$ 30,295.29
Apr-18	\$ 32,924.84	\$ 29,415.77	\$ 29,480.73	\$ 23,444.54	\$ 29,404.60	\$ 33,693.92	\$ 26,765.21	\$ 23,039.01	\$ 18,778.65	\$ 307,818.12
Apr-19	\$ 36,242.46	\$ 33,360.51	\$ 31,259.25	\$ 28,093.04	\$ 34,042.91	\$ 33,240.05	\$ 34,167.32	\$ 24,010.34	\$ 25,680.67	\$ 356,714.74
	\$ 3,317.62	\$ 3,944.74	\$ 1,778.52	\$ 4,648.50	\$ 4,638.31	\$ (453.87)	\$ 7,402.11	\$ 971.33	\$ 6,902.02	\$ 48,896.62
May-18	\$ 31,848.22	\$ 26,438.28	\$ 28,858.79	\$ 22,787.36	\$ 31,267.36	\$ 27,081.85	\$ 25,281.38	\$ 20,469.12	\$ 19,013.54	\$ 300,032.46
May-19	\$ 35,012.94	\$ 25,847.91	\$ 28,148.67	\$ 26,620.44	\$ 29,754.57	\$ 25,873.48	\$ 31,645.07	\$ 21,120.75	\$ 22,203.21	\$ 322,857.69
	\$ 3,164.72	\$ (590.37)	\$ (710.12)	\$ 3,833.08	\$ (1,512.79)	\$ (1,208.37)	\$ 6,363.69	\$ 651.63	\$ 3,189.67	\$ 22,825.23
Jun-18	\$ 28,346.39	\$ 33,692.99	\$ 25,618.02	\$ 18,999.73	\$ 24,087.68	\$ 22,125.91	\$ 24,133.62	\$ 16,939.83	\$ 16,172.30	\$ 283,291.54
Jun-19	\$ 36,555.21	\$ 33,147.45	\$ 26,343.36	\$ 22,989.37	\$ 26,778.74	\$ 24,064.38	\$ 29,880.04	\$ 19,885.56	\$ 19,141.86	\$ 311,315.09
	\$ 8,208.82	\$ (545.54)	\$ 725.34	\$ 3,989.64	\$ 2,691.06	\$ 1,938.47	\$ 5,746.42	\$ 2,945.73	\$ 2,969.56	\$ 28,023.55
Jul-18	\$ 28,107.92	\$ 39,108.51	\$ 23,633.82	\$ 21,315.81	\$ 26,734.53	\$ 19,264.93	\$ 25,621.56	\$ 19,982.14	\$ 18,280.17	\$ 294,131.03
Jul-19	\$ 35,131.93	\$ 36,369.22	\$ 24,231.47	\$ 24,218.71	\$ 27,175.17	\$ 19,351.63	\$ 29,577.04	\$ 20,950.62	\$ 18,350.03	\$ 312,224.33
	\$ 7,024.01	\$ (2,739.29)	\$ 597.65	\$ 2,902.90	\$ 440.64	\$ 86.70	\$ 3,955.48	\$ 968.48	\$ 69.86	\$ 18,093.30
Aug-18	\$ 31,661.57	\$ 34,125.51	\$ 29,740.26	\$ 24,829.70	\$ 30,180.30	\$ 28,581.48	\$ 30,545.86	\$ 22,683.21	\$ 20,100.52	\$ 333,764.89
Aug-19	\$ 39,582.49	\$ 33,570.66	\$ 29,656.00	\$ 26,476.21	\$ 29,380.11	\$ 29,700.14	\$ 34,461.52	\$ 24,483.05	\$ 20,165.50	\$ 356,695.54
	\$ 7,920.92	\$ (554.85)	\$ (84.26)	\$ 1,646.51	\$ (800.19)	\$ 1,118.66	\$ 3,915.66	\$ 1,799.84	\$ 64.98	\$ 22,930.65
Sep-18	\$ 29,222.87	\$ 17,932.12	\$ 20,970.39	\$ 18,959.98	\$ 24,291.43	\$ 23,206.26	\$ 27,285.00	\$ 19,515.95	\$ 15,521.08	\$ 272,666.48
Sep-19	\$ 34,247.52	\$ 14,707.69	\$ 24,538.50	\$ 22,051.15	\$ 27,890.71	\$ 25,757.29	\$ 30,724.28	\$ 23,104.32	\$ 18,743.74	\$ 291,781.66
	\$ 5,024.65	\$ (3,224.43)	\$ 3,568.11	\$ 3,091.17	\$ 3,599.28	\$ 2,551.03	\$ 3,439.28	\$ 3,588.37	\$ 3,222.66	\$ 19,115.18
Oct-18	\$ 38,792.02	\$ 29,472.48	\$ 36,296.13	\$ 31,338.07	\$ 34,984.82	\$ 42,691.58	\$ 35,720.38	\$ 27,047.95	\$ 22,003.46	\$ 399,366.41
Oct-19	\$ 47,521.30	\$ 30,896.57	\$ 39,233.70	\$ 30,680.53	\$ 41,142.10	\$ 46,608.02	\$ 43,136.90	\$ 28,835.60	\$ 25,118.23	\$ 429,615.06
	\$ 8,729.28	\$ 1,424.09	\$ 2,937.57	\$ (657.54)	\$ 6,157.28	\$ 3,916.44	\$ 7,416.52	\$ 1,787.65	\$ 3,114.77	\$ 30,248.65
Nov-18	\$ 45,087.57	\$ 34,449.21	\$ 47,568.27	\$ 33,061.64	\$ 42,302.77	\$ 45,091.40	\$ 40,445.49	\$ 30,895.61	\$ 25,850.14	\$ 441,804.02
Nov-19	\$ 51,545.95	\$ 36,518.59	\$ 47,821.34	\$ 33,941.18	\$ 44,784.45	\$ 52,998.54	\$ 47,727.07	\$ 34,310.92	\$ 25,012.30	\$ 466,370.26
	\$ 6,458.38	\$ 2,069.38	\$ 253.07	\$ 879.54	\$ 2,481.68	\$ 7,907.14	\$ 7,281.58	\$ 3,415.31	\$ (837.84)	\$ 24,566.24
Dec-18	\$ 45,732.57	\$ 32,263.76	\$ 45,425.15	\$ 32,609.42	\$ 40,142.99	\$ 36,035.25	\$ 40,533.56	\$ 25,813.22	\$ 22,873.13	\$ 411,462.69
Dec-19	\$ (45,732.57)	\$ (32,263.76)	\$ (45,425.15)	\$ (32,609.42)	\$ (40,142.99)	\$ (36,035.25)	\$ (40,533.56)	\$ (25,813.22)	\$ (22,873.13)	\$
YTD 18	\$ 424,804.63	\$ 356,943.22	\$ 410,341.64	\$ 311,140.52	\$ 390,877.46	\$ 388,901.73	\$ 370,128.34	\$ 292,409.10	\$ 247,836.31	
YTD 19	\$ 439,569.64	\$ 333,653.09	\$ 367,893.21	\$ 312,975.60	\$ 380,835.72	\$ 374,678.23	\$ 399,002.14	\$ 277,446.77	\$ 254,119.04	
	\$ 14,765.01	\$ (23,290.13)	\$ (42,448.43)	\$ 1,835.08	\$ (10,041.74)	\$ (14,223.50)	\$ 28,873.80	\$ (14,962.33)	\$ 6,282.73	
	3.36%	-6.98%	-11.54%	0.59%	-2.64%	-3.80%	7.24%	-5.39%	2.47%	

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 TO
RECONSIDER AND/OR ALTER OR
AMEND THE COURT’S JANUARY 30,
2020, ORDER**

TO: ALL DEFENDANTS AND THEIR ATTORNEYS

YOU WILL PLEASE TAKE NOTICE that Plaintiff, by and through his undersigned counsel, respectfully moves this Court for an Order reconsidering the grant of Defendants Ladles Franchising, Inc.; Ladlessoups, LLC; Sue Allen; and Tracy Allen’s motion for summary judgment.

The Order of the Court was filed on January 30, 2020. Pursuant to SCRCP Rule 59(e), the Order of the Court filed on January --, 2020 should be reconsidered and reversed.

Standard of Review

Rule 59(e) of the South Rules of Civil Procedure, which is “substantially” the same as the Federal Rule, permits a court to “alter or amend [a] judgment.” S.C. R. Civ. P. 59(e); *Id.* at Notes (stating that “Rule 59 is substantially the Federal Rule”). Rule 59 “permits a court to amend a judgment within ten days for three reasons: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” *E.E.O.C. v. Lockheed Martin Corp.*, 116 F.3d 110, 112 (4th Cir. 1997).

The Court Should Alter or Amend its Order Pursuant to SCRCP 59(e)

The Order grants summary judgment for the Franchisor Defendants. The Order is contrary to well-established law and the evidence in the record and should be altered or amended.

A. The Order Does Not Support Summary Judgment as a Matter of Law

The South Carolina Payment of Wages Act (the “Act”) provides that every employer in the State shall pay wages due pursuant to S.C. Code Ann. §41-10-40(A). The Act defines an employer as 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. S.C. Code Ann § 41-10-10(1) (emphasis added). South Carolina courts have explained that the legislature intended to impose individual liability on *agents or officers* of a corporation who *knowingly permit* the corporation for which they are acting as agent to violate the Act. *Dumas v. InfoSafe Corp.*, 320 S.C. 188 (Ct.App. 1995) (emphasis added). In other words, *Dumas* requires the Court to determine whether the Defendants “knowingly

permitted” the business to violate the Payment of Wages Act. See, also, *Allen v. Pinnacle Healthcare Sys.*, 394 S.C. 268, 715 S.E.2d 362 (S.C. App., 2011).

Plaintiffs have submitted evidence from which a jury could reasonably conclude that; i) tips are wages under the Act; ii) Franchisor Defendants seeking summary judgment acted as agents of the Operating Company/Franchisee Defendants and were employers of Plaintiff under the Act; and iii) Franchisor Defendants “knowingly permitted” Franchisee Defendants to violate the Wages Act.

1. Tips are wages under the South Carolina Payment of Wages Act.

Pursuant to the South Carolina Payment of Wages Act, an employer shall not "withhold or divert" any portion of any employee's wages unless required or permitted by federal or state law "or the employer has given written notice of the deductions . . ." S.C. Code Ann. § 41-10-40(C).

The issue of whether tips constitute wages has arisen several times recently in the United States District Court for the District of South Carolina. *Carbone v. Zen 333 Inc.*, No. 2:16-CV-0108-DCN, 2016 WL 7383920, at *4 (D.S.C. Dec. 21, 2016) (holding that tips constitute wages under the SCPWA); *Degidio v. Crazy Horse Saloon & Rest., Inc.*, No. 4:13-CV-02136-BHH, 2016 WL 3125467, at *5 (D.S.C. June 3, 2016) (same); *Gardner v. Country Club, Inc.*, No. 4:13-CV-03399-BHH, 2016 WL 3125469, at *5 (D.S.C. June 3, 2016) (same); *Spallone v. SOHO Univ., Inc.*, No. 4:15-CV-1622-RBH, 2015 WL 5098154, at *5 (D.S.C. Aug. 31, 2015) (allowing a claim alleging that tips constituted wages under the SCPWA to survive without determining whether tips actually constituted wages because defendants asserted only that the FLSA preempted the SCPWA claim); *Foster v. M5 Hosp. Grp., LLC*, No. 4:14-CV-4517-RBH, 2015 WL 5024404, at *5 (D.S.C. Aug. 24, 2015) (same); see also *Browder v. Peninsula Grill Associates, LLC*, No. 2:14-CV-4135-PMD, 2015 WL 4389502, at *1 (D.S.C. July 15, 2015) (noting that the original complaint

contained a SCPWA claim asserting that tips were wages within the meaning of the SCPWA; however, the amended complaint dropped this claim). Neither the South Carolina Supreme Court nor the South Carolina Court of Appeals has addressed this issue.

The cardinal rule of statutory interpretation is to “determine the intent of the legislature.” *Bass v. Isochem*, 617 S.E.2d 369, 377 (S.C. Ct. App. 2005). S.C. Code Ann. § 41-10-10(2) defines “wages” as all amounts at which labor rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the amount and includes vacation, holiday, and sick leave payments which are due to an employee under any employer policy or employment contract. *See also, Sean Bass v. 817 Corp.*, No.: 2:16-cv-1964-RMG (D. S.C., 2017)

The Court in *Sean Bass v. 817 Corp.* found that the literal meaning of “all amounts for which labor rendered is recompensed” suggests that the statute covers just that, all amounts. Moreover, the Court found that the broad language that follows the clause to include amounts “fixed or ascertained” by any “method of calculating the amount” is intended to reinforce the comprehensiveness of “all amounts” rather than limit the term. *Id.* Finally, the statutory text specifically excludes only funds placed in pension plans or profit sharing plans from the definition of wages. *Id.*

Tips are an amount for which tipped employees are recompensed for labor rendered. The amount is ascertainable by simple addition. And tips are not specifically excluded by the statute. Accordingly, the plain language of the statute supports finding that tips are wages within the meaning of the SCPWA. *Id.*

2. Franchisor Defendants are agents of the Franchisee Defendants and were employers under the Act.

In *Fernander v. Thigpen*, 278 S.C. 140, 293 S.E.2d 424 (1982), the South Carolina Supreme Court explained that, generally, "[q]uestions of agency ordinarily should not be resolved by summary judgment where there are any facts giving rise to an inference of an agency relationship." See also, *Reid v. Kelly & Play Air, Inc.*, 274 S.C. 171, 174, 262 S.E. (2d) 24 (1980); *Jamison v. Howard*, 271 S.C. 385, 247 S.E. (2d) 450 (1978). Moreover, agency may be implied or inferred and may be circumstantially proven by the conduct of the purported agent exhibiting a pretense of authority with the knowledge of the alleged principal. *Fernander, supra*, 278 S.C. 140, 143.

Plaintiffs cite the Ladles Franchise Agreement, a contract between the Franchisor Defendants and the Operating Company/Franchisee Defendants as evidence that Franchisor Defendants acted as agents of Operating Company/Franchisee Defendants:

You [Operating Company/Franchisee Defendants] agree that because of the value of advertising to the goodwill and public image of Ladlessoups' Restaurants, we [Franchisor Defendants] 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 acknowledge that we have the right and you hereby authorize us, to settle or otherwise compromise all disputes with regard to the Marketing Fund.

See, Franchise Agreement at pp. 25 – 27. (emphasis supplied) (**Exhibit 1**)

By this document, Operating Company/Franchisee Defendants specifically authorize Franchisor Defendants to act on their behalf, to “settle or compromise all disputes with regard to the Marketing Fund,” which indicates that Operating Company Defendants are the agent of Franchisor Defendants. The Franchise Agreement gives Franchisor Defendants significant and important authority to act as agent and on behalf of the Operating Company/Franchisee Defendants, for the benefit both of principals and agents. Moreover, Franchisor Defendants, have the power to bind the Operating Company/Franchisee Defendants, with *actual authority* with regard to the Marketing Fund, and therefore, are agents of the Operating Company/Franchisee Defendants (who also employ Plaintiff class members).

3. Franchisor Defendants “knowingly permitted” Franchisee Defendants to violate the Wages Act.

Plaintiff has also submitted evidence from which a jury could reasonably conclude that Franchisor Defendants “knowingly permitted” the Operating Company Defendants (for whom Franchisor Defendants act as agents) to deprive Plaintiffs of wages. Breaking that phrase from *Dumas* into its component parts, Plaintiffs must submit evidence that Franchisor Defendants “knew” about or were aware of the challenged policy, and that they “permitted” the policy to occur, meaning that they allowed it to happen, or had the ability to stop the policy and failed to do so.

Plaintiff has submitted evidence that Franchisor Defendants had knowledge of the tipping policy, and that they designed and implemented the policy. Specifically, Franchisor Defendant Suzie Allen (the creator of the Ladles concept) stated in her deposition that the tipping policy challenged by Plaintiffs was created by her in her first location, and was present in all locations (Ladles West Ashley, Kiawah Island, and Summerville). (Suzie Allen deposition, p. 21, Lns. 6-25; p. 22 at Lns. 1-2; p. 32 at Lns. 12-22; p. 33 at Lns. 22-25; p. 34 at Ln. 1 and Lns. 14-21; and p. 35 at Lns. 6-13.) (**Exhibit 2**). Plaintiff also cites as evidence that Ms. Allen and Franchisor

Defendants created the policy, and substantially control the employee compensation parameters of all Franchisees based on Allen's statement in the Ladles Franchising Video on the Ladles website that "the only two things that you can really control in money, is food costs and employee wages." Ms. Allen further stated in her deposition that the policy at all of these locations was that employees were only paid their hourly wages and that the credit card tips (retained by Franchisee Defendants) allegedly went to subsidizing the employees' hourly wages. (Suzie Allen deposition, p. 21, Lns. 6-25; p. 22 at Lns. 1-2; p. 32 at Lns. 12-22; p. 33 at Lns. 22-25; p. 34 at Ln. 1 and Lns. 14-21; and p. 35 at Lns. 6-13). A jury could reasonably conclude from such evidence that the Franchisor Defendants created the challenged policy, which is probative of whether Franchisor Defendants "know" about or were aware of the challenged policy.

Plaintiffs have also submitted evidence from which a jury could reasonably conclude that Franchisor Defendants actively participated in the tipping policy by benefiting from it, which is additional probative evidence of the Franchisor Defendants' awareness or knowledge of the challenged policy. The Franchisor Defendants receive royalty payments each month from each Ladles location. The royalty fee is a percentage of gross sales for each month, which is the total amount of monthly revenue. According to the plain language of the Franchise Agreement, that gross revenue presumptively includes credit card tips, since the monthly gross sales includes services performed at the restaurants "whether for cash or credit". Per the Ladles Franchise Agreement:

a. 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.

b. 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.

See, Ladles Franchise Agreement at pp. 17-18 (emphasis added).

Plaintiffs have also submitted evidence from which a jury could reasonably conclude that Franchisor Defendants “permit” the policy to occur, and had the ability to stop the challenged tipping policy, by requiring Operating Company/Franchisee Defendants to terminate the policy and pay all credit card tips to hourly employees. Per the Franchise Agreement, the license under which the Operating Company/Franchisee Defendants operate, individual restaurants are required 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 incomes taxes, social security taxes and sales taxes.” *See* Franchise Agreement at p. 23, subsection E. This section of the Franchise Agreement is all inclusive with regards to government laws, ordinances, and regulations and would naturally include compliance with the South Carolina Payment of Wages Act.

Also per the Franchise Agreement, the Franchisor Defendants have the power to terminate any franchise that fails to “comply with any provision of this Agreement or any mandatory specification, standard, or operating procedure we prescribe” *See* Franchise Agreement at p. 36, paragraph (2). Additionally, Corey Paul testified that if the Franchisor required him to end the

tipping policy he would end it. (Corey Paul Deposition, p. 74, lns 5-13). **(Exhibit 3)**. Further, Teri Owens testified as follows:

Q: Okay. So if, for example, they [Franchisors] told you as a policy you can no longer keep credit card tips or we will terminate, you know, the franchise, that's something that they could do, correct?

A: Yeah, I would guess that it would be something we would change.

Q: Okay. Right. So if this franchise agreement said you can no longer keep the credit card tips, you would change your policy?

A: Uh-huh.

Q: So Ladles Franchising, Inc., they know about your credit card tips policy?

A: Uh-huh.

Q: They have the ability to stop it?

A: I don't – I guess. You know, I ...

Q: If they told you that you could no longer do it, then you would stop doing it?

A: I would have to stop doing it. Yeah.

(Teri Owens deposition, page 48, line 23 – page 49, line 17). **(Exhibit 4)**.

The power to terminate a franchise is sufficient evidence from which a jury could reasonably conclude that Franchisor Defendants could (being aware of the challenged policy) compel Operating Company Defendants to cease the policy and pay the credit card tips to plaintiffs. A jury could conclude that Franchisor Defendants thus “permit” the challenged policy to occur.

Accordingly, as Plaintiffs have submitted evidence from which a jury could reasonably conclude that tips are wages, Franchisor Defendants are agents of the Operating

Company/Franchise Defendants, that they formulated and actively participate in the policy by benefitting from it, and have the power to stop the policy allegedly depriving Plaintiffs of wages. Construing all ambiguities, conclusions, and inferences arising from the evidence most strongly against the moving party, a jury could reasonably conclude that Movants “knowingly permitted” the Operating Company/Franchise Defendants to engage in a policy of withholding wages from plaintiffs.

B. The Order Misrepresents Evidence in the Record.

1. There is evidence in the record that Defendants came into possession of the credit card tips Plaintiff claims.

As to Plaintiff’s cause of action for conversion, the Order states that “there is no evidence in the record that any moving Defendants ever came into possession of credit card tips that Plaintiff claims.” Order, p. 6. As noted previously in this brief and as noted by Plaintiff’s counsel at the hearing on January 6, 2020, the Franchisor Defendants receive royalty payments each month from each Ladles location. The royalty fee is a percentage of gross sales for each month, which is the total amount of monthly revenue. A jury could reasonably conclude from the plain language of the Franchise Agreement that gross revenue includes credit card tips, since the definition of monthly gross sales includes “other services sold or performed by or for you or the Restaurant ... whether for cash or credit.” Per the Ladles Franchise Agreement:

a. 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.

b. 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.

See, Ladles Franchise Agreement at pp. 17-18 (emphasis added).

The Order only cites cherry-picked, self-serving testimony from Franchisor and Franchisee Defendants to counter the language from the Franchise Agreement. The Order cites Sue Allen's testimony that the royalty 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." Order, p. 7. Notably, the language in the Franchise Agreement includes a long list of items excluded from the gross sales including discounts and taxes, however, tips are mentioned nowhere in the list. A jury could reasonably conclude that if the language of the agreement provides a list of items not included in gross sales but excludes tips from that list then tips are reasonably part of the gross sales that each Franchisee pays a percentage of to the Franchisor Defendants.

Moreover, Corey Paul provided inconsistent testimony to that cited in the Order because he also testified as follows:

Q: Okay. And so with the credit card tips, where do those go?

A: The credit card tips go into the – into the daily sales transaction.

Q: So that's, you know, whatever amount that comes in on credit card tips, that just gets added to the gross sales?

A: Uh-huh.

Q: And whose tips are they, though, the credit card tips?

A: Those would be the store's tips.

(Corey Paul deposition, page 36, line 20 – page 37, line 5). **(Exhibit 5).**

Corey Paul further testified as follows:

Q: So for 2017, Bates number 11, it's – for Fort Mill it's gross sales \$342,321.88?

A: Correct.

Q: And the tip is how much?

A: \$27,943.11.

Q: Is that the – that's – so those tips are counted into the gross, gross sales, correct?

A: Yes.

(Corey Paul deposition, page 45, Lines 2 – 9). **(Exhibit 6).**

Despite the Order conclusively stating that Cory Paul testified that the Franchisor Defendants do not collect royalties based upon credit card tips, it is obvious from his testimony that he has no idea what the royalty payment is based on but he does confirm that credit card tips are included in the gross sales:

Q: Okay. And with -- and do you have -- is there a royalty fee that you pay to Ladles Franchising, Inc.?

A: Yeah.

Q: And how does that work?

A: It's based off of a percentage, and every month we get a bill sent to us, and we send it off to the Ladles Franchising.

Q: Okay. And percentage of what?

A: The net sales or the gross sales, one of them. I'm not 100 percent sure. I'd have to look at the bill. It's based off of your total sales.

Q: Total sales, okay. So would that include the amount from the credit cards?

A: Just depends what number they're going off of. I don't believe it's off of the amount from the credit cards, but I'd have to double check that. I'd have to see what number was on the bill.

Q: I mean, do you think that it is the gross sales? Would the credit card tips be included in the net sales?

A: The credit card tips would not be included in the net sales. **The credit card tips are included in the gross sales.** Which one is on the percentage bill for the royalties, I am not sure. I'd have to look. (emphasis added).

Q: What would you have to look at?

A: The bill that I received, to know which number.

Q: And you haven't – have you given those to your attorney?

A: The royalty bills?

Q: Yes.

A: No.

Q: Would it be in the franchise agreement?

A: It should be. Yes.

(Corey Paul deposition, page 47, line 16 – page 49, line 3). **(Exhibit 7).**

Later in his deposition, Mr. Paul was asked to review a copy of the franchise agreement and the definition of gross sales from the agreement which he then read into the record. Mr. Paul then testified as follows:

Q: Okay. So in that list of things that are **not** included in the gross sales, credit card tips are **not** listed, correct? (emphasis added).

A: Correct.

(Corey Paul deposition, pages 89-91). **(Exhibit 8).**

The Franchise Agreement states that the royalty payments are a percentage of the gross sales. Mr. Paul testified that credit card tips are included in the restaurants' gross sales.

Accordingly, the Order misrepresents the evidence in the record when it states that there is no evidence of possession of credit card tips by these Defendants. In fact, there is documentary as well as testimonial evidence that would allow a jury to reasonably conclude that the Franchisor Defendants receive a portion of the credit card tips from each Ladles location. This finding of fact goes directly to the heart of Plaintiff's cause of action for conversion against the Franchisor Defendants.

Even assuming the Franchisor Defendants do not specifically receive a portion of the credit card tips (which Plaintiff disputes), money is fungible and there is no way to separate the monies taken in by the individual franchisees and paid to the franchisor. Moreover, as the deposition testimony of Corey Paul and Teri Owens reveals, the entire Ladles concept and viability of the restaurants apparently depends on the retention of the credit card tips.

The Franchisee Defendants that have been deposed so far indicate that the policy of withholding credit card tips from employees is necessary to prevent them from losing employees or having to change the whole restaurant concept. (Teri Owens Deposition, p. 35, Lns. 2-10 and Corey Paul Deposition, p. 32, Lns. 6-16). **(Exhibit 9)**. Also, as noted in the video on the Ladles website, part of the "Ladles concept" includes maintaining a small number of employees each of whom must perform all of the duties required to run a Ladles restaurant. In order for each Ladles restaurant to retain its employees and maintain the Ladles concept, all of them must and do withhold credit tips from their employees. The entire Ladles concept depends on each location maintaining this policy. This control of wages serving as a fundamental cornerstone of Ladles is evident in the Ladles franchising video, where Allen says: *"The design of the store, the reason we did it the way we did it, is because **the only two things that you can really control in money, is***

food costs and employee wages, so the way that the store is designed is to have less employees.”
(emphasis added).

2. There is evidence in the record that Defendants have control over the tipping policies of the individual franchisees.

The Order states that “the evidence shows that compensation of employees and tipping procedures are exclusively a matter for the individual franchisees, without control by these Defendants.” Order, p. 9. However, there is sufficient evidence in the record that would allow a jury to reasonably conclude that the Franchisor Defendants do have control of the tipping policies of the individual franchisees. First, the Franchise Agreement states that the individual franchisees are required 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 incomes taxes, social security taxes and sales taxes.” See Franchise Agreement at p. 23, subsection E. This language necessarily includes compliance with the South Carolina Payment of Wages Act. If the tipping policy is in violation of the Act, the Franchisor Defendants have the power to terminate the franchise and therefore, is not “exclusively a matter for the individual franchisees, without control by these Defendants” as the Order states.

Second, in their answer to Plaintiff’s Interrogatory No. 34 regarding meetings with franchisees that discussed the franchisee or franchisor’s policy relating to tips, the Franchisor Defendants answered:

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. (emphasis added).

(Franchisor Defendants Answer to Plaintiff's Interrogatory No. 34). **(Exhibit 10)**.

A jury could reasonably conclude from this answer that the Franchisor Defendants are describing meetings where the Franchisor gave a directive to the individual franchisees regarding their tipping policies¹. Admittedly, the last sentence of this answer appears to contradict the first portion of the answer. However, this ambiguity should be viewed in a light most favorable to the non-moving party and left to a jury to decide. The answer plainly states that Ms. Allen had discussions with the individual franchisees regarding their tipping policies and conveyed to them what they “may never” do

Third, as noted previously, Teri Owens and Corey Paul both testified that if the Franchisor Defendants required them to end their tipping policy they would end it. (Teri Owens deposition, page 48, line 23 – page 49, line 17) (Corey Paul Deposition, p. 74, lns 5-13).

Based on the language of the Franchise Agreement, the Defendants' answers to interrogatories, and the deposition testimony of Teri Owens and Corey Paul, there is sufficient evidence in the record that would allow a jury to reasonably conclude that the Franchisor Defendants have control over the tipping policies of the individual franchisees.

C. Summary Judgment is Premature Because Discovery is Still Ongoing.

The Order states that Plaintiff has advanced no argument that further discovery could possibly lead to additional evidence relevant to this motion. Order, p. 11. This is inconsistent with

¹ Notably, the Defendants' answer correctly states that tip monies belong to the employees and may never be permanently retained by the owner. However, this is in complete contradiction to the tipping policy created by Ms. Allen and implemented by the individual franchisees. This may reflect Ms. Allen's contention (which Plaintiff disputes) that the credit card tips are used to subsidize the employees' hourly wages.

the fact that this Court granted Plaintiff's motion to compel discovery against the Franchisor Defendants and the Franchisee Defendants at the January 6, 2020 hearing. Summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 114-15 410 S.E.2d 537, 545 (1991). One of the areas of discovery addressed was the issue of whether royalty payments made by the individual franchisees to the franchisor included a portion of the credit card tips. On January 16, 2020, the Franchisor Defendants produced 7 pages of what appear to be sales summaries for the individual franchisee locations. (Franchisor Defendants Supplemental RRFP) **(Exhibit 11)**. Nowhere in these 7 pages are royalty payments noted or is the issue of whether the Franchisor Defendants receive a portion of the credit card tips clarified in anyway whatsoever. Notably, the Franchisee Defendants still have not responded to this Court's order compelling them to respond. The language of the Franchise Agreement as well as the deposition testimony in the record is sufficient to allow a jury to reasonably conclude that the Franchisor Defendants receive a portion of the credit tips.

The Order also notes that Plaintiff did not serve discovery until May 24, 2019. The Order fails to note, however, that the Franchisor Defendants did not initially respond to Plaintiff's discovery until August 21, 2019. Plaintiff made repeated attempts with Defendants to submit a scheduling order, yet they refused. There is currently no discovery deadline in place for this matter and discovery is still ongoing.

This Motion is made in accordance with the South Carolina Rules of Civil Procedure and supported by the Complaint, deposition testimony, and any memorandum in support and attached exhibits, and those facts, arguments, and law raised at any hearing on this motion.

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Date: February 7, 2020
Mt. Pleasant, South Carolina

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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1

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 Ladlessoups' 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 Laddlessoups' 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 or 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 Ladlessoups' 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, Ladlesscups' 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 of 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: _____

1 Q. And when you first started was -- how
2 much -- and you had salaried employees, correct?

3 A. Yes.

4 Q. And how much did they make?

5 A. One made 500; one made 6- a week.

6 Q. Okay. And so how did you handle -- I
7 assume that tips, whether they were cash or credit
8 card, were coming in?

9 A. Yes.

10 Q. Okay. And how did you handle that?

11 A. The cash tips, they would split them.
12 I really didn't have anything to do with that. The
13 credit card tips were allotted to their hourly
14 wage. It afforded us the ability to pay them a
15 higher hourly -- hourly wage.

16 Q. Okay. So did they -- so that just went
17 into a pool of -- just explain that to me again.
18 So...

19 A. It gave us -- it was a subsidized --
20 the hourly rate that the employees made was
21 subsidized by the tips.

22 Q. Okay. So when they got their paycheck,
23 they didn't have an itemized amount for tips?

24 A. No, they did not.

25 Q. They didn't get a separate paycheck for

1 tips?

2 A. No, they did not.

3 Q. And I don't know, you may have given
4 this information to your attorney. Do you know --
5 well, let me back up.

6 You opened up the Ladles in West Ashley
7 in 2007?

8 A. '07.

9 Q. And you had it for how long?

10 A. Until 2017.

11 Q. Okay.

12 A. The end of the year.

13 Q. Do you know from, let's say 2015 to
14 2017, the amount of credit card tips that Ladles
15 West Ashley was bringing in each year?

16 A. I do not.

17 Q. Okay. Is that an amount that you could
18 find?

19 A. I'm sure.

20 Q. Okay. And you don't think with the
21 records that you've given your attorney that that
22 number is in there?

23 A. I don't know.

24 Q. Okay. Do you know what records you've
25 given your attorney?

1 Jersey.

2 Q. And so at some point did you open other
3 Ladles restaurants?

4 A. Yes.

5 Q. And would they have been under the
6 Ladlessoups, LLC?

7 A. No.

8 Q. And this might be where I get into a
9 question where I'm asking Ms. Allen just as an
10 individual as you, not as a representative of
11 Ladles, LLC -- Ladlessoups, LLC.

12 So at some point you opened up other
13 locations --

14 A. Yes.

15 Q. -- besides the Ladles West -- okay.
16 What was the first?

17 A. Freshfields.

18 Q. And that's the one on Johns Island --
19 is it Kiawah or Johns Island?

20 A. Kiawah. Same.

21 Q. And what year would that have been?

22 A. 2008.

23 Q. Okay. And business was going good and
24 you just saw that there was an opportunity to open
25 up --

1 A. No.

2 Q. Okay. Tell me. Sorry.

3 A. We were approached and given a really
4 nice opportunity by Kiawah.

5 Q. Okay. And who approached you?

6 A. Tim somebody. I don't know his name.

7 Q. And well, just tell me, he had been to
8 your restaurant before --

9 A. Yes.

10 Q. -- and liked it?

11 A. Yes.

12 Q. And then he asked y'all to open --

13 A. Yes.

14 Q. -- up a location?

15 Okay. And did you basically go through
16 the same process that you opened up the Ladles West
17 Ashley to open up that location?

18 A. A little more in depth.

19 Q. Okay. And how so?

20 A. It was a -- we had to have engineered
21 plans for the build-out because it was a shell.

22 Q. Okay. Same concept --

23 A. Yes.

24 Q. Okay. And same policies, as far as
25 with the tipping?

1 A. Yes.

2 Q. Okay. And after that, did you -- well,
3 let me ask you this: Did you open that under a
4 separate LLC?

5 A. Yes.

6 Q. And what was the name of that?

7 A. I honestly cannot remember what the
8 name of it was. It was -- I really don't know, and
9 I don't want to misstate.

10 Q. Sure. Is that something that you can
11 find --

12 A. Yes.

13 Q. -- and provide to your attorney?
14 And after that, did you open up any
15 other locations?

16 A. Yes.

17 Q. Where?

18 A. Summerville.

19 Q. And when did you open up that location?

20 A. I'm not 100 percent positive. It was
21 probably -- about a year later, 2009.

22 Q. Okay. And did you do that under a
23 separate --

24 A. Yes.

25 Q. -- a different LLC? Do you remember

1 the name of that LLC?

2 A. I'm not 100 percent positive about that
3 one either.

4 Q. Sure. And will --

5 A. But I can get that for you as well.

6 Q. Thank you. And did you open up -- and
7 did that have same policy with the credit --

8 A. Yes.

9 (Court reporter clarification.)

10 BY MR. ASHLEY:

11 Q. So that had the same policies for
12 credit card tips?

13 A. Yes.

14 Q. Did you have any other locations after
15 that?

16 A. No.

17 Q. And at some point, did you sell the
18 location in Kiawah to somebody?

19 A. Yes.

20 Q. Okay. And when did you sell that?

21 A. I'm not positive of the date on that
22 either. To the best of my recollection, around
23 2012.

24 Q. Okay. And who did you sell it to?

25 A. Dan Sutton.

1 MR. KOON: Object to the form.

2 THE WITNESS: What was the end of your
3 question? Sorry.

4 BY MR ASHLEY:

5 Q. If Ladles Franchising, Inc. put it in
6 the franchise agreement that you could no longer
7 keep the credit card tips, you would stop keeping
8 the credit card tips, correct?

9 MR. FERRARA: Object to the form.

10 MR. KOON: Object to the form of the
11 question.

12 THE WITNESS: If I were to sign the
13 document, then I would.

14 BY MR ASHLEY:

15 Q. And we've got -- and Laney Sharpe is
16 currently working at your West Ashley location; is
17 that correct?

18 A. That's correct.

19 Q. What type of work does she do?

20 A. A little bit of everything. She
21 preps. She works up front. She cleans. She does
22 dishes.

23 Q. Okay. Does she receive credit card
24 tips?

25 A. No.

MR. KOON: Object to form of the
question.

THE WITNESS: I'm sure they would give
me some time to correct it.

BY MR ASHLEY:

Q. Oh, I understand. But at some point
you would have to correct it?

A. Uh-huh.

MR. KOON: Object to the form of the
question.

BY MR ASHLEY:

Q. Okay. So if, for example, they told
you as a policy you can no longer keep credit card
tips or we will terminate, you know, the
franchise, that's something that they could do,
correct?

MR. KOON: Object to the form of the
question.

MR. FERRARA: Object to the form.

THE WITNESS: Yeah, I would guess that
it would be something we would change.

BY MR ASHLEY:

Q. Okay. Right. So if this franchise
agreement said you can no longer keep the credit
card tips, you would change your policy?

1 A. Uh-huh.

2 MR. FERRARA: Object to the form.

3 MR. KOON: Object to the form of the
4 question.

5 BY MR ASHLEY:

6 Q. So Ladles Franchising, Inc., they know
7 about your credit card tips policy?

8 A. Uh-huh.

9 Q. They have the ability to stop it?

10 MR. KOON: Object to the form of the
11 question.

12 THE WITNESS: I don't -- I guess. You
13 know, I...

14 BY MR ASHLEY:

15 Q. If they told you that you could no
16 longer do it, then you would stop doing it?

17 A. I would have to stop doing it. Yeah.

18 MR. KOON: Object to the form of the
19 question.

20 BY MR ASHLEY:

21 Q. With regards to Craig Chappell, can
22 you tell me about his -- how it came about that he
23 came to work for you?

24 A. Good question. I was thinking about
25 that the other day, about how did he come to us.

1 likes to give that bonus to the kids that are
2 working for us as a little perk for them working
3 hard and making a lot of everyone's life easier.

4 Q. When you say she, who are you talking
5 about?

6 A. Our chef.

7 Q. What is her name?

8 A. Randy.

9 Q. Randy what?

10 A. Watkins.

11 Q. Randy Watkins. All right. And how
12 long has Randy been there?

13 A. Two years.

14 Q. All right. And with the hourly
15 employees, they -- and it's -- they split -- for
16 the cash tips, they split them amongst themselves?

17 A. Uh-huh.

18 Q. However they choose to do it?

19 A. Uh-huh.

20 Q. Okay. And so with the credit card
21 tips, where do those go?

22 A. The credit card tips go into the --
23 into the daily sales transaction.

24 Q. So that's, you know, whatever amount
25 that comes in on credit card tips, that just gets

1 added to the gross sales?

2 A. Uh-huh.

3 Q. And whose tips are they, though, the
4 credit card tips?

5 A. Those would be the store's tips.

6 Q. And do you tell the employees this?

7 A. Yes. That's in the document that they
8 sign, pretty much, that they're -- that they don't
9 get the credit card tips. That's discussed with
10 every single employee manual that gets signed.

11 Q. Okay. But are they -- so is that put
12 on their paycheck anywhere, the amount of tips
13 that came in that they're not participating in?

14 A. No, because it's not theirs. Once you
15 opt out of becoming a non-tipped employee, then
16 you're no longer -- I don't track what you would
17 have made had you been it, because your hourly
18 rate is then different.

19 Q. Okay. And just when you say you opt
20 out of being a tipped employee, what do you mean
21 by that?

22 A. Well, we explain to them that we're
23 not -- that we're hiring a non-tipped employee.
24 So by agreeing to that, therefore opting out of
25 being a tipped employee.

1 A. Not listed on here, no.

2 Q. So for 2017, Bates number 11, it's --
3 for Fort Mill it's gross sales \$342,321.88?

4 A. Correct.

5 Q. And the tip is how much?

6 A. \$27,943.11.

7 Q. Is that the -- that's -- so those tips
8 are counted into the gross, gross sales, correct?

9 A. Yes.

10 Q. What the -- what are customers told
11 with regard to if they leave a credit card tip,
12 who that goes to?

13 A. Well, customers are typically told
14 that when they leave a tip that it goes towards
15 everybody making higher wages, as opposed to hour
16 -- as opposed to servers' wages plus tips. That
17 way they can all make a little more money.

18 Q. Is that a sign? How are they told
19 that?

20 A. The employees typically tell them when
21 asked.

22 Q. When asked, okay. Have they ever been
23 told not to tell customers where the tips go,
24 credit card tips go?

25 A. Absolutely not. That's sketchy.

1 A. By deductions, you mean the ones the
2 state and federal government take out?

3 Q. Right. So we have state and federal
4 government. What about deductions from you?

5 A. No.

6 Q. So that's not included on their pay
7 stub, any deductions that you make?

8 A. I don't know of any deductions.

9 Q. Well, I mean, would credit card tips
10 be a deduction?

11 A. I don't think an accountant would see
12 that as a deduction.

13 Q. Okay. So no mention of tips on their
14 pay stub?

15 A. I don't believe so.

16 Q. Okay. And with -- and do you have --
17 is there a royalty fee that you pay to Ladles
18 Franchising, Inc.?

19 A. Yeah.

20 Q. And how does that work?

21 A. It's based off of a percentage, and
22 every month we get a bill sent to us, and we send
23 it off to the Ladles Franchising.

24 Q. Okay. And percentage of what?

25 A. The net sales or the gross sales, one

1 of them. I'm not 100 percent sure. I'd have to
2 look at the bill. It's based off of your total
3 sales.

4 Q. Total sales, okay. So would that
5 include the amount from the credit cards?

6 A. Just depends what number they're going
7 off of. I don't believe it's off of the amount
8 from the credit cards, but I'd have to double
9 check that. I'd have to see what number was on
10 the bill.

11 Q. I mean, do you think that it is the
12 gross sales? Would the credit card tips be
13 included in the net sales?

14 A. The credit card tips would not be
15 included in the net sales. The credit card tips
16 are included in the gross sales. Which one is on
17 the percentage bill for the royalties, I am not
18 sure. I'd have to look.

19 Q. What would you have to look at?

20 A. The bill that I received, to know
21 which number.

22 Q. And you haven't -- have you given
23 those to your attorney?

24 A. The royalty bills?

25 Q. Yes.

1 A. No.

2 Q. Would it be in the franchise
3 agreement?

4 A. It should be. Yes.

5 Q. Have you produced that? Do you have
6 it?

7 A. I don't have that. The franchise
8 agreement I signed with Suzie, and she retained
9 our copy, and she's got our copy.

10 Q. Let's back up then. Let's look at
11 what the -- Bates number 10.

12 A. Where is that?

13 Q. For 2018.

14 A. 2018 for West Ashley or Fort Mill?

15 Q. West Ashley. And I believe that's the
16 top of the number, and the gross sales were
17 \$434,426?

18 A. Uh-huh. Yes.

19 Q. So that's gross sales?

20 A. Correct.

21 Q. And then what's deducted from those
22 gross sales is refunds and discounts. Does that
23 -- and then that's -- provides the net sales. Is
24 that what you see?

25 A. Yes, but the word that says gross

1 Q. Okay. If in the franchise agreement
2 there, can you -- because I still want to know
3 what they -- what it says in the agreement as far
4 as what the percentage of their royalty payment is
5 based on, and it should be in that agreement. Do
6 you want to -- I just want to see what they say in
7 the agreement.

8 A. Well, in my agreement we calculated it
9 to three percent. In this sample copy I'll have
10 to find it.

11 MR. FERRARA: For clarification, David,
12 were you referring to West Ashley or Fort Mill or
13 just in general?

14 MR ASHLEY: In general. I just want to
15 know how they -- whether it's percentage of the
16 gross sales, net sales, total. I just want to
17 know what their percentage is being paid on. I
18 understand that he's got, you know, three percent
19 of one and not the other. I just want to know
20 what the percentage is coming from, and that
21 should be in the agreement, I think.

22 MR. FERRARA: You can ask him again,
23 David, but I do think he testified to that
24 already.

25 MR ASHLEY: Well, I just want to see if

1 it's okay.

2 THE WITNESS: In the book it says: Of
3 the gross sales which are defined as subsection C
4 of this section. Definition of gross sales as
5 used in this agreement. The term gross sales
6 shall mean gross sales of all food, beverage,
7 other menu items, merchandise and goods and other
8 services sold or performed by or for you or the
9 restaurant and upon or from the premises or
10 through or by means of the business conducted at
11 the restaurant or the premises whether for cash or
12 credit. And then it lists things that don't.

13 BY MR ASHLEY:

14 Q. Will you continue and -- just to
15 finish off that paragraph?

16 A. Sales and service taxes collected from
17 customers and paid to the appropriate taxing
18 authority, all management or employee meals and
19 sale of cigar, cigarettes, and newspaper as well
20 as income from pay telephones shall not be
21 included in gross sales. The discounted portion
22 of menu prices, whether by way of coupons,
23 promotions, or otherwise shall not be included in
24 gross sales.

25 Q. Okay. So in that list of things that

1 are not included in the gross sales, credit card
2 tips are not listed, correct?

3 A. Correct.

4 MR ASHLEY: All right. Let me check
5 one thing, but I think I may be done.

6 BY MR ASHLEY:

7 Q. And so when you do the training
8 program, how long does that last for?

9 A. Which training program?

10 Q. The training program for the Ladles
11 Franchising.

12 A. Usually around four weeks.

13 Q. Okay. Where does that take place?

14 A. Some of it may take place in another
15 store. If -- for example, training of the chef
16 ahead of time. So that way by the time the store
17 opens you have somebody who is already trained.
18 Sometimes it all takes place at the new location.

19 Q. Okay. And you know, throughout -- so
20 Ladles Franchising Inc., they provide support to
21 the individual, the franchise?

22 A. Uh-huh.

23 Q. And whether that's -- you know, and
24 that's not just to open the store, but even once
25 the store is up and running they -- you know, if

1 question.

2 A. If Ladles Franchising decided to
3 change or do something?

4 Q. If they decide that they no longer
5 wanted you to have the policy of you keeping the
6 credit card tips, could they change that?

7 A. Yeah. I'd have to change my whole
8 thing, but...

9 Q. Okay.

10 A. I'd lose people.

11 Q. And are you aware of any other Ladles
12 locations that have the policy of keeping credit
13 card tips?

14 A. I don't know. I honestly do not know
15 what everyone else does.

16 Q. Okay. But do you know, are you aware
17 of what any of the other stores do?

18 A. Huh-uh.

19 Q. You never had a discussion with them
20 about it?

21 A. No.

22 Q. Even since this lawsuit?

23 A. No. We're always working. So we
24 don't get to talk to each other.

25 Q. But even since this lawsuit has --

1 Q. Okay. And what do you tell them?

2 A. That everybody is a non-tipped
3 employee, but we have cash tips on the counter,
4 and as a bonus to them they're allowed to take
5 those cash tips.

6 Q. Okay. But they don't take the credit
7 card tips?

8 A. Correct. And that is discussed that
9 they don't get the credit card tips, but they get
10 the cash tips as an added bonus to their hourly
11 wage, because we don't have designated servers
12 here, because if we did that, then those people up
13 front would no longer be -- they wouldn't --
14 they're not supposed to work in the back anymore,
15 and that defeats our whole concept and our whole
16 teamwork.

17 Q. Right. Well, do you have a tip
18 pooling policy?

19 A. No.

20 Q. Where you just put all the tips into
21 and it can just get divvied up between the people
22 on the shift?

23 A. No, there's no policy for that.

24 Q. With the cash tips then, how do you
25 decide who gets that?

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.



David Ashley <david@leclercqlaw.com>

Discovery Response Per Motion to Compel (RFP #11)

M. Evan Lacke <elacke@lackelawfirm.com>

Thu, Jan 16, 2020 at 2:42 PM

To: Ben Le Clercq <Ben@leclercqlaw.com>, David Ashley <David@leclercqlaw.com>

Cc: Kerry Koon <kerrykoon@hotmail.com>, Debbie Mathews <debbie@leclercqlaw.com>

Gentlemen:

As ordered, please find attached below a pdf file containing Ladles Franchising, Inc.'s record of each franchisee's reported monthly revenues from 2015-2019. Information from non-party out-of-state franchisees has been redacted.

Regards,

Evan

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Exhibit 11

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2/7/2020, 8:59 AM

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2 attachments



2015-2019 RoyaltyRevs-LFI-1.15.20.pdf

174K



M. Evan Lacke.vcf

1K

2015 (p.1)

	January	February	March	April	May	June
West Ashley	\$ 36,462.00	\$ 34,609.00	\$ 33,034.00	\$ 26,904.00	\$ 24,086.00	\$ 22,248.00
Freshfields	\$ 22,001.00	\$ 21,393.00	\$ 27,147.00	\$ 27,439.00	\$ 21,650.00	\$ 25,505.00
Mount Pleasant	\$ 45,473.00	\$ 46,457.00	\$ 35,707.00	\$ 31,009.00	\$ 24,247.00	\$ 20,937.00
Coosaw	\$ 35,869.00	\$ 32,979.00	\$ 29,647.00	\$ 24,754.00	\$ 21,335.00	\$ 18,879.00
James Island	\$ 36,716.00	\$ 35,893.00	\$ 30,098.00	\$ 25,161.00	\$ 21,649.00	\$ 20,252.00
Charleston	\$ 20,383.00	\$ 22,759.00	\$ 17,145.00	\$ 15,087.00	\$ 11,162.00	\$ 9,326.00
Cane Bay	\$ 24,522.00	\$ 24,397.00	\$ 22,450.00	\$ 19,204.00	\$ 19,165.00	\$ 14,959.00
Knightsville					\$ 8,916.00	\$ 24,800.00
Fort Mill						
Moncks Corner	\$ 274,567.00	\$ 260,414.00	\$ 232,906.00	\$ 197,774.00	\$ 177,474.00	\$ 183,454.00

2015 (p. 2)

July	August	September	October	November	December	YTD
\$ 22,370.00	\$ 26,538.00	\$ 29,235.00	\$ 34,764.00	\$ 35,150.28	\$ 38,119.40	\$ 363,519.68
\$ 33,495.00	\$ 27,733.00	\$ 22,422.00	\$ 24,300.00	\$ 27,476.13	\$ 27,855.06	\$ 308,416.19
\$ 22,668.00	\$ 24,241.00	\$ 30,556.00	\$ 39,230.00	\$ 41,399.50	\$ 46,780.04	\$ 408,704.54
\$ 18,785.00	\$ 23,603.00	\$ 23,624.00	\$ 28,659.00	\$ 28,982.25	\$ 27,952.23	\$ 315,068.48
\$ 20,744.00	\$ 22,305.00	\$ 25,250.00	\$ 30,686.00	\$ 31,292.13	\$ 32,561.25	\$ 332,607.38
\$ 7,281.00	\$ 8,058.00	\$ 15,628.00	\$ 20,083.00	\$ 23,882.13	\$ 19,117.50	\$ 189,911.63
\$ 11,527.00	\$ 17,100.00	\$ 20,235.00	\$ 19,654.00	\$ 20,795.15	\$ 20,329.47	\$ 234,337.62
\$ 23,783.00	\$ 25,990.00	\$ 24,835.00	\$ 25,897.00	\$ 25,342.69	\$ 36,336.36	\$ 195,900.05
				\$ -	\$ 37,872.23	\$ 37,872.23
						\$ -
\$ 191,805.00	\$ 207,538.00	\$ 223,487.00	\$ 262,890.00	\$ 268,993.41	\$ 328,596.56	\$ 2,809,898.97

2016 (p. 1)

	January	February	March	April	May	June	July	August	September	October
WA	\$ 43,923.28	\$ 41,497.64	\$ 32,327.83	\$ 31,809.49	\$ 31,547.94	\$ 29,743.98	\$ 27,765.44	\$ 31,389.08	\$ 31,481.17	\$ 32,938.75
FF	\$ 22,390.17	\$ 21,917.00	\$ 30,136.08	\$ 26,743.63	\$ 24,708.19	\$ 28,642.34	\$ 35,979.15	\$ 31,302.00	\$ 22,578.14	\$ 19,330.93
MP	\$ 52,062.80	\$ 45,815.97	\$ 35,223.89	\$ 30,998.57	\$ 30,163.16	\$ 25,699.82	\$ 24,621.56	\$ 30,018.91	\$ 31,551.04	\$ 33,121.06
CC	\$ 35,661.91	\$ 30,517.79	\$ 27,651.58	\$ 27,144.58	\$ 22,919.56	\$ 22,125.80	\$ 19,958.11	\$ 22,793.74	\$ 24,861.96	\$ 21,841.75
JI	\$ 39,407.43	\$ 34,622.45	\$ 28,372.63	\$ 26,328.94	\$ 24,461.48	\$ 22,222.03	\$ 22,135.68	\$ 26,452.88	\$ 28,269.28	\$ 27,616.32
DT	\$ 23,060.94	\$ 20,558.15	\$ 18,335.62	\$ 16,455.81	\$ 10,912.94	\$ -	\$ -	\$ -	\$ 9,503.84	\$ 18,292.95
CB	\$ 21,295.73	\$ 22,558.72	\$ 20,997.48	\$ 21,452.13	\$ 18,350.75	\$ 16,040.14	\$ 13,709.09	\$ 20,167.34	\$ 17,697.76	\$ 17,129.14
KV	\$ 32,386.28	\$ 29,096.87	\$ 26,105.70	\$ 23,228.14	\$ 23,237.28	\$ 21,047.69	\$ 17,638.66	\$ 20,130.38	\$ 20,483.75	\$ 19,328.93
FM	\$ 38,258.68	\$ 37,625.08	\$ 35,078.11	\$ 32,166.15	\$ 30,371.18	\$ 23,801.13	\$ 27,159.50	\$ 29,110.95	\$ 30,053.71	\$ 34,638.68
MC							\$ 14,693.88	\$ 40,347.97	\$ 29,300.67	\$ 26,480.97
	\$ 352,530.93	\$ 322,070.72	\$ 292,785.06	\$ 293,967.32	\$ 277,704.57	\$ 244,985.05	\$ 260,482.16	\$ 317,781.86	\$ 309,522.48	\$ 326,967.75

2016 (p.)

November	December	VTD
\$ 38,946.10	\$ 47,321.71	\$ 420,692.41
\$ 28,556.89	\$ 31,407.83	\$ 323,692.35
\$ 43,961.99	\$ 53,101.29	\$ 436,340.06
\$ 27,851.65	\$ 31,512.94	\$ 314,841.37
\$ 36,346.17	\$ 40,689.60	\$ 356,924.89
\$ 26,160.51	\$ 26,996.22	\$ 170,276.98
\$ 21,044.28	\$ 22,916.71	\$ 233,359.27
\$ 27,090.79	\$ 29,304.38	\$ 289,078.85
\$ 36,655.83	\$ 41,496.55	\$ 396,415.55
\$ 31,704.61	\$ 30,517.52	\$ 173,045.62
<u>\$ 398,662.48</u>	<u>\$ 449,203.79</u>	<u>\$ 3,846,664.17</u>

2017 (4)

	January	February	March	April	May	June
WA	\$ 40,168.18	\$31,596.91	\$ 41,832.01	\$ 31,757.29	\$ 32,225.07	\$ 28,976.21
FF	\$ 24,080.75	\$22,769.76	\$ 31,632.17	\$ 27,505.38	\$ 24,620.25	\$ 33,716.22
MP	\$ 41,904.38	\$35,350.88	\$ 40,667.27	\$ 26,190.16	\$ 28,335.56	\$ 27,069.39
CC	\$ 29,332.65	\$25,580.33	\$ 31,267.03	\$ 20,941.74	\$ 22,045.57	\$ 20,246.65
JI	\$ 34,128.61	\$28,639.71	\$ 33,047.95	\$ 25,924.45	\$ 26,506.62	\$ 26,565.99
DT	\$ 29,138.13	\$24,390.21	\$ 27,591.18	\$ 23,681.63	\$ 21,603.56	\$ 16,952.33
KV	\$ 26,588.10	\$24,761.85	\$ 30,794.98	\$ 23,342.70	\$ 23,476.76	\$ 21,756.99
FM	\$ 35,698.15	\$31,485.05	\$ 36,130.77	\$ 26,009.12	\$ 24,457.27	\$ 19,151.59
MC	\$ 27,822.94	\$24,934.15	\$ 29,981.60	\$ 23,288.51	\$ 21,620.82	\$ 20,259.63
	\$ 367,163.42	\$ 322,576.09	\$ 385,236.31	\$ 298,926.42	\$ 294,272.51	\$ 280,616.05
CB	\$ 20,156.19	\$18,483.50	\$ 21,185.63	\$ 16,118.67	\$ 16,566.72	\$ 16,919.80

2017 (p2)

July	August	September	October	November	December	YTD
\$ 27,407.45	\$ 33,154.62	\$ 28,960.33	\$ 39,050.66	\$ 40,027.93	\$ 43,303.77	\$ 418,460.43
\$ 40,010.74	\$ 34,764.75	\$ 17,862.90	\$ 27,543.61	\$ 28,511.39	\$ 32,591.41	\$ 345,609.33
\$ 23,857.27	\$ 30,186.70	\$ 26,334.25	\$ 40,044.42	\$ 47,211.79	\$ 54,386.79	\$ 421,538.86
\$ 18,436.33	\$ 23,775.07	\$ 20,658.55	\$ 28,568.11	\$ 30,386.78	\$ 32,819.17	\$ 304,057.98
\$ 22,958.64	\$ 29,046.23	\$ 26,747.37	\$ 35,258.39	\$ 39,392.70	\$ 42,749.03	\$ 370,965.69
\$ 15,331.59	\$ 21,791.40	\$ 24,301.34	\$ 35,524.31	\$ 38,916.48	\$ 36,023.26	\$ 315,245.42
\$ 21,927.81	\$ 28,447.84	\$ 25,320.39	\$ 33,073.85	\$ 31,357.99	\$ 36,008.62	\$ 326,857.88
\$ 18,457.70	\$ 23,763.50	\$ 23,140.56	\$ 28,973.59	\$ 32,101.07	\$ 33,251.58	\$ 332,619.95
\$ 19,245.55	\$ 25,379.48	\$ 18,933.50	\$ 24,819.66	\$ 23,907.98	\$ 25,593.20	\$ 285,787.02
\$ 272,694.92	\$ 322,573.76	\$ 277,639.23	\$ 367,713.26	\$ 384,721.20	\$ 412,506.14	\$ 3,986,639.31
\$ 11,459.96	\$ 9,063.39	\$ 11,497.15	\$ 3,135.13	-	n/a	\$ 144,586.14
						\$ 4,131,225.45

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2018 & JC

	West Ash	Freshfield	Mt Pleas	Coosaw	James Is	Downtown	Kn-Villo	Fort Mill	Monck Co	TOTALS
Jan-18	\$ 40,571.26	\$ 20,570.37	\$ 47,621.85	\$ 29,311.20	\$ 38,312.72	\$ 40,467.04	\$ 30,968.93	\$ 30,825.97	\$ 23,550.97	\$ 367,677.05
Jan-19	\$ 42,073.62	\$ 25,040.35	\$ 42,863.37	\$ 34,108.05	\$ 43,475.11	\$ 43,164.03	\$ 40,593.17	\$ 28,796.78	\$ 27,157.64	\$ 424,134.03
	\$ 1,502.36	\$ 4,469.98	\$ (4,758.48)	\$ 4,786.86	\$ 5,162.39	\$ 2,696.99	\$ 9,624.24	\$ (2,029.19)	\$ 3,606.67	\$ 56,456.98
Feb-18	\$ 32,886.94	\$ 23,016.72	\$ 35,272.41	\$ 25,976.15	\$ 32,401.72	\$ 33,851.75	\$ 29,101.18	\$ 25,056.87	\$ 21,521.95	\$ 319,796.15
Feb-19	\$ 40,740.21	\$ 26,350.76	\$ 36,888.91	\$ 30,357.05	\$ 36,903.93	\$ 37,501.47	\$ 38,848.98	\$ 25,550.12	\$ 25,970.89	\$ 377,668.51
	\$ 7,853.27	\$ 3,334.04	\$ 1,616.50	\$ 4,380.90	\$ 4,502.21	\$ 3,649.72	\$ 9,747.80	\$ 493.25	\$ 4,448.94	\$ 57,872.36
Mar-18	\$ 39,622.46	\$ 36,457.50	\$ 39,855.82	\$ 28,506.92	\$ 36,766.54	\$ 36,810.36	\$ 33,726.17	\$ 30,140.22	\$ 24,170.40	\$ 373,772.31
Mar-19	\$ 40,916.01	\$ 37,843.38	\$ 36,908.64	\$ 33,439.86	\$ 39,507.92	\$ 36,419.20	\$ 38,240.75	\$ 26,398.71	\$ 26,574.97	\$ 404,067.60
	\$ 1,293.55	\$ 1,385.88	\$ (2,947.18)	\$ 4,932.94	\$ 2,741.38	\$ (391.16)	\$ 4,514.58	\$ (3,741.51)	\$ 2,404.57	\$ 30,295.29
Apr-18	\$ 32,924.84	\$ 29,415.77	\$ 29,480.73	\$ 23,444.54	\$ 29,404.60	\$ 33,693.92	\$ 26,765.21	\$ 23,039.01	\$ 18,778.65	\$ 307,818.12
Apr-19	\$ 36,242.46	\$ 33,360.51	\$ 31,259.25	\$ 28,093.04	\$ 34,042.91	\$ 33,240.05	\$ 34,167.32	\$ 24,010.34	\$ 25,680.67	\$ 356,714.74
	\$ 3,317.62	\$ 3,944.74	\$ 1,778.52	\$ 4,648.50	\$ 4,638.31	\$ (453.87)	\$ 7,402.11	\$ 971.33	\$ 6,902.02	\$ 48,896.62
May-18	\$ 31,848.22	\$ 26,438.28	\$ 28,858.79	\$ 22,787.36	\$ 31,267.36	\$ 27,081.85	\$ 25,281.38	\$ 20,469.12	\$ 19,013.54	\$ 300,032.46
May-19	\$ 35,012.94	\$ 25,847.91	\$ 28,148.67	\$ 26,620.44	\$ 29,754.57	\$ 25,873.48	\$ 31,645.07	\$ 21,120.75	\$ 22,203.21	\$ 322,857.69
	\$ 3,164.72	\$ (590.37)	\$ (710.12)	\$ 3,833.08	\$ (1,512.79)	\$ (1,208.37)	\$ 6,363.69	\$ 651.63	\$ 3,189.67	\$ 22,825.23
Jun-18	\$ 28,346.39	\$ 33,692.99	\$ 25,618.02	\$ 18,999.73	\$ 24,087.68	\$ 22,125.91	\$ 24,133.62	\$ 16,939.83	\$ 16,172.30	\$ 283,291.54
Jun-19	\$ 35,555.21	\$ 33,147.45	\$ 26,343.36	\$ 22,989.37	\$ 26,778.74	\$ 24,064.38	\$ 29,880.04	\$ 19,885.56	\$ 19,141.86	\$ 311,315.09
	\$ 8,208.82	\$ (545.54)	\$ 725.34	\$ 3,989.64	\$ 2,691.06	\$ 1,938.47	\$ 5,746.42	\$ 2,945.73	\$ 2,969.56	\$ 28,023.55
Jul-18	\$ 28,107.92	\$ 39,108.51	\$ 23,633.82	\$ 21,315.81	\$ 26,734.53	\$ 19,264.93	\$ 25,621.56	\$ 19,982.14	\$ 18,280.17	\$ 294,131.03
Jul-19	\$ 35,131.93	\$ 36,369.22	\$ 24,231.47	\$ 24,218.71	\$ 27,175.17	\$ 19,351.63	\$ 29,577.04	\$ 20,950.62	\$ 18,350.03	\$ 312,224.33
	\$ 7,024.01	\$ (2,739.29)	\$ 597.65	\$ 2,902.80	\$ 440.64	\$ 86.70	\$ 3,955.48	\$ 968.48	\$ 69.86	\$ 18,093.30
Aug-18	\$ 31,661.57	\$ 34,125.51	\$ 29,740.26	\$ 24,829.70	\$ 30,180.30	\$ 28,581.48	\$ 30,545.86	\$ 22,683.21	\$ 20,100.52	\$ 333,764.89
Aug-19	\$ 39,582.49	\$ 33,570.66	\$ 29,656.00	\$ 26,476.21	\$ 29,380.11	\$ 29,700.14	\$ 34,461.52	\$ 24,483.05	\$ 20,165.50	\$ 356,695.54
	\$ 7,920.92	\$ (554.85)	\$ (84.26)	\$ 1,646.51	\$ (800.19)	\$ 1,118.66	\$ 3,915.66	\$ 1,799.84	\$ 64.98	\$ 22,930.65
Sep-18	\$ 29,222.87	\$ 17,932.12	\$ 20,970.39	\$ 18,959.98	\$ 24,291.43	\$ 23,205.26	\$ 27,285.00	\$ 19,515.95	\$ 15,521.08	\$ 272,666.48
Sep-19	\$ 34,247.52	\$ 14,707.69	\$ 24,538.50	\$ 22,051.15	\$ 27,890.71	\$ 25,757.29	\$ 30,724.28	\$ 23,104.32	\$ 18,743.74	\$ 291,781.66
	\$ 5,024.65	\$ (3,224.43)	\$ 3,568.11	\$ 3,091.17	\$ 3,589.28	\$ 2,551.03	\$ 3,439.28	\$ 3,988.37	\$ 3,222.66	\$ 19,115.18
Oct-18	\$ 38,792.02	\$ 29,472.48	\$ 35,296.13	\$ 31,338.07	\$ 34,984.82	\$ 42,691.58	\$ 35,720.38	\$ 27,047.95	\$ 22,003.46	\$ 399,366.41
Oct-19	\$ 47,521.30	\$ 30,896.57	\$ 39,233.70	\$ 30,680.53	\$ 41,142.10	\$ 46,608.02	\$ 43,136.90	\$ 28,835.60	\$ 25,118.23	\$ 429,615.06
	\$ 8,729.28	\$ 1,424.09	\$ 2,937.57	\$ (657.54)	\$ 6,157.28	\$ 3,916.44	\$ 7,416.52	\$ 1,787.65	\$ 3,114.77	\$ 30,248.65
Nov-18	\$ 45,087.57	\$ 34,449.21	\$ 47,568.27	\$ 33,061.64	\$ 42,302.77	\$ 45,091.40	\$ 40,445.49	\$ 30,895.61	\$ 25,850.14	\$ 441,804.02
Nov-19	\$ 51,545.95	\$ 36,518.59	\$ 47,821.34	\$ 33,941.18	\$ 44,784.45	\$ 52,998.54	\$ 47,727.07	\$ 34,310.92	\$ 25,012.30	\$ 466,370.26
	\$ 6,458.38	\$ 2,069.38	\$ 253.07	\$ 879.54	\$ 2,481.68	\$ 7,907.14	\$ 7,281.58	\$ 9,415.31	\$ (837.84)	\$ 24,566.24
Dec-18	\$ 45,732.57	\$ 32,263.76	\$ 45,425.15	\$ 32,609.42	\$ 40,142.99	\$ 36,035.25	\$ 40,533.56	\$ 25,813.22	\$ 22,873.13	\$ 411,462.69
Dec-19										
	\$ (45,732.57)	\$ (32,263.76)	\$ (45,425.15)	\$ (32,609.42)	\$ (40,142.99)	\$ (36,035.25)	\$ (40,533.56)	\$ (25,813.22)	\$ (22,873.13)	\$
YTD 18	\$ 424,804.63	\$ 356,943.22	\$ 410,341.64	\$ 311,140.52	\$ 390,877.46	\$ 388,901.73	\$ 370,128.34	\$ 292,409.10	\$ 247,836.31	
YTD 19	\$ 439,569.64	\$ 333,653.09	\$ 367,893.21	\$ 312,975.60	\$ 380,835.72	\$ 374,678.23	\$ 399,002.14	\$ 277,446.77	\$ 254,119.04	
	\$ 14,765.01	\$ (23,290.13)	\$ (42,448.43)	\$ 1,835.08	\$ (10,041.74)	\$ (14,223.50)	\$ 28,873.80	\$ (14,962.33)	\$ 6,282.73	
	3.36%	-6.98%	-11.54%	0.59%	-2.64%	-3.80%	7.24%	-5.39%	2.47%	

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-

1

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 Ladlessoups' 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 Laddlessoups' 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 or 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 Ladlessoups' 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, Ladlesscups' 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 of 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: _____

Ladles co-founder, Sue Allen, YouTube (2012),
<https://www.youtube.com/watch?v=UoO8ua34ZnM> video at 5:18).

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

3 CRAIG CHAPPELL, on)
 4 behalf of himself and)
 5 others similarly)
 6 situated,)

6 Plaintiff(s))

7 vs.)

DEPOSITION OF
 CRAIG HAROLD CHAPPELL

8 LADLES SOUPS - JAMES)
 9 ISLAND, LLC; LADLESSOUPS,)
 10 LLC; LADLES SOUPS AT CANE)
 11 BAY, LLC; LADLES SOUPS AT)
 12 CITADEL MALL, LLP, LADLES)
 13 SOUPS CALHOUN, LLC;)
 14 LADLES SOUPS CANE BAY,)
 15 LLC; LADLES SOUPS COOSAW,)
 16 LLC; LADLES SOUPS)
 17 DOWNTOWN CHARLESTON, LLC;)
 18 LADLESSOUPS FRESH FIELDS,)
 19 LLC; LADLES SOUPS @)
 20 FRESHFIELDS VILLAGE, LLC;)
 21 LADLESSOUPS MAINSTREET,)
 22 LLC; LADLES SOUPS MONCKS)
 23 CORNER, LLC; LADLESSOUPS)
 24 MOUNT PLEASANT, LLC;)
 25 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.)

1 2015 to April of 2015, are you?

2 MR. RIDDELL: Objection.

3 BY MR. FERRARA:

4 Q You can still answer.

5 A I don't understand the question. I'm sorry.

6 Lost wages?

7 Q Are you claiming --

8 A She still claimed all the charge tips. She
9 kept all of them, if that's what you're referring to.

10 Q Let me ask you this, Craig, just for the
11 period of February 2015 to April 2015, what are you
12 claiming, if anything at all, that Ladles - James Island
13 did wrong to you during that time?

14 A They withheld charge tips.

15 Q Tell me what you mean by that.

16 A I don't know how I can explain that better.
17 They didn't give anybody charge tips. They kept them
18 and put them in their pocket.

19 Q How do you know that?

20 A How do I know that? Because we didn't receive
21 them. And they have a charge tips screen on their
22 computer. And we're to turn it to them every time they
23 make a transaction. 90 percent of the people, I would
24 say, pay with a debt or credit card. That's all.

25 Q And tell me in your own words what you're

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 I gave my -- I doubt I have them back then.
2 But I gave my tax returns to Mr. Le Clercq along with
3 pay stubs.

4 Q Now, was there any particular reason you
5 haven't provided those in your discovery answers?

6 A I provided everything I was told by my
7 attorney way back when I filed this three years ago.

8 Q Okay. Well, do you believe now that your
9 attorney has possession of copies of your tax returns
10 from the period of time that you worked at
11 Ladles - James Island?

12 A Yes.

13 Q All right. And when you answered our request
14 for production of documents concerning tax returns,
15 which is No. 4 --

16 A Right.

17 Q -- you indicated that you were trying to find
18 them?

19 A Maybe that might have been my copy. But I
20 know my attorney, Ben -- my other attorney has copies of
21 everything. I did not personally make copies for
22 myself. I just am not that kind of guy that does that.
23 But he has copies of everything.

24 Q All right. And are you consenting for him to
25 disclose those and give us copies?

1 MR. RIDDELL: Objection to the extent it looks
2 for attorney-client privileged communications about what
3 he's saying for his attorney to release.

4 MR. SHELBOURNE: He hasn't objected to the
5 production.

6 BY MR. KOON:

7 Q You've not objected to the production. You
8 said you couldn't find them. Can you find them or not
9 find them?

10 A Are you asking me?

11 Q I am.

12 A I don't have them, sir. My attorney has them.

13 Q All right. And your attorney follows your
14 lawful direction; do they not?

15 MR. RIDDELL: Same objection.

16 Don't answer the question.

17 BY MR. KOON:

18 Q Are you refusing to answer whether or not you
19 will produce your tax returns for the time that you
20 worked at Ladles?

21 A Well . . .

22 Q I don't think your lawyer can help you on that
23 one. You just got to tell --

24 A I'm not refusing to do anything, sir.

25 Q Will you provide those tax returns?

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

1 Q Sometime in your first stint?

2 A Yeah, probably, probably.

3 Q And so was it also in talking with Logan that
4 you came to form some view of what other Ladles
5 locations were doing with charge tips? Do you recall
6 Logan telling you something about how other Ladles
7 locations handled charge tips?

8 MR. KOON: Object to the form of the question.

9 A No. What I understood is the one and only
10 time we talked about Mount Pleasant was the time that we
11 were actually talking about the tips and how all Ladles
12 keeps charge tips except Mount Pleasant.

13 Q So isn't that same conversation when you-all
14 specifically talked about the Mount Pleasant location --

15 A I don't know if --

16 Q Hang on, let me finish.

17 A Okay. Go ahead.

18 Q It was the same conversation with Logan when
19 you had talked about specifically the Mount Pleasant
20 location that you remember Logan also talking about all
21 the other Ladles locations?

22 A I don't know if it was the same conversation
23 or a different one.

24 Q But you recall a conversation with Logan where
25 he said something along the lines of all the other

1 Ladles locations, what, don't give charge tips to their
2 employees?

3 MR. KOON: Object to the form.

4 MR. FERRARA: Object to the form.

5 Q Answer orally for the record, please.

6 A Yes.

7 Q Do you recall just one of those conversations
8 happening with Logan, or were there a few?

9 A It's been a few, a couple of times probably.

10 MR. KOON: Object to the form of the question.

11 BY MR. RIDDELL:

12 Q Do you remember about when these couple of
13 conversations occurred, were they both like really near
14 the beginning of your employment or were they kind of
15 spread out?

16 MR. FERRARA: Object to the form.

17 MR. KOON: Object to the form.

18 A I'm probably guessing in the beginning because
19 after the first six months or whatever, it was never
20 brought up again. So I'm guessing at the beginning of
21 my employment.

22 Q Why didn't any employees ever challenge this?

23 MR. KOON: Object to the form of the question.

24 A Because they're young, and they need a job.

25 And some were in high school. Some were just starting

In the Matter Of:

Craig Chappell vs
Ladles Soups, et al.

Teri Owens

September 13, 2019



A. William Roberts, Jr. & Associates

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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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1 A. No, but I knew all other Ladles paid
2 higher rates than the average, too. I mean, I
3 just knew that.

4 Q. Okay. So that's just something that
5 each one does?

6 A. Uh-huh. Uh-huh.

7 Q. But how is it that they all came about
8 to do that -- do that type of pay rate?

9 A. I don't know.

10 Q. And when you talk about rates with
11 them, do you talk about tips with them?

12 A. Yes. There is a -- all the cash tips
13 -- and this was -- the employees decided this, and
14 I said the cash tips are yours. So you guys split
15 them however you see fit. If you want to share
16 them with the kitchen, you share them with the
17 kitchen. If you don't want to share them with the
18 kitchen, it's up to you. They decided we're going
19 to share them with everyone who works that day.

20 The ACH tips, they go into the
21 business because that's the only way I can afford
22 the pay the higher rate.

23 Q. When you say the ACH, that's credit
24 cards?

25 A. Yes, credit cards, credit, debit.

1 Q. Okay. And he -- hourly employees,
2 they don't get the credit card tips?

3 A. Well, they get it in their -- in their
4 payroll. I mean, that's how I make payroll,
5 because a lot of times the business percentages
6 don't work out to be able to pay people at the
7 higher levels.

8 Q. Okay. So do you -- you take the
9 credit card tips and then you --

10 A. Transfer it into payroll accounts to
11 make payroll.

12 Q. Right, but you're not transferring it
13 to them individually as tips; you're just adding
14 that to your gross sales, and then you pay them
15 out of?

16 A. Uh-huh.

17 Q. Your regular payroll?

18 A. Yes.

19 Q. Okay. And when you pay them, you
20 know, you don't have any -- there's no -- what
21 sort of information is on their paychecks?
22 Obviously, their name?

23 A. Their hourly rate, yes, and their year
24 to dates and their taxes and everything that comes
25 out of that.

1 Q. Okay.

2 A. Does not include taxes or tips.

3 Q. Okay. And how do you know that?

4 A. Because it's in my report. It's
5 exactly, and that's the number I pay my percentage
6 on.

7 Q. Okay. When you say it is in that
8 report, what report are you referring?

9 A. My Square report. My Square summary
10 report. There is a gross number. There is a net
11 number.

12 Q. Right. And tips are not included in
13 either of those?

14 A. Tips are included in -- I think
15 they're included in gross, but I'm not sure. They
16 are not included in net. Taxes are not included
17 in net because those go directly back out.

18 Q. So --

19 A. So no, I do not pay the franchise a
20 percentage of the tips.

21 Q. Okay. Is Ladles Franchising, Inc.,
22 are they aware of your policy of keeping the
23 credit card tips?

24 A. Yes, since all of this has occurred,
25 you know. We never really discussed it before.

1 MR. KOON: Object to form of the
2 question.

3 THE WITNESS: I'm sure they would give
4 me some time to correct it.

5 BY MR ASHLEY:

6 Q. Oh, I understand. But at some point
7 you would have to correct it?

8 A. Uh-huh.

9 MR. KOON: Object to the form of the
10 question.

11 BY MR ASHLEY:

12 Q. Okay. So if, for example, they told
13 you as a policy you can no longer keep credit card
14 tips or we will terminate, you know, the
15 franchise, that's something that they could do,
16 correct?

17 MR. KOON: Object to the form of the
18 question.

19 MR. FERRARA: Object to the form.

20 THE WITNESS: Yeah, I would guess that
21 it would be something we would change.

22 BY MR ASHLEY:

23 Q. Okay. Right. So if this franchise
24 agreement said you can no longer keep the credit
25 card tips, you would change your policy?

1 A. Uh-huh.

2 MR. FERRARA: Object to the form.

3 MR. KOON: Object to the form of the
4 question.

5 BY MR ASHLEY:

6 Q. So Ladles Franchising, Inc., they know
7 about your credit card tips policy?

8 A. Uh-huh.

9 Q. They have the ability to stop it?

10 MR. KOON: Object to the form of the
11 question.

12 THE WITNESS: I don't -- I guess. You
13 know, I...

14 BY MR ASHLEY:

15 Q. If they told you that you could no
16 longer do it, then you would stop doing it?

17 A. I would have to stop doing it. Yeah.

18 MR. KOON: Object to the form of the
19 question.

20 BY MR ASHLEY:

21 Q. With regards to Craig Chappell, can
22 you tell me about his -- how it came about that he
23 came to work for you?

24 A. Good question. I was thinking about
25 that the other day, about how did he come to us.

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

In the Matter Of:

Craig Chappell vs
Ladles Soups, et al.

Corey Paul 30b6 Ladles West Ashley

September 13, 2019



A. William Roberts, Jr. & Associates

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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)

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:
Counsel for the Plaintiff
REPORTED BY: Roxanne Easterwood, RPR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 Q. Okay. And what do you tell them?

2 A. That everybody is a non-tipped
3 employee, but we have cash tips on the counter,
4 and as a bonus to them they're allowed to take
5 those cash tips.

6 Q. Okay. But they don't take the credit
7 card tips?

8 A. Correct. And that is discussed that
9 they don't get the credit card tips, but they get
10 the cash tips as an added bonus to their hourly
11 wage, because we don't have designated servers
12 here, because if we did that, then those people up
13 front would no longer be -- they wouldn't --
14 they're not supposed to work in the back anymore,
15 and that defeats our whole concept and our whole
16 teamwork.

17 Q. Right. Well, do you have a tip
18 pooling policy?

19 A. No.

20 Q. Where you just put all the tips into
21 and it can just get divvied up between the people
22 on the shift?

23 A. No, there's no policy for that.

24 Q. With the cash tips then, how do you
25 decide who gets that?

1 likes to give that bonus to the kids that are
2 working for us as a little perk for them working
3 hard and making a lot of everyone's life easier.

4 Q. When you say she, who are you talking
5 about?

6 A. Our chef.

7 Q. What is her name?

8 A. Randy.

9 Q. Randy what?

10 A. Watkins.

11 Q. Randy Watkins. All right. And how
12 long has Randy been there?

13 A. Two years.

14 Q. All right. And with the hourly
15 employees, they -- and it's -- they split -- for
16 the cash tips, they split them amongst themselves?

17 A. Uh-huh.

18 Q. However they choose to do it?

19 A. Uh-huh.

20 Q. Okay. And so with the credit card
21 tips, where do those go?

22 A. The credit card tips go into the --
23 into the daily sales transaction.

24 Q. So that's, you know, whatever amount
25 that comes in on credit card tips, that just gets

1 added to the gross sales?

2 A. Uh-huh.

3 Q. And whose tips are they, though, the
4 credit card tips?

5 A. Those would be the store's tips.

6 Q. And do you tell the employees this?

7 A. Yes. That's in the document that they
8 sign, pretty much, that they're -- that they don't
9 get the credit card tips. That's discussed with
10 every single employee manual that gets signed.

11 Q. Okay. But are they -- so is that put
12 on their paycheck anywhere, the amount of tips
13 that came in that they're not participating in?

14 A. No, because it's not theirs. Once you
15 opt out of becoming a non-tipped employee, then
16 you're no longer -- I don't track what you would
17 have made had you been it, because your hourly
18 rate is then different.

19 Q. Okay. And just when you say you opt
20 out of being a tipped employee, what do you mean
21 by that?

22 A. Well, we explain to them that we're
23 not -- that we're hiring a non-tipped employee.
24 So by agreeing to that, therefore opting out of
25 being a tipped employee.

1 A. Not listed on here, no.

2 Q. So for 2017, Bates number 11, it's --
3 for Fort Mill it's gross sales \$342,321.88?

4 A. Correct.

5 Q. And the tip is how much?

6 A. \$27,943.11.

7 Q. Is that the -- that's -- so those tips
8 are counted into the gross, gross sales, correct?

9 A. Yes.

10 Q. What the -- what are customers told
11 with regard to if they leave a credit card tip,
12 who that goes to?

13 A. Well, customers are typically told
14 that when they leave a tip that it goes towards
15 everybody making higher wages, as opposed to hour
16 -- as opposed to servers' wages plus tips. That
17 way they can all make a little more money.

18 Q. Is that a sign? How are they told
19 that?

20 A. The employees typically tell them when
21 asked.

22 Q. When asked, okay. Have they ever been
23 told not to tell customers where the tips go,
24 credit card tips go?

25 A. Absolutely not. That's sketchy.

1 A. By deductions, you mean the ones the
2 state and federal government take out?

3 Q. Right. So we have state and federal
4 government. What about deductions from you?

5 A. No.

6 Q. So that's not included on their pay
7 stub, any deductions that you make?

8 A. I don't know of any deductions.

9 Q. Well, I mean, would credit card tips
10 be a deduction?

11 A. I don't think an accountant would see
12 that as a deduction.

13 Q. Okay. So no mention of tips on their
14 pay stub?

15 A. I don't believe so.

16 Q. Okay. And with -- and do you have --
17 is there a royalty fee that you pay to Ladles
18 Franchising, Inc.?

19 A. Yeah.

20 Q. And how does that work?

21 A. It's based off of a percentage, and
22 every month we get a bill sent to us, and we send
23 it off to the Ladles Franchising.

24 Q. Okay. And percentage of what?

25 A. The net sales or the gross sales, one

1 of them. I'm not 100 percent sure. I'd have to
2 look at the bill. It's based off of your total
3 sales.

4 Q. Total sales, okay. So would that
5 include the amount from the credit cards?

6 A. Just depends what number they're going
7 off of. I don't believe it's off of the amount
8 from the credit cards, but I'd have to double
9 check that. I'd have to see what number was on
10 the bill.

11 Q. I mean, do you think that it is the
12 gross sales? Would the credit card tips be
13 included in the net sales?

14 A. The credit card tips would not be
15 included in the net sales. The credit card tips
16 are included in the gross sales. Which one is on
17 the percentage bill for the royalties, I am not
18 sure. I'd have to look.

19 Q. What would you have to look at?

20 A. The bill that I received, to know
21 which number.

22 Q. And you haven't -- have you given
23 those to your attorney?

24 A. The royalty bills?

25 Q. Yes.

1 A. No.

2 Q. Would it be in the franchise
3 agreement?

4 A. It should be. Yes.

5 Q. Have you produced that? Do you have
6 it?

7 A. I don't have that. The franchise
8 agreement I signed with Suzie, and she retained
9 our copy, and she's got our copy.

10 Q. Let's back up then. Let's look at
11 what the -- Bates number 10.

12 A. Where is that?

13 Q. For 2018.

14 A. 2018 for West Ashley or Fort Mill?

15 Q. West Ashley. And I believe that's the
16 top of the number, and the gross sales were
17 \$434,426?

18 A. Uh-huh. Yes.

19 Q. So that's gross sales?

20 A. Correct.

21 Q. And then what's deducted from those
22 gross sales is refunds and discounts. Does that
23 -- and then that's -- provides the net sales. Is
24 that what you see?

25 A. Yes, but the word that says gross

1 Q. What was the policy when you worked at
2 West Ashley when -- before you purchased it?

3 A. It was, I'm assuming, very similar to
4 what I have now.

5 Q. Because you didn't change any policies
6 when you purchased it, correct?

7 A. I did not come up with any new
8 policies.

9 Q. Okay. So when you worked there, the
10 store kept the credit card tips?

11 A. Yes.

12 MR. FERRARA: I object to the form of
13 the question on the last one.

14 BY MR ASHLEY:

15 Q. What kind of point of sale system do
16 you use?

17 A. Square.

18 Q. That's the name of it?

19 A. It's made by Apple.

20 Q. Is that -- can you describe it for me?
21 Is that the little iPads?

22 A. Yes.

23 Q. How does that work? Who picked -- who
24 chose that?

25 A. The Square point of sales system was

1 MR. KOON: Object to the form.

2 THE WITNESS: What was the end of your
3 question? Sorry.

4 BY MR ASHLEY:

5 Q. If Ladles Franchising, Inc. put it in
6 the franchise agreement that you could no longer
7 keep the credit card tips, you would stop keeping
8 the credit card tips, correct?

9 MR. FERRARA: Object to the form.

10 MR. KOON: Object to the form of the
11 question.

12 THE WITNESS: If I were to sign the
13 document, then I would.

14 BY MR ASHLEY:

15 Q. And we've got -- and Laney Sharpe is
16 currently working at your West Ashley location; is
17 that correct?

18 A. That's correct.

19 Q. What type of work does she do?

20 A. A little bit of everything. She
21 preps. She works up front. She cleans. She does
22 dishes.

23 Q. Okay. Does she receive credit card
24 tips?

25 A. No.

1 Q. Okay. If in the franchise agreement
2 there, can you -- because I still want to know
3 what they -- what it says in the agreement as far
4 as what the percentage of their royalty payment is
5 based on, and it should be in that agreement. Do
6 you want to -- I just want to see what they say in
7 the agreement.

8 A. Well, in my agreement we calculated it
9 to three percent. In this sample copy I'll have
10 to find it.

11 MR. FERRARA: For clarification, David,
12 were you referring to West Ashley or Fort Mill or
13 just in general?

14 MR ASHLEY: In general. I just want to
15 know how they -- whether it's percentage of the
16 gross sales, net sales, total. I just want to
17 know what their percentage is being paid on. I
18 understand that he's got, you know, three percent
19 of one and not the other. I just want to know
20 what the percentage is coming from, and that
21 should be in the agreement, I think.

22 MR. FERRARA: You can ask him again,
23 David, but I do think he testified to that
24 already.

25 MR ASHLEY: Well, I just want to see if

1 it's okay.

2 THE WITNESS: In the book it says: Of
3 the gross sales which are defined as subsection C
4 of this section. Definition of gross sales as
5 used in this agreement. The term gross sales
6 shall mean gross sales of all food, beverage,
7 other menu items, merchandise and goods and other
8 services sold or performed by or for you or the
9 restaurant and upon or from the premises or
10 through or by means of the business conducted at
11 the restaurant or the premises whether for cash or
12 credit. And then it lists things that don't.

13 BY MR ASHLEY:

14 Q. Will you continue and -- just to
15 finish off that paragraph?

16 A. Sales and service taxes collected from
17 customers and paid to the appropriate taxing
18 authority, all management or employee meals and
19 sale of cigar, cigarettes, and newspaper as well
20 as income from pay telephones shall not be
21 included in gross sales. The discounted portion
22 of menu prices, whether by way of coupons,
23 promotions, or otherwise shall not be included in
24 gross sales.

25 Q. Okay. So in that list of things that

1 are not included in the gross sales, credit card
2 tips are not listed, correct?

3 A. Correct.

4 MR ASHLEY: All right. Let me check
5 one thing, but I think I may be done.

6 BY MR ASHLEY:

7 Q. And so when you do the training
8 program, how long does that last for?

9 A. Which training program?

10 Q. The training program for the Ladles
11 Franchising.

12 A. Usually around four weeks.

13 Q. Okay. Where does that take place?

14 A. Some of it may take place in another
15 store. If -- for example, training of the chef
16 ahead of time. So that way by the time the store
17 opens you have somebody who is already trained.
18 Sometimes it all takes place at the new location.

19 Q. Okay. And you know, throughout -- so
20 Ladles Franchising Inc., they provide support to
21 the individual, the franchise?

22 A. Uh-huh.

23 Q. And whether that's -- you know, and
24 that's not just to open the store, but even once
25 the store is up and running they -- you know, if

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.

In the Matter Of:

Craig Chappell vs
Ladles Soups, et al.

Julie Dyke 30b6 Ladles of Mt. Pleasant

September 18, 2019



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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS

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) DEPOSITION OF: LADLES OF MT. PLEASANT
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 Q. And what did you do when you left Belk?

2 A. I didn't work. Stayed home with our
3 youngest for a couple of years.

4 Q. And so what did you do after that?

5 A. After the two years of staying home, I
6 went -- when our youngest started school, I went
7 back to Belk part-time and just worked mornings in
8 like the shipping and receiving department.

9 Q. Okay. And how long did you do that
10 for?

11 A. About -- probably about a year.

12 Q. Okay.

13 A. And then I started at Ladles
14 Summerville.

15 Q. Okay. Do you remember what year you
16 started at Ladles Summerville?

17 A. 2009.

18 Q. And was that already up and running?

19 A. Yes.

20 Q. Or you started it?

21 A. It was up and running.

22 Q. So you purchased it from someone?

23 A. No, I was an employee there.

24 Q. Oh, you started at Ladles?

25 A. Uh-huh.

1 Q. Okay. I got you. And that was in
2 2009?

3 A. Yes.

4 Q. Okay. And what did you do at Ladles
5 Summerville?

6 A. I was the front of house. You could
7 call it a manager, I guess.

8 Q. Okay.

9 A. Served customers.

10 Q. Were you paid salary?

11 A. Yes.

12 Q. Okay. And who owned it at the time?

13 A. As far as I know, it was Suzie Allen
14 and Bob and Michelle Smith. They were partners of
15 some kind.

16 Q. And how long did you work at Ladles in
17 Summerville?

18 A. Close to one year.

19 Q. Okay. And did you do any of the
20 bookkeeping?

21 A. No.

22 Q. Anything like that for them?

23 A. Huh-uh.

24 Q. You just did the management? Were you
25 the manager?

1 A. I think they called me that, but I
2 was -- I was an employee. I ladled soup and rang
3 up customers.

4 Q. I got you.

5 A. So...

6 Q. And you did that for a year, so from
7 about 2009, 2010?

8 A. Right.

9 Q. And as far as you know, Suzie Allen
10 owned it when you ran it?

11 A. She was in partnership with the Smiths,
12 yes.

13 Q. And so in 2010, what did you do?

14 A. I moved to the West Ashley Ladles.

15 Q. And what did you do there?

16 A. Same thing.

17 Q. Salaried employee?

18 A. Yes.

19 Q. And Suzie Allen owned that?

20 A. Yes.

21 Q. Okay. And so how long were you there?

22 A. Until we opened our Ladles in November
23 of that year.

24 Q. So you started at Ladles in West Ashley
25 in 2010. And then do you remember around generally

1 what month that would have been?

2 A. What month --

3 Q. That you started at Ladles West Ashley?

4 A. It was January.

5 Q. Okay. January. And then January of
6 2010 and then November of 2010 you --

7 A. We opened our own Ladles in Mount
8 Pleasant.

9 Q. And why did you move from the
10 Summerville to the West Ashley location?

11 A. The Smiths let me go.

12 Q. When you say -- what do you mean by --

13 A. They fired me.

14 Q. Okay. For what? Why?

15 A. They didn't like me. We couldn't come
16 to an agreement on how to run the business.

17 Q. Okay.

18 A. So...

19 Q. And remind me again, there's two
20 Smiths?

21 A. Yes.

22 Q. Okay. And what were their names?

23 A. Bob and Michelle.

24 Q. Bob and Michelle Smith. And did they
25 own any other Ladles locations?

1 A. No.

2 Q. And they didn't have any connection
3 with Ladles West Ashley?

4 A. No.

5 Q. Okay. So they let you go and Suzie was
6 like, you know, come work at West Ashley?

7 A. Yes.

8 Q. Okay. And it was just a personality
9 issue that they had?

10 A. Yes.

11 Q. And so you worked at Ladles West Ashley
12 from 2010 until November '10?

13 A. Uh-huh, yes.

14 Q. And how did it come about that you
15 opened the Ladles Mount Pleasant? Now, did
16 somebody -- did you buy Ladles Mount Pleasant or
17 did you open it from scratch?

18 A. From scratch.

19 Q. Okay. And can you just walk me through
20 the -- you know, how is it that you came to do that
21 or decide to do that?

22 A. Well, Suzie knew that I was a good
23 employee and that I wanted to open my own business.
24 So that's how we started. When they let me go,
25 I -- I loved the business and I wanted to open my

1 A. After I was there a couple of months,
2 she started giving us credit card tips, but I'm not
3 sure who all got credit card tips.

4 Q. And how did she give you those credit
5 card tips?

6 A. She -- I'm trying to remember. I don't
7 remember. I want to say she wrote us a check for
8 them.

9 Q. Okay.

10 A. When I say us, I -- she wrote me a
11 check. I don't know who else was included in that,
12 because we all worked at other -- everybody was
13 kind of moving between locations then. The same
14 employees --

15 Q. Moving between locations?

16 A. Yes.

17 Q. Which locations?

18 A. Kiawah Island and West Ashley.

19 Q. Okay. And at Kiawah Island, what was
20 the policy regarding credit card tips?

21 A. I was paid by West Ashley, but I worked
22 at -- you know, we got one salary, but we would
23 work some shifts there and some shifts at West
24 Ashley.

25 Q. Who owned Kiawah? When you would work

1 payment?

2 A. Kitchen, right now everybody comes in
3 at 12.

4 Q. Okay. That's what they start out at?

5 A. Yes.

6 Q. Okay. And then do people in the
7 kitchen do up front work?

8 A. Yes.

9 Q. And vice versa?

10 A. Yes.

11 Q. And so if you've got experience or if
12 you've been working there for a while, is there a
13 next level after \$10 and \$12?

14 A. I mean, pretty much what we do at our
15 Ladles is every year if they're still there, they
16 get another dollar an hour. And this is the time
17 of year, so they're all getting ready to get bumped
18 up a dollar.

19 Q. So, if somebody, if they stay on long
20 enough, they keep moving up --

21 A. Uh-huh.

22 Q. -- to a different -- okay.

23 What do y'all do with the credit card
24 tips?

25 A. The end of each month, they're written

1 a separate check. It's distributed among all the
2 employees based on how many hours they work.

3 Q. And does that include the hourly
4 employees?

5 A. Everyone is hourly.

6 Q. Everyone is -- you don't have any
7 salaried employees?

8 A. No.

9 Q. I got you. And so just once a month
10 they get a separate check?

11 A. Yes.

12 Q. And that's for their tips?

13 A. Their tips.

14 Q. And how is it that you decided to do
15 that policy, as opposed to keeping the credit card
16 tips?

17 A. Well, since everyone is a team and we
18 all work together, we just -- that seemed the
19 fairest way. We pool the cash, so they pool
20 everything -- we pool it all.

21 Q. I got you. Are you an hourly paid
22 employee?

23 A. No.

24 Q. Do you take a salary?

25 A. We take a draw when we need to, but,

1 policy wages with any other owners -- Ladles
2 owners?

3 A. I mean, not really. We've had meetings
4 in the past where it's come up within a group.

5 Q. And what kind of meetings are these?

6 A. Well, when we first opened, we had --
7 of course, there weren't that many stores then.
8 There were only four or five stores. But we used
9 to have meetings like once or twice a year with the
10 owners.

11 Q. Okay. And when you say owners, who do
12 you --

13 A. Other Ladles owners.

14 Q. And does that also include the
15 franchising company?

16 A. Yes.

17 Q. Okay. And so y'all would have meetings
18 how many times?

19 A. Once or twice a year. I think there
20 were times we only had one a year.

21 Q. And at these meetings, there's been
22 times where y'all discussed tipping policy, wages,
23 that sort of thing?

24 A. Yes.

25 Q. And what was discussed?

1 A. It was mostly just about that the
2 employees, you know, need to get the tips. So
3 we're supposed to share the tips with the -- or
4 give the tips to the employees.

5 Q. Okay. Were there owners that, you
6 know, disagreed with that?

7 A. No.

8 Q. Are you aware of any Ladles locations
9 where the policy is that they don't give the
10 tips -- credit card tips to their employees?

11 A. I don't know what the other Ladles do
12 really.

13 Q. But at these meetings, no owner stood
14 up and said, well, I don't think that we should do
15 that? We don't --

16 A. Not that I recall, no.

17 Q. Did any of the owners, you know, say
18 we'll -- did you discuss how you would go about
19 giving the credit card tips, whether it would be in
20 a check, a separate check, or any other way to do
21 it?

22 A. We discussed how we were going to be
23 doing ours at the time. And that's all I can say.
24 We said this is what we do. You know, it's always
25 been kind of a weird area in a business like ours

1 A. Gross would be we don't pay royalties
2 on our sales tax, which is included in the gross.

3 Q. Right.

4 A. So, to me, in my mind, that is net. We
5 don't pay royalties to her on tax.

6 Q. Right. And that's actually --

7 A. So we have our sales and then minus our
8 tax. You know, tips are not included in that. I
9 wouldn't pay her royalties on tips I took in. So
10 that is -- to me, is net. So...

11 Q. And how do you know that tips aren't
12 included in the gross sales?

13 A. Because they're not.

14 Q. You know it's not because you don't pay
15 it?

16 A. Right, because I have a report that
17 shows me total sales, discounts, tax.

18 Q. Is that --

19 A. It's itemized.

20 Q. Have you provided that to your
21 attorney?

22 A. It's all electronic.

23 Q. Is it possible to get a paper copy of
24 it?

25 A. No. I don't know how you'd get a -- I

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.

In the Matter Of:

Craig Chappell vs
Ladles Soups, et al.

Sue Ellen Allen 30b6 Ladlessoups, LLC

September 18, 2019



A. William Roberts, Jr. & Associates

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1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON

3 CRAIG CHAPPELL, ON BEHALF OF HIMSELF AND OTHERS
4 SIMILARLY SITUATED,

Plaintiff(s),

5 vs.

CASE NO. 2018-CP-10-785

6 LADLES SOUPS - JAMES ISLAND LLC, et al.,

7 Defendants.

8
9 30(b)(6) LADLESSOUPS, LLC, and LADLES
FRANCHISING, INC.
10 DEPOSITION OF: SUE ELLEN ALLEN

11
12 DATE: September 18, 2019

13 TIME: 11:41 AM

14 LOCATION: Ferrara Law Firm
8887 Old University Blvd.
15 North Charleston, SC

16 TAKEN BY: Counsel for the Plaintiff

17 REPORTED BY: MARIE MCCOLLUM, Court Reporter

18
19 A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 Q. And when you first started was -- how
2 much -- and you had salaried employees, correct?

3 A. Yes.

4 Q. And how much did they make?

5 A. One made 500; one made 6- a week.

6 Q. Okay. And so how did you handle -- I
7 assume that tips, whether they were cash or credit
8 card, were coming in?

9 A. Yes.

10 Q. Okay. And how did you handle that?

11 A. The cash tips, they would split them.
12 I really didn't have anything to do with that. The
13 credit card tips were allotted to their hourly
14 wage. It afforded us the ability to pay them a
15 higher hourly -- hourly wage.

16 Q. Okay. So did they -- so that just went
17 into a pool of -- just explain that to me again.
18 So...

19 A. It gave us -- it was a subsidized --
20 the hourly rate that the employees made was
21 subsidized by the tips.

22 Q. Okay. So when they got their paycheck,
23 they didn't have an itemized amount for tips?

24 A. No, they did not.

25 Q. They didn't get a separate paycheck for

1 tips?

2 A. No, they did not.

3 Q. And I don't know, you may have given
4 this information to your attorney. Do you know --
5 well, let me back up.

6 You opened up the Ladles in West Ashley
7 in 2007?

8 A. '07.

9 Q. And you had it for how long?

10 A. Until 2017.

11 Q. Okay.

12 A. The end of the year.

13 Q. Do you know from, let's say 2015 to
14 2017, the amount of credit card tips that Ladles
15 West Ashley was bringing in each year?

16 A. I do not.

17 Q. Okay. Is that an amount that you could
18 find?

19 A. I'm sure.

20 Q. Okay. And you don't think with the
21 records that you've given your attorney that that
22 number is in there?

23 A. I don't know.

24 Q. Okay. Do you know what records you've
25 given your attorney?

1 A. No.

2 Q. Okay. Tell me. Sorry.

3 A. We were approached and given a really
4 nice opportunity by Kiawah.

5 Q. Okay. And who approached you?

6 A. Tim somebody. I don't know his name.

7 Q. And well, just tell me, he had been to
8 your restaurant before --

9 A. Yes.

10 Q. -- and liked it?

11 A. Yes.

12 Q. And then he asked y'all to open --

13 A. Yes.

14 Q. -- up a location?

15 Okay. And did you basically go through
16 the same process that you opened up the Ladles West
17 Ashley to open up that location?

18 A. A little more in depth.

19 Q. Okay. And how so?

20 A. It was a -- we had to have engineered
21 plans for the build-out because it was a shell.

22 Q. Okay. Same concept --

23 A. Yes.

24 Q. Okay. And same policies, as far as
25 with the tipping?

1 A. Yes.

2 Q. Okay. And after that, did you -- well,
3 let me ask you this: Did you open that under a
4 separate LLC?

5 A. Yes.

6 Q. And what was the name of that?

7 A. I honestly cannot remember what the
8 name of it was. It was -- I really don't know, and
9 I don't want to misstate.

10 Q. Sure. Is that something that you can
11 find --

12 A. Yes.

13 Q. -- and provide to your attorney?
14 And after that, did you open up any
15 other locations?

16 A. Yes.

17 Q. Where?

18 A. Summerville.

19 Q. And when did you open up that location?

20 A. I'm not 100 percent positive. It was
21 probably -- about a year later, 2009.

22 Q. Okay. And did you do that under a
23 separate --

24 A. Yes.

25 Q. -- a different LLC? Do you remember

1 the name of that LLC?

2 A. I'm not 100 percent positive about that
3 one either.

4 Q. Sure. And will --

5 A. But I can get that for you as well.

6 Q. Thank you. And did you open up -- and
7 did that have same policy with the credit --

8 A. Yes.

9 (Court reporter clarification.)

10 BY MR. ASHLEY:

11 Q. So that had the same policies for
12 credit card tips?

13 A. Yes.

14 Q. Did you have any other locations after
15 that?

16 A. No.

17 Q. And at some point, did you sell the
18 location in Kiawah to somebody?

19 A. Yes.

20 Q. Okay. And when did you sell that?

21 A. I'm not positive of the date on that
22 either. To the best of my recollection, around
23 2012.

24 Q. Okay. And who did you sell it to?

25 A. Dan Sutton.

1 Q. So if somebody was employing a manager
2 that wasn't acceptable to you, you would have the
3 ability to either have that manager removed or
4 terminate the franchise, correct?

5 MR. KOON: Object to the form of the
6 question.

7 THE WITNESS: Yes. Has never been
8 done. Just want to state that.

9 BY MR. ASHLEY:

10 Q. And so how does the -- so can you tell
11 me about how the individual stores, they pay --
12 it's a royalty fee to you?

13 A. Yes.

14 Q. Okay. And how is that determined?

15 A. It's based -- it's based on the
16 individual store.

17 Q. Right. The percentage that they pay is
18 based on the individual store.

19 A. Correct.

20 Q. But how do you come up with percentage
21 of what is being -- that they pay?

22 A. Percent of what?

23 Q. Right. I understand that each store
24 might have a different percentage, but what are
25 they paying a percentage of?

1 A. They pay on their sales of their
2 product, less any discounts that they wouldn't have
3 received money for, less taxes, and less tips.

4 Q. Okay. And is that included in the
5 agreement, that tips -- and if you want to turn to
6 Page 17 of the agreement. I'm sorry, Page 18.

7 And it's the definition of gross sales,
8 and so the agreement states that the royalty
9 fees -- it's a percentage of the gross sales?

10 A. Correct.

11 Q. And the agreement defines gross sales
12 as all food, beverage, other menu items,
13 merchandise and goods, and other services sold or
14 performed by or for you or the restaurant in, upon,
15 or from the premises or through or by means of the
16 business conducted at the restaurant or the
17 premises, whether for cash or credit, correct?

18 A. Correct.

19 Q. And it excludes -- in the next
20 sentence, it excludes some things, and that would
21 be taxes; management or employee meals; sale of
22 cigars, cigarettes, and newspapers; as well as
23 income from pay phones. But it doesn't mention
24 tips. How do you know that tips aren't included in
25 the gross sales?

1 And this is information that you have
2 access to for each individual store?

3 A. What do you mean?

4 Q. If you wanted to find out the amount of
5 tips that Ladles at Fort Mill brought in for the
6 day or for the year, that's information that you
7 could obtain, correct?

8 A. I could. I don't.

9 Q. Okay. And Ladles, I assume -- do y'all
10 have a trademark?

11 A. Yes.

12 Q. And who owns that?

13 A. What do you mean?

14 Q. Who can use the trademark, the Ladles
15 trademark?

16 A. Any franchisee.

17 Q. Who actually owns the trademark?

18 A. Ladles Franchising.

19 Q. And do you have an employee handbook?

20 A. Yes.

21 Q. And who creates the employee handbook?

22 A. My husband and I created it, Tracy
23 Allen and myself.

24 Q. And all of the locations use the same
25 handbook?

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	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2018-CP-10-0785
	)	
	)	
CRAIG CHAPPELL	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
LADLES SOUPS JAMES ISLAND,	)	
LLC, et al	)	
	)	
Defendants	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

October 29, 2019
Charleston, South Carolina

B E F O R E:

THE HONORABLE BENTLEY D. PRICE, JUDGE

A P P E A R A N C E S:

DAVID D. ASHLEY, ESQ.
BENJAMIN SCOTT WHALEY LECLERCQ, ESQ.
Attorneys for the Plaintiff

PETER BRANDT SHELBOURNE, ESQ.
Attorney for the Defendant Ladles Soups Mount Pleasant

JOYCE C. RUEGER,
Certified Verbatim Reporter-Master
Circuit Court Reporter

[Certified Transcript Provided for: David D. Ashley, Esq.]

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PROCEEDINGS

CLERK OF COURT: Position number 31, 2018-0785
Craig Chappell verses Ladles Soups James Island, LLC.

THE COURT: Alrighty. Good morning. We have the
Defendant's Motion for Summary Judgment, is that correct?

MR. SHELBOURNE: That's correct, Your Honor.
Brandt Shelbourne on behalf of Ladles Soups Mount
Pleasant, and Julie and Eric Dyke.

THE COURT: All right.

MR. SHELBOURNE: Your Honor, I represent Julie and
Eric Dyke who are the sole members of Ladles Soups Mount
Pleasant. Ladles Soups is a franchise business. There
is an overall franchisor that is also a Defendant in this
suit. I don't represent him. We are a totally separate
independent LLC. There is a franchise agreement that
sets forth our relationship but it is a limited agreement
that doesn't really control much other than the menus and
things like that.

Mr. Chappell was employed by Ladles Soups James
Island and is suing a number of Defendants; all the
Ladles franchises he can think of as well as some of the
owners saying that he wasn't properly paid in tips and
wages and that the James Island facility or business's
tip policy was illegal or improper; violated the law and
he wasn't paid properly. So he decides to sue every

1 Ladles he can think of. He has never worked for Ladles
2 Mount Pleasant. He's never worked for Julie and Eric
3 Dyke and that's in the memo. Your Honor, I heard you
4 earlier say that you haven't necessarily checked the
5 emails. I have a memo we filed if I could hand it up.

6 THE COURT: Absolutely.

7 [Whereupon, Mr. Shelbourne proffers documents to the
8 Court]

9 THE COURT: Thank you, sir.

10 MR. SHELBOURNE: Thank you. And Your Honor that
11 memo contains excerpts from Mr. Dyke's deposition where
12 he says as far as I know Ladles Soups Mount Pleasant
13 didn't do anything wrong and hasn't done anything. But
14 yet we're dragged into this lawsuit.

15 Your Honor, significantly this lawsuit was filed in
16 February of 2018. In May 2019 we filed a Motion for
17 Summary Judgment. About the same time we received
18 discovery; from over a year later after filing suit was
19 discovery served.

20 And they have -- one of the things they've asked in
21 discovery is tell us all your employees' names and
22 addresses. Well, they want to know, they want to subject
23 our employees' private information so then I assume so
24 they can go contact them and say hey, do you want to sue
25 your employer. It's a fishing expedition, Your Honor.

1 Mr. Chappell has never had any relationship with my
2 client. He's not ever been damaged by my client. And
3 they're alleging some class action thing but there has
4 never been a -- there is no class certification. There
5 is no determination that there is a class that we would
6 even be in the class.

7 And so we think we're entitled to summary judgment
8 at this point in time as to all claims that they brought
9 against Ladles Mount Pleasant. And again, I'm only
10 representing Ladles Mount Pleasant and Julie and Eric
11 Dyke.

12 THE COURT: All right. Give me one second and let
13 me try to catch up because on the docket it says Ladles
14 -- oh, it's just because it's the first one, Ladles Soups
15 James Island. He just sued them all.

16 MR. SHELBOURNE: He sued them all. In for a penny,
17 in for a pound I guess.

18 THE COURT: Okay.

19 [Whereupon, the Court reviews documents]

20 THE COURT: He got Cane Bay, Knightsville?

21 MR. SHELBOURNE: That's out in Summerville.

22 THE COURT: Oh. All right.

23 MR. SHELBOURNE: And so we haven't told them we
24 objected to their interrogatory asking for who our
25 employees are because it's akin to basically saying he

1 works for a restaurant in downtown Charleston and decides
2 you know what? I wasn't paid proper tips so I'm going to
3 sue all the restaurants in Charleston and I'm going to
4 ask for all their employees' names because I think maybe
5 they all might be doing something wrong. There is no
6 evidence in the record whatsoever that Ladles Soups Mount
7 Pleasant improperly paid or handled its tips. And they
8 can't cite to anything that would support that.

9 And Your Honor they've taken my clients depositions.
10 There is nothing in the record to show that and we think
11 we're entitled to summary judgment at this point in time.

12 THE COURT: All right.

13 MR. SHELBOURNE: Thank you.

14 THE COURT: So the basis of the complaint is simply
15 just a wage issue? I mean its improper wage I guess.
16 And are they alleging that it is like a corporate
17 standard or its somewhere in their like By Laws this is
18 how we tip and pay?

19 MR. SHELBOURNE: They are -- I believe they are
20 alleging that it's a corporate standard. The franchise
21 agreement does not address how the franchisees are
22 supposed to handle tips or wages. It's completely left
23 silent and it's up to them. And that's what all the
24 witnesses have testified to. From what we understand the
25 way that -- this isn't a wait staff restaurant. This is

1 a restaurant where you go in and you order, there is like
2 a little key pad that they put around and you sign your
3 name. And there is a place where you can put tips. So
4 if you put cash in the tips their argument is those all
5 go to the employees. But at James Island apparently
6 there may have been something else going on. There are
7 several lawyers here to represent the other Defendants so
8 I don't want to speak for them.

9 But that's not what -- we didn't do anything
10 improper and they haven't been able to show anything
11 improper and we think we're entitled to summary judgment
12 as to their claims against Mount Pleasant and the Dykes.

13 THE COURT: Okay.

14 MR. SHELBOURNE: Who are, simply, the members of
15 the LLC.

16 THE COURT: And the other attorneys are just
17 waiting to see what I do here to make their determination
18 on whether they are going to file it.

19 MR. SHELBOURNE: I think they just don't want to be
20 hanging with me this morning.

21 THE COURT: Alrighty. All right, yes sir?

22 MR. ASHLEY: Thank you Your Honor, I'm David Ashley
23 for Craig Chappell. The Ladles restaurant franchises
24 they all have common policy of withholding credit card
25 tips from their hourly paid employees. This is a policy

1 that originated with the founder of the franchise. It's
2 something that has gone on from the beginning and it
3 continues today at each of the locations. We've taken
4 the depositions of four of them so far and they've all
5 confirmed that they have the same policy. Do you have a
6 copy of your memorandum?

7 THE COURT: Our computer is issued by the State so
8 of course it doesn't work so it keeps going off. So
9 yeah, let me take a look at it. She's pulling it up each
10 time but then it just cuts off.

11 [Whereupon, Mr. Ashley proffers documents to the
12 Court]

13 MR. ASHLEY: It says -- so far with the depositions
14 that we've taken with the James Island location, the West
15 Ashley location, the Fort Mill location they all have
16 this policy. And it's possible that Mount Pleasant
17 doesn't have this policy but we don't know right now
18 because they have not responded to two of our discovery
19 requests that would answer the question the easiest.

20 One of those is interrogatory number 26 which simply
21 just asks for a list of employees for the past three
22 years. The other is a request for production that simply
23 asks for payroll records that show how they paid the
24 tips. This is something they could produce within five
25 minutes and you know they haven't done it yet. There is

1 also if you look at exhibit number G there is an
2 affidavit from Lane Charpia [phonetic] who is an employee
3 at Ladles West Ashley and her affidavit tells us that
4 management there has told her when customers ask where
5 the tips go to not tell them.

6 So we've got the -- I don't think that we're
7 required to just take their word for it. We have a
8 situation where at least one of the locations you know is
9 telling their employees not to tell the customers where
10 the tips go.

11 And I think that you know to -- and the other
12 situation we have is that the bulk of the Defendants have
13 not responded to our discovery requests at all. They are
14 about five months past due. And I think it's a little
15 disingenuous for one of the parties to claim that we
16 can't prove that there is a common policy when a majority
17 of the Defendants refuse to even engage in discovery.

18 And so our class action has been filed. It's
19 pending with the Court. We believe ---

20 THE COURT: --- hold on. So you have filed to have
21 this designated as a class action?

22 MR. ASHLEY: Yes, Your Honor. It is filed. It is
23 pending with the Court. And the class is simply all the
24 Ladles employees at all the Ladles locations who have not
25 have their credit card tips paid to them.

1 THE COURT: So the allegation -- I'm not -- so the
2 allegation that y'all are alleging is that Ladles keeps
3 the tips, the owner's do?

4 MR. ASHLEY: Yes, sir.

5 THE COURT: All right. And then the cash tips is
6 disbursed amongst the employees?

7 MR. ASHLEY: That's what they say and we don't have
8 any reason to believe that it's not. Our main allegation
9 is that they keep the credit card tips.

10 THE COURT: Okay. When did you file to have it
11 certified as a class?

12 MR. ASHLEY: I believe it was in -- its exhibit C
13 ---

14 MR. SHELBOURNE --- I believe Your Honor, September
15 11th.

16 THE COURT: All right. And how many people do you
17 allege are going to be members of this class?

18 MR. ASHLEY: I believe it's over 75.

19 THE COURT: Okay. Mr. Shelbourne, what is your
20 position as to -- I understand what you're saying is that
21 hey, here's the employees; go put them in your class. I
22 mean that's what you're saying by not answering the first
23 interrogatory by saying here are the employees for the
24 past three years. What's your position as to the other
25 interrogatory that they are requesting?

1 MR. SHELBOURNE: Your Honor, it's a fishing
2 expedition. They have no cause of action against my
3 client, or clients. They have no claims against my
4 clients. My clients are not alleged to have done
5 anything wrong. And even if they were they don't have a
6 relationship with the Plaintiff. The Plaintiff and even
7 the other Plaintiff Ms. Charpia [phonetic] have never
8 been employed by my client.

9 And so for them to do this it is no different from
10 them suing Magnolias or Hank's or those people and saying
11 hey, give us all your information because we want to see
12 if your tip policies are appropriate or any other
13 restaurant.

14 They could sue every restaurant in Charleston and
15 say we want to do it because it is no relationship. They
16 are simply saying because we have a Ladles name we must
17 have some connection. But they haven't been able to show
18 a connection.

19 Mr. Ashley says well there is the -- they are all
20 doing it the same. That is simply not the case, Your
21 Honor. They took Mr. and Mrs. Dyke's deposition and that
22 is not what they said. They said they do turn over the
23 tips, the credit card tips, through a bonus program to
24 the employees. So there is no evidence to support their
25 cause of action. But even if they were, even if our

1 client didn't do it properly again there is no past
2 relationship between Mr. Chappell and my client. And now
3 if they get a class certification I think that might
4 change it. But at this point in time they haven't and
5 we're entitled to summary judgment and to be out of this
6 case.

7 My client is a small essentially a Mom and Pop
8 sandwich shop that have been dragged through over a year
9 and a half of litigation which is killing their business
10 simply because we happen to have the name associated with
11 a bunch of other businesses that he may have, Mr.
12 Chappell may have had something to do with. And it is
13 killing my client's business, Your Honor.

14 THE COURT: I agree with you. Whenever I asked
15 when was the class filed that's what I was trying to get
16 to. But you're obviously trying to get out before that
17 happens.

18 MR. SHELBOURNE: We are, Your Honor. We think we
19 should be out of it because there is no relationship with
20 this -- if he wants to point at a franchise agreement and
21 say this is what we're supposed to do that's fine. But
22 the franchise agreement doesn't say that. And I can't
23 prove a negative so ---

24 THE COURT: --- Mr. Ashley, what's your position as
25 to that as to they don't have any -- I mean they don't

1 have any relationship with Mr. Chappell?

2 MR. ASHLEY: Well, they do have a relationship
3 because if the franchisor is an employer under the act it
4 has the same policy -- the Dykes worked for the original
5 franchisor. You know they learned the business from
6 them. They developed -- any of the policies that they
7 have they developed from them.

8 What we've seen in the depositions is that almost
9 every franchise owner originally worked with the original
10 franchisor and they just took those policies and when
11 they started their business just used those same
12 policies.

13 THE COURT: All right.

14 MR. SHELBOURNE: It's not true.

15 THE COURT: I understand.

16 MR. SHELBOURNE: At the end they don't have any
17 deposition testimony to support that and that's why --
18 this is a Motion for Summary Judgment. They've had over
19 a year to do discovery ---

20 THE COURT: --- let me ask this question. Mr.
21 Ashley, did Mr. Chappell work at the Ladles of Mount
22 Pleasant?

23 MR. ASHLEY: He did not work at Ladles of Mount
24 Pleasant.

25 THE COURT: All right. I'm going to grant your

1 motion. If you get it certified as a class, it will
2 change things.

3 MR. SHELBOURNE: Thank you, Your Honor.

4 THE COURT: All right. Good luck to you.

5 MR. ASHLEY: Thank you.

6 THE COURT: Do you want a Form 4 or you want to do
7 an order?

8 MR. SHELBOURNE: Form 4 is fine, Your Honor --
9 well, we'll do an order.

10 THE COURT: All right. You'll do it.

11 MR. SHELBOURNE: Thank you, Your Honor.

12 *****END OF TRANSCRIPT OF RECORD*****
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Charleston County, South
Carolina on the 29th day of October, 2019.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

March 1, 2020

Joyce C. Rueger, CVR-M
Court Reporter

[Certified Transcript Provided for: David D. Ashley]

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
 2 COUNTY OF CHARLESTON) CASE NO. 2018-CP-10-785

3 CRAIG CHAPPELL,)
 4)
 5 Plaintiff,) Transcript of Record
 6 vs.)
 7 LADLES FRANCHISING,) Date: January 6, 2020
 8 INC., ET. AL.,)
 9 Respondents.

10 * * * * *

11

12 B E F O R E:

13 The Honorable Bentley Price

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20 Denise J. Lauder, RPR

21 Ninth Judicial Circuit

22

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24

25

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(No exhibits were offered or
marked for identification.)

1 (The following proceedings were had
2 January 6, 2020, 12:05 p.m., Charleston County
3 Common Pleas Nonjury, Judge Price.)

4 THE COURT: All right. The next one is
5 Chappell v Ladles Soups James Island.

6 Is it Chapel or Chappell?

7 MR. LECLERCQ: Chappell.

8 THE COURT: All right.

9 I vaguely remember this one. Let me
10 see if I can remember and figure it out. It has
11 something to do with tips. Gentleman's client --
12 made a motion for his client that they were not
13 associated with Ladles of James Island. I agreed
14 and I let them out of the case.

15 I remember Mr. Koon and others were
16 here to just see what was going to happen. They
17 saw what was going to happen, and I assume that's
18 what got us here today.

19 Am I kind of close?

20 MR. KOON: And a bunch of other stuff.

21 THE COURT: Along with nine other
22 motions.

23 MR. LECLERCQ: Good morning, Judge.

24 THE COURT: Morning.

25 MR. LECLERCQ: Benjamin LeClerc here

1 on behalf of the plaintiffs. I'm joined by my
2 associate David Ashley as well as Laney Charpia
3 that we've asked be allowed to enter this case via
4 motion to amend. So this case is about tips,
5 credit card tips specifically, that have been taken
6 by the defendant from the plaintiff.

7 THE COURT: All right. And the
8 plaintiff's name again?

9 MR. LECLERCQ: Craig Chappell. He's
10 not here today; he has a friend in hospice. We
11 have asked in the motion to amend that Ms. Charpia
12 be allowed to be added as plaintiff. And so she is
13 also with us.

14 THE COURT: That's who I was wondering
15 who it was. And how do you spell her last name?

16 MR. LECLERCQ: C-H-A-R-P-I-A.

17 THE COURT: Is your husband an
18 attorney?

19 MS. CHARPIA: No.

20 THE COURT: There's a -- there's an
21 attorney in Summerville with the same last name.
22 Just seemed like a unique last name and he's an
23 attorney.

24 And are we going to hear all eight?

25 MR. LECLERCQ: There are a bunch of

1 motions. So the -- if the -- with the Court's
2 indulgence, I can give you just a brief overview,
3 the view from 10,000 feet.

4 THE COURT: Sure.

5 MR. LECLERCQ: The appropriate place to
6 start is with Black's Law Dictionary which defines
7 a tip as a gratuity for service. And a gratuity is
8 defined as something given without obligation. And
9 so that's really the heart of what's happening.

10 And if -- the other place to start is
11 if you look at the defendant's website. The
12 originator of the Ladles concept basically brags
13 about their ability to control the wages. She says
14 the only two things that you can control in money
15 are food costs and employee wages. And so that's
16 exactly what they are doing.

17 There was a very lengthy initial
18 pleadings phase in this case. So it was filed back
19 in 2018, but we -- in February, but we had
20 difficulty getting service over all of the
21 defendants. And so we had to file a motion to
22 extend the time in which to serve or to serve by
23 publication.

24 Finally, after we got service, motions
25 to dismiss were filed in July of 2018. They were

1 decided in January of 2019, with motions to
2 reconsider being filed, which weren't actually
3 decided until March of 2019.

4 At that point, discovery was supposed
5 to start and we sent out discovery, but,
6 unfortunately, we have not been able to get
7 defendants to comply with their discovery
8 obligation.

9 And so this is a Payment of Wages Act
10 case amongst other things. And what can be more
11 relevant in a Payment of Wages Act case but the
12 identities of the employees. We have still not
13 been given the identities of the employees.

14 And so the defendants are the
15 franchiser, as well as the operating company
16 defendants, and just individuals with personal
17 liability. So that the motions that are pending
18 are a motion to amend the complaint, which is
19 basically to add a count of quantum meruit,
20 alternative counts of negligence as well as a civil
21 conspiracy claim.

22 We've got motions to compel discovery
23 as well as motions to deem responses to request to
24 admit admitted. We've got a motion for continuance
25 and a scheduling order, and as well as our motion

1 for class certification.

2 We have also requested that the motion
3 for -- to reconsider be -- I'm sorry, the motion
4 for summary judgment that Your Honor granted for
5 Ladles Mount Pleasant be reconsidered. So based on
6 -- based on the facts as have come out in our
7 independent investigation. The other pending
8 motions are the defendants' motions for summary
9 judgment.

10 So I have already given the Court a
11 brief overview of the procedural posture of this
12 case. The -- there are a couple of important
13 points though to highlight in that the defendants
14 filed motions to dismiss for improper parties back
15 in 2018 when the case was filed -- or, I'm sorry,
16 in July after it had been filed and finally we got
17 service.

18 In our response to those motions, we
19 requested that the Court grant the class
20 certification. Now there's an important procedural
21 point. Finally, when those motions were denied by
22 the Court in January of 2019, and the defendants
23 then moved to reconsider, which was denied, they
24 took a shot at all of the arguments that they had
25 been making relating to standing and other things.

1 That was denied. Okay.

2 And so at that point they have an
3 obligation to comply with discovery, and they
4 didn't do it. And so we have the right to seek
5 discovery from, for example, Ladles Mount Pleasant.
6 After the motion to dismiss filed by Ladles Mount
7 Pleasant was denied, we have the right to get the
8 identities of their employees, which they never
9 provided, to see if there is an appropriate class
10 representative.

11 So the -- at the status conference,
12 which was held just a couple of months ago in front
13 of Judge Young, he indicated that once the -- you
14 know, he would look at -- if he were doing it as
15 the motion for summary judgment prior to the
16 discovery being done, but he said the first thing
17 is to get the motion for class certification done.

18 So we're going to tag team, if it's
19 okay, Judge. We would like to start with the
20 motions to compel discovery. And my associate
21 Mr. David Ashley is going to -- would like to make
22 remarks to the Court relating to the motion to
23 dismiss.

24 Are there any questions that you have
25 of me prior to?

1 THE COURT: Just indicated that Judge
2 Young wanted to get the motion for class
3 certification heard before he heard summary
4 judgment, but we're going to do it all today?

5 MR. LECLERCQ: Well, we are prepared to
6 do it all today, but if -- it depends on where the
7 Court comes down on the motion for class
8 certification. We think that -- for example, the
9 way that this is done in Federal Court is there is
10 a motion for conditional class certification, and
11 there is a lower threshold that that can be done,
12 but we haven't been given the appropriate discovery
13 that would allow us to buttress that motion for
14 class certification.

15 Nevertheless, we do think that it is
16 timely and could be granted at this time by the
17 Court.

18 THE COURT: All right. Mr. Koon.

19 MR. KOON: Your Honor, I represent
20 Defendants Ladles Franchising, Inc., Sue Allen,
21 Tracy Allen, and Ladles Soup, LLC. The Ladles
22 Franchising, Inc. obviously is the franchising
23 company that franchises the various locations
24 through the other defendants in the case.

25 Tracy Allen and Sue Allen are officers

1 of the franchising company. Sue Allen is formerly
2 the operator of Ladles Soups, LLC, which was one of
3 the restaurants, the West Ashley restaurant.

4 Ladles Soups, LLC is basically a
5 defunct corporation having sold the West Ashley
6 location to Corey Paul, who is one of the owners of
7 entities operating two of the franchises.

8 I stood up because I can't let a couple
9 of things go unanswered. First of all, he's
10 painted us along with everybody else as refusing to
11 answer discovery. We have answered discovery. We
12 have objected to a couple of issues, but they have
13 nothing to do with the motions here today.

14 We have provided all of the information
15 about former employees of Ladles Soups, LLC that we
16 know about, and those are the only employees who
17 would have anything to do with tips. For example,
18 Ladles Franchising, LLC does not employ servers,
19 waiters or anybody else.

20 And we did have a telephone conference
21 with Judge Young and, obviously, he set all of
22 these motions for today. He did not indicate any
23 preference that one had to be heard before the
24 other.

25 And my clients have never made a motion

1 to dismiss or for summary judgment, other than the
2 very one we are here to argue today. So we haven't
3 had our shot. We've been impatiently waiting for
4 our shot until today.

5 So if had a suggestion, I would ask
6 Your Honor to -- since you've already granted one
7 summary judgment motion, and ours is very similar
8 to the one that you granted, I would suggest that
9 those motions perhaps be heard first; but,
10 obviously, we'll comply with whatever your wishes
11 are.

12 THE COURT: What's the gentleman's name
13 over here?

14 MR. SHELBOURNE: Brandt Shelbourne,
15 Your Honor, on behalf of Ladles Mount Pleasant,
16 Inc. --

17 THE COURT: But you're here just to see
18 what's -- the motion to reconsider, to argue that?

19 MR. SHELBOURNE: I'm here to respond to
20 the motion to reconsider once I hear the basis.

21 THE COURT: Sure.

22 And, Mr. LeClercq, is that information
23 accurate? Have they provided these lists of
24 employees from Ladles, LLC?

25 MR. LECLERCQ: Your Honor, like I said,

1 my associate David is going to be handling the
2 motions to compel discovery. He's been involved in
3 the front lines with the discovery, but the answer
4 is no. They have not complied with their discovery
5 obligation under the law of South Carolina.

6 And it has significantly hampered our
7 ability to be able to go forward with the motion
8 for class certification, the setting of depositions
9 and similar things. So we think that to set the
10 table as it were, it's important for the Court to
11 understand the importance of this -- of the
12 discovery that we've requested.

13 MR. FERRARA: Your Honor, Paul Ferrara,
14 on behalf of multiple defendants, Ladles -- and I
15 can go through those, Your Honor, but, for example,
16 Ladles James Island where Mr. Chappell works,
17 Ladles West Ashley, Ladles Knightsville, Ladles
18 Fresh Fields, Dan and Carol Sutton, Steve Trager,
19 Terry Owens.

20 Your Honor, as of today, all of the
21 discovery that -- of the clients that I represent
22 has been answered and served upon the plaintiff.
23 Several depositions have taken place, Your Honor.
24 The proprietor, Terry Owens, that ran Ladles James
25 Island where Mr. Chappell worked, she has been

1 deposed, Ladles West Ashley has been deposed.

2 And the only information that has not
3 been provided by all of my clients en masse, Your
4 Honor, and it's due to liability concerns is that
5 -- similar to that of Mount Pleasant's objection in
6 that main social security numbers, addresses, phone
7 numbers we believe is confidential information and
8 that my clients are not allowed to disseminate that
9 information to the plaintiff.

10 And essentially, Your Honor, what the
11 plaintiff is doing here has -- is going on a witch
12 hunt trying to find alleged employees who might
13 have suffered a claim as a result of these credit
14 card tips. Importantly, Your Honor, if you aren't
15 changing your mind and have already granted summary
16 judgment because Mount Pleasant had nothing to do
17 with Mr. Chappell, and likewise all of my clients
18 except for James Island where Mr. Chappell worked
19 have nothing to do with Mr. Chappell.

20 And the plaintiff at the same time,
21 Your Honor, is trying to get a class certified,
22 which they still have not done. My clients have
23 complied as of today with all of the discovery and
24 presented everything within their control.

25 I understand there was a subpoena that

1 was issued to the Department of Employment
2 Workforce that have the names, addresses, and wage
3 information that was paid to these alleged
4 aggrieved parties. And I will let Mr. LeClercq
5 tell Your Honor about that.

6 I understand there might have been an
7 objection, but that -- that's where all of this
8 information that the plaintiff is seeking to get,
9 the names and addresses and amount of wages that
10 have been paid, can easily be obtained from the
11 State through the Department of Employment
12 Workforce. My clients don't readily have access to
13 that information.

14 Respectfully, Your Honor, my clients
15 have spent thousands of dollars to get this far
16 into the litigation. We have answered all of the
17 discovery with the exception of the employees'
18 information, confidential information and --

19 THE COURT: Well, let me do this. Let
20 me try to get a grasp on this real quickly. So we
21 have the plaintiffs' motion -- two plaintiffs'
22 motions to intervene. Are those the same?

23 MR. LECLERCQ: Judge, we have -- yes.
24 It's a -- the motion is a motion to intervene and
25 in the alternative to amend the complaint to allow

1 the addition of Laney Charpia as an additional
2 plaintiff. So that's the thrust of the motions
3 that have been filed.

4 We filed a motion to intervene
5 initially, but then we reconsidered it and restyled
6 it a motion to intervene and in the alternative to
7 amend the complaint.

8 THE COURT: All right. So we have
9 plaintiffs' motion to amend, which you just
10 discussed, motions to intervene, the motion to
11 compel, and the two motions for summary judgment.
12 All right. So nothing too crazy. We can handle
13 it.

14 So what I want to do, I'm not going to
15 take up the class certification. I agree, I just
16 don't think you have enough information or we have
17 any information to certify a class at this point in
18 time. I will continue that. If you want me to
19 hear it, I'm happy to do it the week of
20 February 17th.

21 So what I want to do is take up the
22 motions for summary judgment. And, Mr. Koon, since
23 you represent the larger entity, I would like to
24 hear from you first if that's okay.

25 MR. KOON: Thank you, Your Honor.

1 First of all, the -- it's important to
2 recognize, although there does seem to be a kind of
3 bewildering paper about amendments to the motion
4 for intervention or in the alternative amendment of
5 the complaint for the initial amended complaint and
6 amended amended complaint, and a second amended
7 complaint, the causes of action that are before the
8 Court at this juncture against all of the
9 defendants, including mine, are failure to pay
10 wages under the Wages Act, breach of contract, and
11 conversion.

12 Now, it is undisputed -- and we've
13 given Your Honor affidavits and deposition excerpts
14 that the plaintiff never worked for any of my
15 clients. In fact, Ladles Franchising, Inc. has
16 never employed servers, waiters, or other employees
17 who would naturally receive tips. And that is in
18 our client's affidavit attached to the motion.

19 We have never had an employer/employee
20 relationship with Mr. Chappell or, for example, the
21 intervenor. Now the intervenor works at the
22 successor to the West Ashley location, which my
23 client used to own, Sue Allen, but she sold that;
24 and there's no question she sold it way before the
25 proposed intervenor began working there.

1 So everything I say applies not only to
2 Mr. Chappell but to his proposed intervenor. We've
3 never had an employer/employee relationship. We've
4 never had a contractual relationship with either
5 Chappell or the intervenor; and, naturally, if they
6 have worked for us, we never came into possession
7 of any tips that they now claim.

8 And there are deposition excerpts from
9 all of the franchisors who have been deposed so far
10 which -- and also the deposition of Sue Allen, the
11 operating -- chief operating officer of the
12 franchising company, that the franchising company,
13 Ladles Franchising, doesn't charge any percentage
14 fees, franchise fees on any tips. No matter what
15 kind. So that's undisputed also.

16 THE COURT: Will you explain this to
17 me, Mr. Koon? So what essentially happened was Sue
18 Allen, did she establish this Ladles concept?

19 MR. KOON: She did.

20 THE COURT: And so she built this brand
21 up. She realized that she could make more money
22 franchising it. She sold hers, started the -- what
23 would be -- it be Ladles, Inc., and then she said,
24 okay, I'm not going to go sling soup anymore.

25 I'm just going to get people to pay me

1 for a franchise. Independent individuals that want
2 to come and franchise a Ladles, they can go make
3 soup and sell it all day, but I'm up here now. Is
4 that how the business actually operates now?

5 MR. KOON: Yes, sir, except that she
6 established Ladles Franchising along with her
7 husband before the Ladles Soups location West
8 Ashley was sold. Actually, Mount Pleasant was the
9 first franchisee.

10 So they have a typical franchise store,
11 a franchisee relationship controlled by a franchise
12 agreement, which is in the record, and which
13 plainly establishes that the franchisor and the
14 franchisee are separate and independent entities.
15 They are not agents of each other. That is
16 directly considered in the franchise agreement.
17 That is paragraph 5(2), which is quoted to you in
18 the record.

19 And so the franchisees are all
20 independent entities and all have acknowledged
21 that. And all have also, that have been deposed,
22 have acknowledged, just as Sue Allen and her
23 husband alleged and have stated, that no tipping
24 policy, no compensation policy is included in the
25 franchisee's obligations under the franchise

1 agreement, and that nobody has required the
2 franchisees to adopt any particular tipping policy.

3 And, importantly, to that issue,
4 Mr. Shelbourne's client was the very first
5 franchisee and he's presented evidence and his
6 client has testified that they pay credit card tips
7 in monthly checks to the employees. So that proves
8 there is no policy. The very first franchisee has
9 a different policy.

10 THE COURT: All right. Let me stop you
11 right there. You represent Sue Allen, Ladles
12 Inc. --

13 MR. KOON: Ladles Franchising, Inc.

14 THE COURT: Okay. Who else?

15 MR. KOON: Tracy Allen, Sue Allen's
16 husband, and an officer of Ladles Franchising,
17 Inc., and Ladles Soups, LLC, which is a dormant LLC
18 that formerly owned the West Ashley location.

19 Our argument is very simple, Your
20 Honor: You can't sue somebody you never worked for
21 under the wage statute.

22 THE COURT: I understand.

23 MR. LECLERCQ: Much to the contrary,
24 Judge, I'm sorry, let me correct some of these
25 inaccuracies. First of all, there is evidence in

1 the record which we cited in our materials, that
2 they do in fact -- they take a percentage of the
3 gross, that the franchisors takes a percentage of
4 the gross of the franchisees for services rendered.
5 That is in the franchise document.

6 The franchisor gets a percentage of the
7 gross of services rendered. What services are
8 rendered at Ladles West Ashley? The services of
9 Laney Charpia. And the defendants get payments for
10 that, including via credit card and including
11 credit card tips, which are not distributed.

12 Even though they are gratuities for
13 service, they are not given to the servers that are
14 actually giving those services.

15 Okay. So the first point, it is
16 incorrect that the franchisor is not benefitting
17 from this illegal tipping policy. The franchisor
18 is making money off of the tips. The franchisor is
19 taking the credit card -- a percentage of the
20 credit card tips that should belong to Ms. Charpia
21 and are going instead to the franchisor. So they
22 are benefitting.

23 So the thrust of our response to the
24 motion for summary judgment is this is not Federal
25 Court. This is not the Fair Labor Standards Act.

1 This is the Payment of Wages Act. And,
2 specifically, we think the Dumas v InfoSafe case
3 controls here. And what does it say?

4 It says that agents of an employer that
5 knowingly permit the non-payment of wages are
6 liable for the payment of wages. And that is
7 exactly what is going on here with regard to the
8 franchisor.

9 Okay. All of this is set out in great
10 detail in our documents, but basically the
11 franchisors are acting as the agent of the
12 franchisees with the power to bind those
13 franchisees. And that is set out specifically in
14 the franchise agreement, and you don't really need
15 to look any further than Ladles' website to see
16 that the franchisor, which owns that website, is
17 acting as the marketing agent for the franchisee
18 for the benefit of all.

19 And so the fact is that they are agents
20 with the power to bind, the franchisors are. Okay.
21 They knowingly permit this tipping policy. They
22 know about it. In fact, it was designed by the
23 original franchisor, Ms. Allen. And so they know
24 about it --

25 THE COURT: You're assuming a lot of

1 facts that I'm assuming are at great question here.
2 I mean, you assume that Ms. Allen set this scheme
3 up or something is what your position in this case
4 is? Is that -- and that she gets some type of
5 gross proceeds from this and she teaches all these
6 franchises how to do this so she makes more money.
7 And in doing so, obviously, is a detriment to Ms.
8 Charpia. And you're assuming that this is a big
9 grand scheme.

10 MR. LECLERCQ: It is supported in the
11 deposition testimony.

12 THE COURT: Okay.

13 MR. LECLERCQ: That that is what
14 happened. That Corey Paul, who is now the owner of
15 the Ladles West Ashley franchise, kept this policy
16 in place that had been designed by -- by the --
17 Ms. Allen.

18 Now, part of the problem, Judge, we
19 haven't been given access to the discovery
20 documents that we should have gotten that would
21 allow us to respond to -- to this sort of thing to
22 find out -- for example, we've noticed the
23 deposition of all the operating defendants. Not
24 all of them have been provided. We have not been
25 given access to the names and contact details for

1 the employees --

2 THE COURT: Well, hold on. I think
3 we're getting into the motion to compel. I want to
4 stick with Mr. Koon's motion for summary judgment.

5 All right. He's responded. Go ahead.

6 MR. KOON: I'm sorry, and I apologize,
7 but counsel has to be constrained by the record.
8 Terry Owens testified in her deposition on page 33
9 that she does not pay tips -- pay gross -- excuse
10 me, does not pay franchise fees on tips.

11 Julie Dyke of Mount Pleasant on page 24
12 says she does not pay her tips as part of the
13 franchisee for the percentage. Excuse me, that's
14 actually page 36.

15 Sue Allen in her 30(b)(6) deposition
16 testified that the franchise fees are percentage
17 less certain other things and less tips.

18 The record has -- there's nothing at
19 all in the record that says the franchise company
20 gets tips. In fact, it says just the opposite.
21 And I would just ask counsel to be constrained by
22 what is in the record.

23 THE COURT: Well, that's why I asked
24 him; he was assuming a lot of facts in his argument
25 that are very contentious I would assume. Well,

1 actually not contentious. For the record --

2 MR. KOON: They're settled.

3 MR. LECLERCQ: To the contrary, Judge.
4 I'm holding the franchise agreement, which is part
5 of the record. And at paragraph -- on page 18, and
6 it's -- paragraph 7(c) says, in this agreement
7 termed gross sales shall mean gross sales of all
8 food, beverage, other menu items, merchandise and
9 goods and other services sold or performed by or
10 for you at the restaurant.

11 THE COURT: Does it say tips?

12 MR. LECLERCQ: It says all goods and
13 other services. And so the fact is, is that the --
14 we've asked for information in discovery that would
15 help us answer these questions which has not been
16 provided, but there is evidence in the record that
17 tips that are part of the gross --

18 THE COURT: You're assuming that other
19 services is also tips. That's your reading or
20 interpretation of that.

21 MR. LECLERCQ: The principal service
22 that's provided at a Ladles -- in Ladles West
23 Ashley, for example, where Ms. Charpia works, is
24 her service in providing food to the customers that
25 come in. And that is the principal service that's

1 provided.

2 There are amounts that are paid by
3 customers for that service, and then there are
4 gratuities. And so those are the services
5 provided. And it says that the percentage is
6 payable on the gross.

7 And so they can't on the one hand stand
8 up and say, we don't take any of the tips, without
9 allowing us the discovery that we need to be able
10 to find that out, particularly when there are
11 documents in the record that directly contradict
12 what was just said.

13 THE COURT: Mr. Koon, let's do this. I
14 want to hear from you certainly, but they're going
15 to keep coming back to this motion to compel. I
16 mean, I think they're just going to keep going back
17 to it every time I let them talk.

18 What do you think I should do? Just
19 let them go ahead and argue the motion to compel
20 and let you all respond and see if we can get
21 somewhere?

22 MR. KOON: We're happy to respond.
23 Actually, Evan Lacke has handled the discovery
24 issues, and he's more prepared to talk about the
25 discovery than I am.

1 THE COURT: Let's do that. It's just
2 going to keep going back to that, I think, that you
3 all are blocking them from getting the access to
4 the information they need. Let me see what they
5 have to say and maybe we can get something
6 accomplished.

7 MR. KOON: Let me respond to one other
8 thing. And I sure am sorry to keep popping up and
9 down. When I hear these allegations that I know
10 are not accurate, I have to bring it to the Court's
11 attention.

12 THE COURT: Please.

13 MR. KOON: Mr. LeClercq perhaps can be
14 tested on the site on this one because he didn't
15 attend the deposition of Terry Owens, the employer
16 of his client, and Corey Paul, but they brought
17 their franchise monthly records to show what their
18 percentage was.

19 And those were produced at their
20 depositions, and they testified that in actuality
21 they never paid franchisees on the credit card
22 tips. And the franchisor agreed with them.

23 THE COURT: Okay. Let's hear the
24 motion to compel and maybe I can just sort them all
25 out.

1 MR. ASHLEY: Thank you, Judge. I am
2 David Ashley on behalf of Mr. Chappell. We served
3 the discovery in May, received no response as we
4 filed our motion to compel in August. I think
5 right after that the franchisor defendants --
6 around that time they initially responded, but
7 objected to a lot of the questions that we were
8 seeking information for.

9 And one of the -- December 31 they
10 supplemented their responses. One of the things we
11 have still asked them for and not received is
12 information relating to the payments that they
13 received from the franchise defendants, which is
14 going to show whether or not the gross sales.

15 We've asked for that and still not
16 received that.

17 THE COURT: Let me stop you there.

18 Mr. Lacke, just as to that point.

19 MR. LACKE: Just as to that point.

20 They sent -- we sent -- when they filed the motion
21 to compel, I sent an e-mail to them asking what
22 specifics -- nor, we had not been contacted by
23 counsel to be made aware as to what specific
24 discovery responses they were requesting be
25 compelled. We had already responded.

1 I received a letter here dated
2 November 13th, asking -- basically following up on
3 the specific reasons for -- for requesting --
4 certain objections and what they would like
5 followed.

6 We've answered all of those. So
7 there's two discovery requests that we have not
8 responded to. One involves basically just a
9 complete asset inventory. And we felt that was a
10 little bit premature to respond to now, so we have
11 objected to that.

12 They've also requested inspection of
13 the Allens' computers and cell phone records. We
14 have maintained our objection to that. They live
15 in Ohio and use those devices. We are happy to
16 make those available for an inspection if they come
17 up there, but we have, in fact, Your Honor, in our
18 first discovery responses provided the names of all
19 of the employees that we know of -- and this,
20 again, Your Honor, only applies to Ladles Soups,
21 LLC. That's the only entity that employed servers.

22 We also provided all of the W2 and
23 payroll information that we could get our hands on.
24 Again, Ms. Allen sold this franchise a number of
25 years ago, so she had to contact -- I believe it

1 was ADP or one of those payroll processing. We
2 provided all of that information to counsel in the
3 first response.

4 I don't believe there are any employees
5 of Ladles Soups, LLC that have worked there
6 historically that they are not aware of. That was
7 all provided in the first discovery responses.

8 THE COURT: He's talking about the
9 gross -- what was it?

10 MR. ASHLEY: The gross sales that are
11 paid by the franchise defendants. It's Request for
12 Production Number 11.

13 THE COURT: All right.

14 MR. LACKE: Just a moment, Your Honor.

15 THE COURT: Take your time.

16 MR. LACKE: Number 11 requests for
17 production states, produce a complete itemized
18 accounting and financial summary of all amounts
19 paid that are owed to you by any other party to
20 this action for the period January 1, 2015, to
21 present.

22 We stated simply, no such itemized
23 accounting and financial summary exists. They have
24 not been prepared. We don't have one. Again, if
25 we -- that was the response. We don't -- we have

1 no objection to -- I'm not sure if they have that
2 information anywhere else. We have no objection to
3 giving it to them.

4 Basically, it was just what was
5 provided, monies that were paid to the franchisor.
6 They already have that.

7 THE COURT: So you want what the
8 franchisee pays to Mr. and Mrs. Allen.

9 MR. ASHLEY: Right. Because they're
10 claiming that they aren't receiving a part of the
11 tip. And when -- they say that Corey Paul provided
12 that at his deposition. He didn't provide that in
13 his deposition. He looked on his phone and said,
14 this is what we get. Nothing has been provided.

15 THE COURT: He testified to it.

16 MR. ASHLEY: Well, he testified to it.
17 We requested the documents and have not received
18 them.

19 THE COURT: Do you have any objection
20 to providing what a franchisee pays to the
21 franchisor?

22 MR. LACKE: Your Honor, we do not.

23 THE COURT: You will get it.

24 MR. ASHLEY: Okay.

25 THE COURT: What's next?

1 MR. ASHLEY: With franchisor
2 defendants, they are correct; they had provided a
3 list of employees. I don't know if you want to get
4 into the motion to compel with the franchisee
5 defendants yet.

6 THE COURT: What do you want them to
7 do?

8 MR. ASHLEY: Well, this is a little bit
9 different because they have -- the only documents
10 they have provided to us are tax returns from their
11 clients and a couple of sales summaries.

12 THE COURT: All right. Well, let me
13 stop you there. If it has tax returns from the
14 clients, you know who they are, then, correct?

15 MR. ASHLEY: Correct. We've asked for
16 a number of other things, and that's all they
17 provided to us.

18 THE COURT: Go ahead. What else have
19 you asked for that you haven't received?

20 MR. ASHLEY: An employee handbook. We
21 -- it might be quicker if I can approach. I can
22 give you a sample of their responses.

23 THE COURT: All right. Which ones do
24 you want to go to?

25 MR. ASHLEY: Your Honor, if you look at

1 -- so these are the responses from Ladles James
2 Island. There is no disagreement that there is
3 standing in the case. So to give you a sample, if
4 you look at Number 25, we asked, do you use a
5 third-party payroll processing service? They
6 objected to that as being unduly burdensome.

7 Number 28, we asked, you know, to state
8 which employees are responsible for payroll,
9 signing checks, handling the tip policy, and
10 accounting and receipts. They answered -- they
11 objected to that as being unduly burdensome.

12 And this goes on. We asked them for
13 payroll documents. They object to that as being
14 unduly burdensome. That was Number 30.

15 THE COURT: Okay.

16 MR. ASHLEY: And within the stuff that
17 we've requested the list of employees; they
18 objected to that.

19 THE COURT: Well, employees would have
20 come with tax returns. Am I correct or incorrect?

21 MR. ASHLEY: No, that is not correct.
22 The tax returns is just what they made for the
23 year. It does not have a list of employees. It's
24 not the employees' tax returns.

25 THE COURT: Oh, I assumed that's what

1 it was.

2 MR. ASHLEY: No. When I say -- all the
3 documents they produced are just the annual tax
4 returns for the company.

5 THE COURT: Got you. I thought you
6 meant each individual employee.

7 MR. ASHLEY: No, sir.

8 THE COURT: Okay. Yes, sir,
9 Mr. Ferrara, what would you like to tell me?

10 MR. FERRARA: Yes, Your Honor, may it
11 please the Court.

12 As to James Island, I understand that
13 the plaintiffs would like my client to present a
14 list of employees and their contact information and
15 financial information, but we objected to that,
16 Your Honor, due to privacy concerns. And since
17 this time, they have issued a subpoena -- that's
18 what I referenced earlier -- to the Department of
19 Workforce in November, Your Honor, asking for DEW
20 to provide all of that information.

21 And so not only as to James Island, but
22 as to every Ladles in this lawsuit. And I
23 understand there is an objection by the Department
24 of Employment Workforce, but I think that they have
25 all the information that -- apparently that the

1 plaintiffs think that they need.

2 But, respectfully, Your Honor, I know
3 that the plaintiffs are entitled to discovery, and
4 we've presented everything that we have in our
5 possession that would not subject my client to
6 further liability, but we are so deep down the
7 rabbit hole with this in that -- I guess, we'll
8 deal with the motions after we get done with the
9 motion to compel.

10 The general objections are that as to
11 Craig Chappell, any information that my client has
12 in their possession, we have produced it. Craig
13 Chappell has been deposed. Terry Owens has been
14 deposed since this discovery, Your Honor, and they
15 have been able to ask her all of the questions
16 directly from the horse's mouth that she had. And
17 she has presented everything.

18 The only thing that we didn't present,
19 because we didn't have possession of it, was -- now
20 I have requested credit card receipts from Square
21 directly, and they have not presented -- Square has
22 not presented that information to me.

23 My client doesn't have this
24 particularized information that relates to the
25 dates Mr. Chappell worked. As soon as I get that,

1 I spoke with Mr. Ashley about that -- as soon as I
2 receive that we are going to produce that.

3 It's burdensome for my client to -- my
4 client doesn't keep individualized records of each
5 transaction that the discovery responses seek to
6 discover, you know, with this kind of -- you know,
7 throw everything against the wall and see if
8 something sticks.

9 So what we have done, Your Honor, as
10 they requested everything that's in our control
11 from Square --

12 THE COURT: Well, let me ask Mr. Ashley
13 this. In the deposition, did they testify if there
14 was a third-party payroll processing service?

15 MR. ASHLEY: They may have. I'm not
16 sure.

17 THE COURT: Did they testify that they
18 were aware of all of the employees, members or
19 officers that responded that has had any
20 responsibility for payroll signing or dispersing
21 paychecks or wages, handling tips, accounting,
22 credit card receipts, bookkeeping and accounting,
23 and hiring and firing employees? Did you ask that
24 question at the deposition?

25 MR. ASHLEY: Your Honor, I did and --

1 but you can ask a question. But what we're asking
2 for are the payroll documents to show what the
3 employees are being paid and to know whether or not
4 they're following the tip policy.

5 THE COURT: Okay. What is your
6 position as to that?

7 MR. FERRARA: Respectfully, Your Honor,
8 just for clarification to the Court, Terry Owens is
9 the chief cook there for Ladles James Island. And
10 she testified as to all of those matters Your Honor
11 inquired about. She is the person who is
12 responsible, and she answered those questions.

13 THE COURT: Mrs. Owens told you about
14 all of that information. And so what else do you
15 want further? Do you want a list of it?

16 MR. ASHLEY: Well, for example, payroll
17 documents are not -- she couldn't have testified to
18 that because she didn't bring them.

19 THE COURT: What's your position,
20 Mr. Ferrara, about the payroll documents? Because
21 it's all about that. This whole case is about
22 those sheets of paper. That's what this is all
23 about.

24 MR. FERRARA: Yes, Your Honor. The
25 payroll documents as to Mr. Chappell, they are not

1 seeking those. They are asking for all of the
2 payroll information and confidential information of
3 the employees.

4 And similar to Mr. Shelbourne's
5 objection as to privacy, we objected on privacy in
6 that to provide all of the employees for the last
7 three years with their name, address, social
8 security number, and their wages, I didn't want my
9 clients who inquired of me whether they should just
10 volunteer that.

11 I believe they would be subjecting
12 themselves to liability to provide all of that
13 information.

14 THE COURT: What would the liability
15 be?

16 MR. FERRARA: Privacy information and
17 that -- private confidential information. And
18 since then --

19 THE COURT: Well, I agree. I don't
20 think they would be entitled to somebody's social
21 security number or something like that. Obviously,
22 if you have that information, I mean -- and you're
23 addressing your name, you can do whatever you want.
24 Not that I agree with that. But does your client
25 have any objection to giving them a list of

1 employees?

2 MR. FERRARA: No, I don't have -- I
3 guess -- I don't have a problem if Your Honor
4 issues that order. But, importantly, Your Honor,
5 the Department of Employment Workforce has the
6 additional information about wages and things that
7 I think the plaintiff is seeking.

8 THE COURT: Do you think you will get
9 it from them?

10 MR. ASHLEY: They have entered a motion
11 to quash and it's -- we've got -- there's going to
12 be a hearing on it in Richland County.

13 THE COURT: Oh, it's up in Columbia.

14 MR. LECLERCQ: Judge, I tried to get
15 their counsel to agree to have it heard today so we
16 could settle it all at once. And if we are going
17 to reset in February, I will ask them if they will
18 waive their objection to having it heard in
19 Charleston.

20 THE COURT: I'm happy to do that.

21 MR. FERRARA: Your Honor, I understand
22 that this -- in this case the plaintiffs are
23 alleging many things, but all of the information
24 that my clients have in their possession we have
25 presented.

1 And the particular financial
2 information that they are seeking from every one of
3 my clients as far as sales, credit card tips, and
4 things like that, that is burdensome for my clients
5 to try to track down. None of my clients keep
6 detailed records and --

7 THE COURT: I would agree with that. I
8 mean, to produce every single transaction that the
9 person gets to on there and get tipped \$1, I mean,
10 that's -- that could be 80 a day.

11 MR. ASHLEY: Your Honor, I don't think
12 that's what we've requested. We just requested --
13 the payroll is completely separate from that.
14 That's not each transaction. I don't think that we
15 have requested each transaction.

16 Payroll is simply what they've paid
17 each employee every two weeks, or how ever often
18 they get paid.

19 THE COURT: Okay.

20 MR. FERRARA: Respectfully, Your Honor,
21 what relevance does that have to claims that
22 unknown people may have a claim to a portion of a
23 credit card tip? I thought that the payroll
24 question was resolved when the subpoena was issued
25 to the Department of Employment Workforce.

1 They have a total of -- and, you know,
2 every one who is on the 941s of my clients, all of
3 my clients, and what they were paid quarter by
4 quarter, but I still don't know how that's
5 relevant. That's what I'm referring to, Your
6 Honor.

7 We're way down in the rabbit hole.
8 This case -- if we go back to the beginning, this
9 case as we sit here today, Your Honor, is
10 essentially just Craig Chappell, in his own
11 individual capacity versus James Island and for his
12 claim, rightfully so.

13 I mean, I understand his position that
14 he's claiming he's entitled to the credit card tips
15 of the days he worked. Square is getting that
16 detailed information, Your Honor, and we will have
17 that, but everything else is just -- just guesswork
18 by the plaintiffs.

19 He's not been certified as a class.
20 And I know Your Honor said you don't want to get
21 into that, but all of the other discovery motions
22 that are before Your Honor, I think we should
23 resolve that until later because -- or if you want
24 to resolve it now, that's fine, Your Honor, but all
25 of that stuff relates to Your Honor's decision

1 about whether you would certify a class for this.

2 So respectfully, Your Honor, there has
3 been plenty of time for the plaintiff to discover
4 everything they would need to be able to move
5 forward with the class. I know that's outside of
6 this.

7 But all of the -- the only reason I
8 mentioned that is because all of these other
9 arguments about discovery and motion to compel
10 relate to the other defendants that are not James
11 Island. I don't -- my client James Island is happy
12 to provide -- I can get my client to provide a list
13 of the employees if Your Honor does a Form 4 in the
14 last three years to James Island.

15 THE COURT: Okay. I'll get you that.
16 No problem. Okay. So let me just -- as a quick
17 aside, you just represent James Island. Who
18 represents all these other people?

19 MR. FERRARA: I do. My office
20 represents the other people as well, Your Honor.

21 THE COURT: Knightsville?

22 MR. FERRARA: Yes.

23 THE COURT: So everybody. Fresh
24 Fields?

25 MR. FERRARA: Everybody, Your Honor.

1 And I guess for the record if you would allow me, I
2 can name out the defendants that I represent
3 because there are several defendants that I think
4 were not served. They are still in the caption,
5 but they weren't served and there's still no
6 appearance by anyone.

7 THE COURT: Okay. If you want to, it's
8 fine. I just wanted to make sure we weren't just
9 dealing with just one being Ladles James Island,
10 because I know we already dealt with Ladles Mount
11 Pleasant.

12 MR. FERRARA: And, Your Honor, I will
13 represent as an officer of the court, my office as
14 of last Friday has answered all of the discovery of
15 all the defendants that I represent. And I
16 understand the plaintiffs' position about the
17 objection.

18 The plaintiffs really want all of the
19 employees of each store for the past three years.

20 THE COURT: How hard is that for a
21 manager to get?

22 MR. FERRARA: Many of my clients are
23 small operations and they don't have it, but once I
24 saw that -- once I saw that there was a subpoena
25 that was issued to the Department of Employment

1 Workforce, I thought that that argument was
2 resolved.

3 I mean, the rules for discovery say
4 that if it's -- we objected under burdensome. And
5 it appears that the plaintiff, by my reading of
6 this subpoena, had agreed and said, okay. Well, I
7 will go to the Department of Employment Workforce
8 and they can give out the information.

9 It's burdensome, Your Honor,
10 financially for my clients. They've had to pay me
11 for this multi-year litigation.

12 THE COURT: Is this something that the
13 Department of Labor can just print out?

14 MR. ASHLEY: They have, but they
15 objected to it.

16 THE COURT: Yeah, I'm going to handle
17 that. So let's do this. Give me your argument
18 real quickly as to why you want to have Ms. Charpia
19 intervene.

20 MR. LECLERCQ: Thank you, Judge. The
21 reason is, she says that the same policy is going
22 on where she works that Craig Chappell. And she
23 came to our attention not through good faith
24 participation in discovery, but through our own
25 investigation.

1 And so it is the exact same policy
2 which is going on at West Ashley as was going on in
3 James Island. And so we think that the amendment
4 of the complaint, which will add a number of claims
5 as well as to add Ms. Charpia, they are on notice.

6 We styled it as a class action from the
7 very beginning. They have been on notice that
8 additional class members would be --

9 THE COURT: Well, sure. That's all you
10 keep asking for is the employees, employees,
11 employees --

12 MR. LECLERCQ: That's right.

13 THE COURT: -- so certainly they're
14 aware of that.

15 MR. LECLERCQ: So they have been fully
16 aware of that and will have the opportunity to take
17 whatever shot they want to to try to refute that.
18 So it's -- we think it's a very liberal standard
19 for amending complaints in South Carolina under
20 Rule 15.

21 And really the only prejudice that the
22 cases talk about is lack of notice, or lack of an
23 opportunity to really -- to address these. And
24 none of that -- none of that prejudice we think
25 applies here.

1 So it is -- she is someone that is also
2 saying that -- that there is apparently evidence of
3 fraudulent behavior going on because there was
4 fraud in the inducement in her own agreement as to
5 what she was told about the tip policy at the time
6 she was hired, as well as that the Ladles
7 franchises are instructing their employees to
8 deceive the customers as to who gets the tips.

9 And we know that the tips are a
10 gratuity that should belong to the servers.

11 THE COURT: I got all that. I'm just
12 trying to figure out what -- I mean, what do you
13 consider to be the prejudice if she intervenes?
14 They're just trying to add another person from
15 another store.

16 MR. FERRARA: They are, Your Honor, but
17 Mr. LeClercq respectfully is confusing two separate
18 motions. One is the motion to intervene, and I
19 would like to discuss that with Your Honor; and the
20 second -- the second part of it is an alternative
21 to amend, which is really to add a new party.

22 So let's -- if we go back to the
23 beginning, Your Honor, kind of like this case, the
24 motion to intervene, there is permissive
25 intervention, as Your Honor is aware of, and then

1 there is nonpermissive intervention. In this case,
2 the -- I filed a memo outlining these arguments,
3 Your Honor.

4 And I was looking to see online -- I
5 filed it electronically; I can't see it in the
6 record, but I will make sure that that gets filed.

7 But attached to my memo, Your Honor,
8 there is -- it's a very important instructive on
9 this. There is a signed addendum by Laney Charpia
10 -- and may I approach, Your Honor?

11 THE COURT: Absolutely.

12 MR. FERRARA: I have provided
13 everybody, the plaintiff, a copy of this. And,
14 respectfully, Your Honor, I will give you a moment
15 to look at that.

16 THE COURT: Okay.

17 MR. FERRARA: Ms. Charpia is not
18 similarly situated to that of Craig Chappell.
19 Craig Chappell, there's no signed agreement like
20 this. Laney Charpia, respectfully, Your Honor,
21 doesn't even have a claim under the failure to pay
22 wages. She's agreeing by this written document to
23 pool tips in exchange for a higher hourly wage. It
24 is very clear to me that that is her claim.

25 And so when we talk about the

1 intervention, she doesn't have a right to intervene
2 in this litigation by Craig Chappell because she
3 has a different interest than Chappell.

4 I understand if I look at the pleadings
5 -- the proposed amended pleadings liberally, it
6 appears Ms. Charpia may want to file an action for
7 unjust enrichment as to these credit card tips.
8 And I know that's down the road, but just these
9 issues I'm bringing up now, Your Honor, support the
10 position that she should not be allowed to
11 intervene and muddy the water up in this case with
12 Craig Chappell. She can file her own lawsuit in
13 her own individual capacity.

14 When I read the pleadings, as well, it
15 looks like maybe she's trying to be substituted as
16 class representative instead of Mr. Chappell. And
17 I gather that by looking at her affidavit. She
18 said she wouldn't have any conflict of interest.

19 I don't know what her position is, but,
20 importantly, Your Honor, my client as of today,
21 Corey Paul, advised me that Laney Charpia still
22 works for him at Ladles West Ashley. She works one
23 day a week. She makes \$9 an hour. She agreed to
24 this agreement when she got hired and she still
25 goes to work today, every day under these terms.

1 And so I submit to you that really
2 adding her into this litigation is just an attempt
3 to add a new party and kick the case out for trial.
4 All of the defendants, all of my clients,
5 respectfully, Your Honor, do want to have this
6 litigation resolved. We want to go to trial or get
7 it resolved.

8 And so adding Laney Charpia in this
9 case, Your Honor, would kick the case out 180 days,
10 and it's highly prejudicial to all of my clients
11 who have already paid for all of the discovery.

12 Your Honor, she should not be allowed
13 to intervene and -- under Rule 24 because she
14 doesn't have an interest in this litigation. In
15 her affidavit -- what's before the Court right now,
16 Your Honor, is that Craig Chappell asserts that he
17 was an employee of Ladles James Island and that he
18 has a claim for credit card tips.

19 He's also asserting to be a
20 representative for all of the other restaurants and
21 the potential employee who might have a claim for
22 credit card tips. Laney Charpia is not the same as
23 Mr. Chappell. In fact, she has a document here
24 that I presented to you, and I don't think it's in
25 dispute, and -- that says she is agreeing to share

1 credit card tips --

2 THE COURT: All right. I get it. I
3 understand what you're saying. Here's what we're
4 going to do.

5 At this point in time, just to be
6 dispositive of these motions and just not have them
7 sit out there and just kind of move this case
8 forward, I am going to -- as to the motion to
9 intervene, I am going to deny that. If she wants
10 to bring her own lawsuit, she's certainly welcome
11 to.

12 The defendants' motion for summary
13 judgment as to Mr. Koon's clients, which is the
14 Allens and Ladle Franchise, Inc., and Ladles Soups,
15 LLC, Mr. Koon, I'm going to consider that. If you
16 would send me a proposed order on that. I want to
17 take a look at that, please.

18 Motion for summary judgment as to your
19 clients currently right now, Mr. Ferrara, I
20 understand the current position that you all are
21 in, you're moving forward; I'm going to deny your
22 motion for summary judgment as to that one.

23 Plaintiffs' motion for class
24 certification just to be dispositive, you can bring
25 the motion back at a later date, but currently I'm

1 denying that motion. I've already denied the
2 motion to intervene. Plaintiffs' motion to amend,
3 at this time I will deny that.

4 I don't know what the motion for
5 continuance is, and motion to compel discovery is
6 granted.

7 Mr. Lacke, if you will get the
8 information that you indicated you would make
9 available to the plaintiffs, I would appreciate
10 that.

11 And, Mr. Ferrara, if you would sooner
12 than later make that information from Square
13 available to the clients sooner than later.

14 To be of assistance, I'm going to
15 retain jurisdiction over this case for the purpose
16 of discovery to try to see if I can't help you all
17 move this along.

18 We are going to hear the motion to
19 quash. See if the attorney from Richland will come
20 here; I would be happy to hear it then. Get in
21 touch with my office and I -- I'll just bring him
22 down here. I mean, it's not that hard and we'll
23 just hear that. I think that would be an
24 enormously large benefit for you all if, in fact,
25 we can get that information from the employment

1 board to see if you can move this case forward or
2 not.

3 Get with my office. We're going to do
4 that the week of February 17th. That's the next
5 common pleas nonjury. All right.

6 MR. KOON: Fifteen days --

7 THE COURT: As long as you need.

8 MR. SHELBOURNE: Judge, this motion to
9 reconsider summary judgment you granted us, I
10 assume that's denied.

11 THE COURT: Denied as well.

12 We're going to take a five-minute
13 break.

14 Yes, sir.

15 MR. ASHLEY: Judge, we did have one
16 more issue and that is the motion to deem request
17 to admit admitted.

18 THE COURT: What was that?

19 MR. FERRARA: I'm ready to argue that,
20 Your Honor, if you are. There was a request to
21 admit, and since it's their motion, I guess I'll
22 let them speak.

23 THE COURT: Yes, sir. Go ahead.

24 MR. ASHLEY: In August, we served
25 request to admit on Mr. Ferrara. He represents the

1 large group of franchise defendants. We did not
2 receive responses until this morning, and that's
3 well past, you know, 30 days that they have to
4 respond. We're just asking if the request to admit
5 be deemed admitted.

6 MR. FERRARA: Respectfully, Your Honor,
7 another associate in my office was handling it,
8 but, nonetheless, they were not properly served.
9 August 23rd, I looked back at an e-mail,
10 Mr. Ashley's office e-mailed all of the defendants.

11 And then if we look at the request to
12 admit, Your Honor, it says to all defendants, but
13 the affidavit of service said it was mailed to
14 Kerry Koon's office and e-mailed to everybody else.

15 My office -- the associate in my
16 office, Alex, who is no longer with me, assumed
17 that that was as to Ladles Corporate which they
18 answered. Mr. Shelbourne also answered. But,
19 respectfully, at that time, we didn't have
20 electronic filing and there was never a hard copy
21 mailed upon me and never served upon me. It was
22 just e-mailed to me.

23 THE COURT: Did you answer?

24 MR. FERRARA: I did, Your Honor. As
25 soon as I received this motion I answered these --

1 these requests to admit, and I gave those to
2 Mr. Ashley this morning. And I've answered those
3 within 30 days of these requests to admit being
4 filed.

5 I think this motion, Your Honor, was
6 filed in December, less than 30 days ago. And
7 that's when I had notice that there was a request
8 to admit that had been served.

9 THE COURT: I agree, there is a lot of
10 moving parts in this case. I will deny your motion
11 and just keep the discovery moving. Okay.

12 We'll take a five-minute break.

13 (These proceedings were concluded at
14 1:06 p.m.

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1 CERTIFICATE OF REPORTER

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3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 6th day of April, 2020 at
13 Charleston, Charleston County, South Carolina.

14

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16

17 S/Carol Denise Lauder
18 Carol Denise Lauder
19 Registered Professional
Reporter, CP
My Commission expires
February 27, 2028

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